

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1879.—Ordered to be printed.

Mr. PATTERSON, from the Committee on Territories, submitted the following

REPORT:

[To accompany bill S. 1802.]

The Committee on Territories, to whom were referred the following resolutions, namely—

1. That the Committee on Territories be, and the same is hereby, instructed to ascertain, at its earliest convenience, whether or not the railroad companies referred to by the acts of the Thirty-ninth Congress approved respectively July 25, 26, and 27, 1866, and entitled respectively "An act granting lands to the State of Kansas to aid the construction of the Kansas and Neosho Valley Railroad and its extension to Red River"; "An act granting lands to the State of Kansas to aid in the construction of a Southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas"; and "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," have issued bonds of any kind predicated upon the conditional land-grants of the land of the Indians of the Indian Territory, claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are, and for what purpose.

2. That said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school funds of any such tribes, and if so, what legislation is necessary to prevent in future the diversion of such school funds from their legitimate purpose.

3. That said committee be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory for the better protection of life and property; whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations—

respectfully beg leave to submit the following report:

That they proceeded with the investigation of the questions submitted for their consideration during the last session, and having found it impracticable to complete the examination before recess, obtained leave to visit the Indian Territory, and conclude their inquiry by testimony taken there, and they now state the result of their labors, with the testimony taken in the investigation.

By acts of Congress referred to in the first resolution there was granted to two railroads a right of way through the Indian Territory, one extending from the southern line of Kansas to the northern boundary of Texas, and the other from the westerly line of Arkansas to the Pacific coast; and in addition to the right of way a grant of lands was made, dependent upon the extinguishment of the Indian title and upon the lands becoming public lands of the United States.

The road from Kansas to Texas passing through the whole width of the Territory and known as the Missouri, Kansas and Texas Railway, extends from Hannibal on the Mississippi River, through Missouri, Kan-

sas, and the Territory to Texas, being 576 miles in length, and forming a link in the line of direct railway communication between Chicago and Saint Louis and the Gulf of Mexico at Galveston. It has mortgaged all its line and all its property of every kind in those States and the Territory as security for its bonds, but has issued no bonds "predicated" upon the lands alone.

These mortgage-bonds have been negotiated and are largely held in London, Paris, and Amsterdam, as well as New York. They were issued in aid of the construction of the road, and are held by private investors.

The Atlantic and Pacific Railroad has been constructed only some 36 miles from the Missouri line to Vinita in the Territory, and has mortgaged the lands conditionally granted for that distance to secure certain bonds issued by said company, which bonds are held by purchasers for investment.

The only condition by which the lands in the Indian Territory could become public lands, would be by the voluntary abandonment of the same by the Indians or in case of the extinguishment of their title.

II.

In regard to the second resolution your committee would report that it appears for the past five years the civilized tribes of the Indian Territory have supported delegations at Washington, who have opposed the organization of a civil government over said Territory. But the committee do not assert that these delegates are employed here for the exclusive purpose of opposing a Territorial government, but they do so in their discretion and judgment as representing what they conceive to be the true interests of their people. These delegates have been from twelve to nineteen in number, and have been paid during the sessions of Congress at the rate of \$7 a day each. The total expenditure for five years has amounted in the aggregate to from \$120,000 to \$200,000, that of the Cherokees alone having been stated to be at least \$20,000 a year. Of this sum it does not appear that any part has been taken directly from their school funds, though the Cherokees are in the habit of appropriating part of their school fund for general purposes, one of which is the maintenance of their delegates at Washington. They profess to borrow the sums taken. While the evidence upon this branch of the investigation is not as satisfactory as desired, the committee do not discover any need of immediate legislation.

III.

The inquiry directed by the third resolution involves the consideration of the present condition of the Territory, and although it assumes that a form of government which will give better protection to life and property is a necessity, it has been deemed wise to make an investigation of the whole subject by the examination of witnesses, and from such other sources of information as have been accessible to the committee.

The Indian Territory was part of the Louisiana purchase acquired from France by the treaty of 1803, the third article of which provided that "the inhabitants of said Territory shall be incorporated in the union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights and advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The title to the soil thus acquired remained unincumbered until 1817, when was commenced a system of reservations for Indian tribes, which has continued until the present time. Within the boundaries of the Territory is embraced an area of 70,000 square miles, or a little more than forty-one millions of acres. The eastern half of the Territory, extending from the western boundary of Arkansas westerly for about 200 miles, is occupied by the five civilized tribes, the Cherokee, Creek, Choctaw, Chickasaw, and Seminole, and comprises a tract similar in form but not quite so large as the State of Alabama.

The latest estimate of the numbers of these tribes and of the other inhabitants of this part of the Territory is as follows:

<i>Cherokees</i> , 19,000 :	
Of whom there are mixed bloods, who talk English.....	6,000
Negroes, citizens of the tribe.....	3,500
White citizens.....	700
	10,200
<i>Creeks</i> , 14,260 :	
Of whom there are mixed bloods, who talk English.....	1,200
Negroes, citizens of the tribe.....	2,500
White citizens.....	136
	3,836
<i>Choctaws</i> , 16,000 :	
Of whom there are mixed bloods, who talk English.....	6,000
White.....	1,300
	7,300
Negroes not adopted, 4,000.	
<i>Chickasaws</i> , 5,800 :	
Of whom there are mixed bloods, who talk English.....	2,500
White.....	365
	2,865
Negroes not adopted, 2,600.	
<i>Seminoles</i> , 2,443 :	
Railroad employes.....	1,200
Other white residents.....	5,000
	6,200

From these estimates it appears that out of the population of 68,703, more than two thirds speak English; 6,200 are white citizens of the United States; 6,600 are negroes resident among the Choctaws and Chickasaws, but not adopted by them; and 8,667 are white and negro members of the tribes. Each tribe is settled upon its own reservation and is governed by its own laws, which have their own Territorial limits, and as a consequence there are five sovereignties ranging in population from 2,500 to 19,000 each, possessing a *quasi* independence, and asserting a right to the attributes of a State; a condition of affairs which of necessity leads to confusion. Criminals escaping from one nation to another avoid punishment by their own tribunals which have jurisdiction only over members of the tribe; while offenses which are alone cognizable by the United States courts (those committed by whites upon Indians, by whites upon each other, or by Indians upon whites) can only be tried at Fort Smith, in the western district of Arkansas, frequently a distance of several hundred miles from the place of commission. As a consequence, the difficulty of procuring the attendance of witnesses, the want of traveled roads, and the personal danger incurred, operate in many cases to prevent prosecutions. Nevertheless the court, at each of

its sessions, four in number each year, is crowded with all the criminal business to which it can attend.

It is plain that there can be but slight protection for life or property in a society so constituted that the courts of the country do not have jurisdiction of all classes of its criminals. The chance of punishment by the courts of the United States is so remote and uncertain, and the negroes are so powerless and the whites are so little disposed to hazard their lives in the effort to obtain justice, that there is an utter absence of that restraint which comes from a rigid enforcement of the laws.

The testimony of witnesses to a condition of things which we have only briefly outlined shows most conclusively the pressing necessity for a more efficient administration of criminal law.

The Supreme Court, in the case of the United States against Rogers, 4 Howard's U. S. Reports, decided that persons adopted by the tribes did not become Indians, but remained amenable to the laws and subject to the jurisdiction of the courts of the United States. There are, therefore, 20,000 white and black citizens of the United States lawfully resident among the five tribes, and almost without the protection of its laws against violence and crime.

What is true of the criminal law is more emphatically the case with reference to the civil jurisdiction of the courts. Indian courts deal wholly with Indians, and the property of whites and negroes, not Indians by adoption, is entirely without protection. The property of these persons and of the railroads which were constructed in the Territory by permission of the Indians amounts to many millions of dollars. To extend in some form a civil jurisdiction over the Territory by which the rights of property shall be adequately protected would seem the immediate duty of Congress. It is a necessity which is the result of the changed condition of things in the Territory, brought about by the consent of the tribes, and not against their protest or wishes. The pecuniary interests to be considered are of far greater amount than those belonging to the tribes. Estimating the stock and improvements of the 48,000 Indian population at a most reasonable figure, their property would be much less in the aggregate, exclusive of their lands, than that of citizens of the United States. It is the right of these citizens that their property thus rightfully in the Territory should have given to it the security to be derived from ready and convenient access to a competent legal tribunal. That a court may be established with both civil and criminal jurisdiction which will afford the protection so much needed to both the lives and property of citizens, as well as of the Indians, does not, in the minds of your committee, permit of question, and they recommend such action by Congress without delay. The authority for establishing these courts is not only found in the treaties, but in the general power given to Congress by the Constitution over all the domain and Territories of the United States.

The second branch of the inquiry under this resolution is, "whether the lands now held in common by the Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of land to certain railroad corporations."

The opinion of the committee is that such a division can be had without confirming such land grants.

But the conditional land grants to railway companies were ill advised and should not have been made, and the committee recommended their repeal.

With a view of advancing these people and impressing them with the importance and benefits of full and complete civil government, if it is

not now true that they are citizens of the United States, they should be made such by appropriate legislation.

The interests of these tribes with the United States are very great. They need constant attention, and with each year their business is growing and becoming more complicated. No session of Congress passes without much legislation touching their rights and interests in many ways. Sometimes this legislation is crude and inconsistent, arising in some degree from the want of persons upon the floor of Congress possessing full knowledge of their local affairs, and competent to advise as to them. The committee are of opinion it would be greatly to the interest of the general government and these tribes for them to be represented in the House of Representatives by one Delegate, like the Territories proper of the United States are represented.

Looking at the whole matter, then, the committee recommend as follows, viz:

1st. The establishment of a United States court in the nation, with criminal and civil jurisdiction.

2d. Granting the right of representation in Congress as is done in the Territories proper of the United States.

3d. The Indians should become citizens of the United States.

4th. The conditional land-grants to railway companies be repealed.

5th. An appropriation should be made by Congress to pay the expenses of the general council authorized to be convened in said Territory, by the treaties of 1866, with the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations; and an appropriation to pay the Delegate in Congress from the nations.

JOHN J. PATTERSON.
JEROME B. CHAFFEE.
A. SAUNDERS.
W. P. KELLOGG.
A. H. GARLAND.
L. F. GROVER.
FRANK HEREFORD.

TESTIMONY

TAKEN BEFORE

THE SUBCOMMITTEE OF THE COMMITTEE ON TERRITORIES OF THE SENATE OF THE UNITED STATES, APPOINTED, ON MOTION BY MR. VOORHEES, UNDER THE FOLLOWING RESOLUTION:

IN THE SENATE OF THE UNITED STATES,
February 25, 1878.

On motion by Mr. VOORHEES,

Resolved by the Senate, That the Committee on Territories be, and the same is hereby, instructed to ascertain, at its earliest convenience, whether or not the railroad companies referred to by the acts of the Thirty-ninth Congress, approved respectively July 25, 26, and 27, 1866, and entitled respectively, "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River"; "An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas"; and "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," have issued bonds of any kind, predicated upon the conditional land-grants of the lands of the Indians of the Indian Territory claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are, and for what purpose.

Resolved further, That said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school-funds of any of such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purpose.

Resolved further, That said committee be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations.

Resolved further, That said committee, in the discharge of its duties aforesaid, be authorized to send for persons and papers, to employ a stenographer, and, when necessary, to compel the attendance of witnesses in its investigation, and to report the result of said investigation to this body during the present session of Congress.

Attest:

GEO. C. GORHAM,
Secretary.

WASHINGTON, D. C., *Friday. March 22, 1878—10.30 a. m.*

Mr. CHAFFEE, the chairman *pro tempore*, called the committee to order. Senators Garland, Grover, Hereford, and Saunders present.

Messrs. Hubbard and Baker appeared on behalf of the railroads.

Messrs. Boudinot, Adair, Overton, and Grafton appeared on behalf of the Indians.

TESTIMONY OF JAMES BAKER.

JAMES BAKER, attorney of the Atlantic and Pacific Railroad, was called and sworn by Mr. Chaffee (who acted as chairman *pro tempore* in the absence of Mr. Patterson).

The CHAIRMAN *pro tempore*. Mr. Garland, you may examine the witness.

By Mr. GARLAND :

Question. Where do you reside ?—Answer. In Saint Louis, Mo.

Q. Are you connected with either of the roads mentioned in the portion of the resolution you have in your hand ?—A. I am the attorney for the Atlantic and Pacific Railroad Company.

By Mr. HEREFORD :

Q. Attorney in fact or law ?—A. General attorney, and am president of the Saint Louis and San Francisco Railroad Company.

By Mr. GARLAND :

Q. How long have you been the attorney of the first-named company ?—A. About ten years.

Q. How long have you been president of the other ?—A. Since last September.

Q. Where is the domicile, the chief domicile of business, of the first company you named, the Atlantic and Pacific Railroad Company ?—A. In New York City.

Q. Read that first portion of the resolution you have in your hand, and, by way of shortening the question, make a statement to the committee, if you please, of all you know in reference to the subject-matter of the inquiry connected with either or both of the roads of which you have spoken, of one which you are the attorney ; of the other, the president.—A. The Saint Louis and San Francisco Company has no interest in the Territory whatever ; it terminates at the State line. It was part of the Atlantic and Pacific Railroad Company, but was sold out by foreclosure of the mortgage. That portion of the Atlantic and Pacific in the Territory was not sold out, no court having jurisdiction to foreclose a mortgage in that country.

Q. When was this sale, of which you spoke, under the foreclosure of the mortgage ?—A. It was in September, 1866.

Q. Under decree of what court ?—A. The circuit court for the eastern district of Missouri.

By Mr. HEREFORD :

Q. Held at Saint Louis ?—A. Held at Saint Louis. The sale was consummated by a deed being executed on the 2d day of November, 1866.

By Mr. GARLAND :

Q. Has the Atlantic and Pacific Railroad Company, of which you are attorney, a grant of lands in the act of Congress mentioned in the first portion of the resolution ?—A. Yes, sir.

Q. To what amount ?—A. Twenty alternate sections on each side of the road. The company claimed it had a grant in the Indian Territory, but the Commissioner of the General Land Office has decided that it has no land in the Indian Territory.

By Mr. HEREFORD :

Q. Was that decision in writing ? If so, who wrote it ?—A. General Williamson made the decision in the latter part of the summer or beginning of the fall, probably September or October, 1877. I made application to the Secretary of the Interior to ascertain whether they would deed lands to us if we built our road through the Indian reservation, and also demanded a deed with a view of bringing suit for that part between the Indian Territory and the State line, and he decided against us on the question.

By Mr. GARLAND:

Q. Have you that opinion with you?—A. I have not.

Q. Was it ever printed that you know?—A. I saw it printed in a paper which represented the department. I do not recollect the name.

Q. Did your company issue bonds predicated upon an additional grant?—A. Yes, sir.

Q. Do you remember the amount of those bonds and when issued?—

A. Not accurately; they were issued as I remember in 1871. There were two series on the road amounting to \$1,200,000, the other upon land lying upon the side of the road amounting to \$500,000, making in all \$1,700,000.

Q. What did each bond call for?—A. I presume each bond called for \$1,000. There might have been some smaller. I am not positive about that.

Q. Can you furnish a copy of the bond of the road?—A. I can furnish a copy, but the bond is included in the mortgage.

Q. What became of these bonds, or any of them, or of all of them, according to your recollection?—A. They were sold to raise funds with which to build the road.

By Mr. HEREFORD:

Q. Sold in the United States?—A. Yes, sir.

Q. Then I understand your proposition to be, that if the Indian Territory shall be opened for settlement, you will be willing to relinquish all your right to the land within the borders of the Indian Territory?—A. Yes, sir.

Q. How can you do that if you hold the fee and predicate your bonds on the land?—A. I do not think we can as against the bonds, but I think that Congress has power to revoke the grant.

Q. For what reason?—A. Because it reserves the power to alter or amend the charter.

Q. Has there been any failure on the part of the corporation to comply with the law?—A. Yes, sir; as we could not build the road through a desolation of 400 or 600 miles. The government would not give us the land we supposed they would, and the result has been that a good many of our people have been ruined, and the bonds have passed out of their hands, because they could not hold them.

Q. Does the company—the stockholders or any officers of the company—own these bonds, or are they distributed outside to other parties?—A. Some had owned portions of the bonds; some have been compelled to sell them, and, on account of the losses made by the investment, have sold to outside parties.

Q. Do you know the proportion of these bonds controlled by those inside of the company?—A. I do not; I think it would be difficult to ascertain that.

By Mr. HEREFORD:

Q. Who are they?—A. They are very numerous—we can furnish a list of stockholders if you would like it.

By the CHAIRMAN *pro tempore*:

Q. In this portion built in the Indian Territory, the company has laid no claim to lands?—A. No, sir; that is, we could not claim the land without the government extinguished the Indian title.

Q. I see by the act that the land throughout the territory is double the quantity of that throughout the States?—A. Yes, sir.

By Mr. GARLAND :

Q. Do you know anything further yourself that would come under the resolution so far as your roads are concerned, or those with whom you are connected ?—A. I do not think of anything. There may be.

By the CHAIRMAN *pro tempore* :

Q. What is the value of the bonds in the market ?—A. I suppose that they can be bought for five cents on the dollar.

By Mr. GARLAND :

Q. For five cents on the dollar ?—A. Yes, sir.

By Mr. HEREFORD :

Q. How many miles are now completed in the Indian Territory ?—A. Thirty-six or thirty-seven miles inside of the Indian Territory.

By the CHAIRMAN *pro tempore* :

Q. Do you say there were bonds amounting to \$1,700,000 issued upon this ?—A. Yes, sir.

By Mr. HEREFORD :

Q. The part which runs through Missouri : how are the funds for the building of that part ; are there mortgages on that part of the road ?—A. Yes ; sir.

Q. Does that part have a land-grant inside of Missouri ?—A. Yes, sir. The government land which the State held—smaller quantities, however.

Q. How much did it cover in Missouri ; the same on each side of the road ?—A. Six miles on each side to the State line from Franklin to Springfield.

By Mr. SAUNDERS :

Q. I was going to ask if you limited it to so much per mile ?—A. Yes, sir ; I think it was \$30,000 on one of the series, and probably \$15,000 on the other, as I recollect it.

By Mr. GROVER :

Q. Making \$45,000 in all ?—A. The mortgage will show just what it is when you get it.

By Colonel ADAIR :

Q. The mortgage that you have been testifying about has reference only to the Atlantic and Pacific Railroad Company ?—A. Yes, sir.

Q. You spoke a little while ago of having prepared a proposition and submitted it to Congress. What bill was that put into ; is it in any bill now pending before Congress ?—A. It is prepared as an amendment to the Cravens bill now before the Committee on Indian Affairs, House of Representatives.

Q. Do you know anything about Mr. Franklin's bill ; is not that also the same proposition ?—A. It is exactly the same proposition, but I had nothing to do with the Franklin bill.

Q. Does that proposition embrace anything that has reference to the conditions of the grant of lands in the Indian Territory ?—A. I guess so.

Q. Does it not specify the grant in the Indian Territory ?—A. I think it does.

Q. Is there not another section in the charter of the act of 1866, with regard to the Atlantic and Pacific Railroad, having reference to land-grants beside that so-called conditional grant to Indians in which the government proposes to give an increased donation to the companies ?—

A. You mean that where lands have been deeded prior to the date of that act—granted or reserved or pre-empted—that the corporation has power to make up what it would lose there on other parts of the line?

Colonel ADAIR. What I mean is this, that it was provided in the act of 1866, in one provision, that your company may have grants to our lands by our consent, and that is called a conditional land-grant. Then the subsequent section in that act provides that your company may have double the quantity of lands in any of the territories of the United States. Are not these two provisions separate in the bill?—A. I do not think the power of purchasing from the Indian tribes or corporations is any conditional grant at all. It is absurd to talk about it.

Q. Conditioned upon their consent?—A. If I understand you, there is a provision in that charter authorizing the company to accept lands from any State or any other corporation or Indian nation. If that is what you mean, that is granted. It has the power to accept with the consent of the President of the United States.

Q. Does not the act of Congress of 1866, relating to the Atlantic and Pacific Railroad Company, have a specification in it that your company may have every other alternate section of public land to the amount of twenty alternate sections per mile on each side of the railroad line as said company may adopt through the territory of the United States, and ten alternate sections of land on each side of said railroad whenever it passes through any State?—A. Yes, sir.

The CHAIRMAN *pro tempore*. I think these questions are not proper; the act shows that itself.

Q. Were there any bonds whatever sold or donated to Indians or any person representing the Indians or the Indian nation?—A. No, sir.

By Mr. GARLAND:

Q. The section of what is called the Cravens bill, to which you alluded and of which Colonel Adair has spoken as being in the Franklin bill, relates only to the conditional land-grant?—A. Yes, sir. I believe that is its language. I really took the resolution from the Franklin bill and asked to have it incorporated in the Cravens bill in the Indian Committee.

By Colonel ADAIR:

Q. If your company could procure any act, whether it be called a territorial bill or not, if your company could secure such legislation of Congress as would establish a territorial bill over the Indian country, and would also declare the Indian lands public lands of the government, would such an act as that make your mortgage good?—A. I do not think that it would. I have represented to our people for two or three years that we could not possibly get the lands.

Q. If you had an act which would take the fee of the lands and put it in the United States and at some time turn the country into a Territory, within the purview of such an act as that would not that make it good?—A. I have no doubt that if the Indian title was extinguished that our title would be good, but this bill does not propose to extinguish the title at all. It proposes giving the Indians a better title than they have. It does propose to dissolve the tribal relations, which, I think, should be done in the interest of the Indians. It proposes to give them more than they have got or ever had before—a better government.

Q. Have you ever read the constitution and laws of the Cherokee Nation?—A. I have read part, but not all, a long time ago.

Q. Do you know how long the Cherokees have had a written form of government?—A. I believe over thirty years or more—you know.

Q. Have you seen the code?—A. Yes; I have seen the code of your laws.

Q. You have not read it?—A. Not a great deal.

Q. How do you happen to know they have no government if you have not read it and do not know anything about it?—A. I do not believe I put it in that light—a good government in place of a bad one. I think, however, your government is a mockery, an absolute mockery.

The CHAIRMAN *pro tempore* objected to this course of the examination.

Q. It is an act passed July 27, 1866. How long after that did you organize and commence building the road?—A. Well, I do not exactly know when the organization took place. It took place under what was called the Frémont party; they undertook to construct part of the road that had to be constructed before the fall in 1868. On the 17th of March the legislature placed that part of the road lying in the State of Missouri, east of Springfield, in the hands of the present party and they entered upon the construction in June and they finished it at Vinita in March or April, 1871, as I recollect.

Q. Section nineteen provides "that unless the said Atlantic and Pacific Railroad Company shall obtain *bona fide* subscription to the stock of said company to the amount of \$1,000,000, with 10 per centum paid, within two years after the passage of the approval of this act it shall be null and void." Can you state whether the company complied with that provision of the charter?—A. It complied with the provision of the charter up to Vinita as construed by the Secretary of the Interior, but since that time they have not. It was impossible to do it.

By Colonel BOUDINOT:

Q. Can you give the committee information as to how much land you would be entitled to if you got the land running along the construction of the road in the Indian nation? Can you make an estimate?—A. I suppose they are entitled to forty sections to the mile, taking both sides of the road.

Q. I do not mean that. What I want to know is, the quantity. Thirty-six miles built in the Indian country entitled the company to twenty alternate sections; how much land would that be? I have figured it out here, and make it 460,800 acres. Is that correct?—A. I suppose so.

By Mr. GARLAND:

Q. Do you wish that to appear?—A. Yes, sir; I suppose if this bill passes in the shape it is in, we could not get the land. That is my opinion as a lawyer, and as counsel for the company I have so advised our people long ago. They are willing to give up the lands for the sake of getting business. In other words, they do not want to be kept in a situation where they cannot get lands or business. They would rather take half a loaf than no bread.

At 12 o'clock m. the committee took a recess until 1 o'clock p. m.

Committee met at 1 o'clock p. m.

TESTIMONY OF D. M. HALEY.

D. M. HALEY sworn by the chairman *pro tempore* and examined:

By Mr. GARLAND:

Question. Where do you reside?—Answer. McAlester, Choctaw Nation, Indian Territory.

Q. How long have you lived there?—A. About twelve years.

Q. What business have you been engaged in?—A. In the drug business.

By the CHAIRMAN *pro tempore* :

Q. Do you belong to the Indian tribe?—A. Yes, sir.

Q. By marriage?—A. Yes, sir; by marriage. I have a wife and four children.

By Mr. GARLAND :

Q. Doctor, there is a resolution pending before the Senate involving several matters of inquiry in reference to the Indian country. The matters we want to speak of are included in the second and third sections of the resolution I now hand you. In order to make the question short, read these and take them in their order and state fully, as far as you can, the items or subjects mentioned there in reference to the country in which you live.—A. I do not think I can get at it from my own knowledge, for we had no delegates here last year.

Q. You had none here last year and have none this?—A. No, sir.

By Mr. HUBBARD :

Q. He was here year before last?—A. Yes; he was elected by the council to defend the eastern boundary question; he came with two other gentlemen for that purpose.

By Mr. GARLAND :

Q. He was not a general delegate?—A. No, sir.

By Mr. HUBBARD :

Q. He has been here recently?—A. Yes, sir.

Q. As delegate?—A. I suppose he claims to be a delegate.

By Mr. GARLAND :

Q. You have no information upon the first point in the inquiry as to the amount expended for school funds?—A. No, sir. It is a difficult matter to get the amount of expenditures from our people from the fact that our laws are not published. I have the laws with me as published up to 1869; since that time we have had no publication except a few in pamphlet form covering not more than half a dozen pages. It is difficult to get the amount of expenditures, because our auditor lives in the southern portion of the nation, probably 125 miles from where I do.

Q. State his place of residence.—A. His post-office address is Good Land, Indian Territory. His name is B. L. Leflora. The treasurer lives on the railroad, about 40 miles from Atoka. His name is C. E. Nelson.

Q. Any information you may have in reference to that is from hearsay; you do not know anything positively yourself as to the expenditures for the last five years as to delegates?—A. Well, for these last delegates there was an appropriation of \$1,500 each, which I saw in the records. I was in the council when that appropriation was made. It was made in 1875.

Q. For how many delegates?—A. For three. Last year this law which was enacted creating delegates to perform this duty was repealed.

Q. Did I understand you to say \$1,500 in the aggregate or \$1,500 each, making in all \$4,500?—A. Fifteen hundred dollars each.

Q. When was it repealed?—A. It was repealed in October, 1876.

By Mr. CHAFFEE, (chairman *pro tempore*) :

Q. Whom did they represent—the whole Territory?—A. They have no law giving them the right to represent anybody.

Q. You say there are three appropriations of \$1,500 each for three different persons. They came here on behalf of what particular Indian tribe?—A. The Choctaws sent them here for the purpose of settling up the eastern boundary question, and they were to receive 18 per cent. of the amount levied besides; this \$4,500 was appropriated for expenses.

Q. On behalf of the Choctaws?—A. Yes, sir.

Q. Eighteen per cent. you say?—A. Yes, sir. Last year the council repealed that law, and since that time there has been no law passed sending any delegates at all.

By Mr. HUBBARD:

Q. You say that there is a man claiming to be a delegate?—A. Yes, sir.

By Mr. GARLAND:

Q. Where can that order of revocation be found?—A. It can be found in the records of the national secretary, who lives some twenty miles east of McAlester. He probably has them.

Q. Do you recollect in that order revoking this authority any provision was made for continuing a delegate here?—A. They repealed it entirely; my understanding is they claimed the right as a contingent right—that there is 18 per cent. they are to receive. He represents himself as a delegate, alleging that the council had no right to repeal the law. The matter was brought before the last council. There were several different kinds of laws. They defeated it entirely; they said they did not want a delegate—that they could not afford to have a delegate.

By Mr. GARLAND:

Q. Do you know whether any of the money that has been expended for the purposes of this delegation has been taken from the school-funds?—A. Last year some time—I do not remember exactly the time—this same gentlemen, who were here acting as delegate, came on, and in making their report to the council, they charged—I do not remember the exact amount—so many hundred dollars as delegates to Washington. That money came out of the school-fund. We have two school-funds proper; one is from interest from invested funds amounting to \$27,000. We have another fund that is created by collections of taxes levied upon corporations who are shipping out coal, lumber, timber, and stone. There is a law creating an office of the national agent to levy and collect these taxes. That law directs that the money shall be applied to school-purposes. It is school-money, not to be used or diverted for any other purpose. I have evidence here to show, according to their statement to the last council and to the council previous, that there has been several thousand dollars diverted from the school-fund.

By Mr. GARLAND:

Q. You say diverted from the school-fund?—A. Yes, sir.

Q. Have you that document with you? If so, produce it.—A. I have most of the papers for the last fiscal year. I got them from the council myself. To get certified copies of the records, you would have to pay 75 cents or \$1 a copy. I was there taking down the whole proceedings, and know it to be correct.

Q. You have compared it with the record?—A. Yes, sir. I now produce it, and it is as follows:

THE COMMITTEE ON TERRITORIES.

9

APPROPRIATION BILL.

AN ACT entitled an act making appropriations for the fiscal year ending July 31, 1878.

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the following sums of money be, and the same are hereby, appropriated out of any money in the Treasury not otherwise appropriated:

Salary principal chief.....	\$1,000 00
Salary national secretary, treasurer, and auditor.....	1,800 00
Salary national attorney.....	400 00
Salary judges supreme court.....	1,200 00
Salary circuit judges.....	1,200 00
Salary district chiefs.....	750 00
Salary district attorneys.....	550 00
Contingent funds, subject to the order of the principal chief.....	400 00
Contingent funds of the Auditor's office.....	200 00
Salary county and probate judges.....	1,600 00
Salary county and probate clerks.....	800 00
Salary of sheriffs.....	1,200 00
Salary county light-horsemen.....	2,400 00
Salary national light-horsemen.....	950 00
To pay judges of election.....	220 00
To pay clerks of election.....	150 00
Salary circuit clerks.....	1,200 00
To pay sheriffs and deputies for attending circuit court.....	2,572 00
To pay sheriffs and deputies attending supreme court.....	50 00
Salary clerk supreme court.....	100 00
Salary of trustees and superintendent of public schools.....	800 00
To pay grand and petit jurors.....	3,600 00
Relief of Josiah Bryant, sheriff of Blue County.....	500 00
Relief of Albert Pike.....	261 75
Relief of Ben Wesley, formerly sheriff of Atoka County.....	22 43
For school purposes out of national royalty.....	7,000 00
For school purpose out of the interest of the invested funds.....	27,534 00
To pay per diem and mileage of members of the general council.....	7,000 00

Which amount, if not exhausted, shall be applied to any other appropriation.

SEC. 2. *Be it further enacted,* That the national auditor is hereby required to issue his warrants on the national treasurer for the same.

SEC. 3. *Be it further enacted,* That this act take effect and be in force from and after its passage.

Passed house, October 31, 1877.

GEO. DURANT, *Speaker.*

Passed senate, October 31, 1877.

CHAS. WINSTON,
President pro tem.

Approved October 31, 1877.

COLEMAN COLE,
P. C. C. N.

FIGURES WON'T LIE.—REPORT OF AN IMPORTANT FINANCE COMMITTEE.—A DEFICIT OF \$4,000 IN ONE YEAR.—LET THE PEOPLE READ AND DRAW THEIR OWN CONCLUSIONS.

To the General Council:

Your joint committee, to whom was referred the report of the national agent for the fiscal year commencing July 12, 1876, and ending June 30, 1877, beg leave to report as follows:

1. We find the report as to receipts for the first quarter of said fiscal year correct, and the disbursements, viz: Paid weigher the sum of \$150—\$32.90 more than he was entitled to under the law; and the amount of \$75 as expenses of office in bulk. The law requires him to make a detailed statement of such expenses, which he has not done.

2. We find in his second quarterly report receipts correctly stated. Disbursements to public weigher, \$200—\$33.14 more than he was entitled to under the law; and the sum of \$125, office expense, for which there is no detailed statement.

3. We find in his third quarterly report receipts correctly stated, and the disbursement the public weigher, \$200—\$18.97 more than he was entitled to under the law; expense of office, \$180.65 in bulk—no detailed statement according to law; and the sum of \$1,066.65 for the expense of a court and attorney fees at McAlester and Atoka, without warrant or authority of law, and in direct violation of his oath of office and his official bond.

4. And in his fourth quarterly report the receipts are short the sum of \$826.00 $\frac{3}{4}$ as royalty on timber. He reports the sum of \$1,434.63 as received from that source, when he really received \$2,260.63 $\frac{1}{4}$, showing the amount first stated short. Other receipts as to coal and timber correct. Disbursement to public weigher, \$50—\$44.75 less than the public weigher was entitled to under the law. Expenses of office, \$170 in bulk; no detailed statement according to law; and to Capt. J. S. Stanley and D. F. Harkins expenses to Washington in railroad suit, \$783.90, without any appropriation having been made for such purpose or law authorizing him to employ attorney. Expense of a court at Muskogee before Agent Marston, \$526.25, without authority of law.

To the national treasurer, \$7,000, which was according to law.

RECAPITULATION.

Amount received as per first quarterly report	\$3,239 67
Second quarterly report	3,151 92
Third quarterly report	4,310 43
Fourth quarterly report	2,555 72
Error in fourth report	826 00
	14,083 74

DISBURSEMENTS.

Amount paid public weigher	\$559 71
Expense of office	550 00
10 per cent. on whole amount collected	1,408 37
Amount paid into treasury	7,000 00
	9,518 08
Total amount according to law	9,518 08
Balance due Choctaw treasury	4,365 65
Balance reported on hand	1,405 94

In the recapitulation those amounts with no law to sustain them have not been made
All of which is respectfully submitted.

B. J. PICKENS,
Chairman.

(NOTE BY THE STENOGRAPHER.—The statement submitted under the head of "Appropriation bill" was taken from the "Star Vindicator," a newspaper published at McAlester, Choctaw Nation, Indian Territory, dated Saturday, November 10, 1877." The second statement submitted, headed "Figures won't lie," "Report of an important finance committee," &c., was taken from the same newspaper issued Saturday, November 6, 1877.)

The WITNESS. Now, then, gentlemen, before I go any further in this thing, I would like to know if I can have protection upon my return home. I am giving evidence here and may need protection when I get back. There was a party arrested last summer without any warrant of law, and it was supposed that they were to be dealt foully with. The question with me is, what security have I got after giving this testimony?

By Mr. CHAFFEE (chairman *pro tempore* :

Q. Do you say to the committee that you are apprehensive of your personal safety upon your return on account of giving this testimony?—A. I am, sir.

Mr. GARLAND. It may be proper to give this testimony without letting it be made public.

The WITNESS. I am not afraid of most of the people. The probability is that the evidence I shall give will go against these parties, and it will not be advantageous to me.

By Mr. GARLAND :

Q. All you know in reference to the expenditure of money coming within the range of this inquiry you have from this record?—A. Yes,

sir. That I have is from the record that I handed to you; more I cannot say.

Q. Who were the custodians of the school-funds under the law?—

A. The national treasurer is the custodian of the fund and he passes it over to the school superintendent and he is the gentleman who lives at Atoka, 40 miles east of McAlester. The question as to the number of schools and the condition they are in I cannot answer. Owing to the great expense and trouble in finding out what the indebtedness of the nation is, and the distance between the treasurer and auditor being so great and the expense and trouble of going to them so heavy to see the balance-sheet, prevented me from having them. It is presumed that the indebtedness of the nation was \$75,000; whether more or less I am unable to say from the fact that there are no laws printed and these balance-sheets are not shown to the people. The only way to get them is to go to the office and get them. They are filed in the national secretary's office from one year to another. None of the people ever get the balance-sheet. The only way to get them is to go to the office.

By Mr. CHAFFEE (chairman *pro tempore*):

Q. What do you mean by nation?—A. I am speaking of the Choctaw Nation.

By Mr. HUBBARD:

Q. Are there county debts?—A. We have county debts, and we issue county scrip.

By Mr. GARLAND:

Q. You say you have county debts besides?—A. Yes, sir; but the county money is worthless. It has no market value at all. None.

Q. Have you any rule, law, or regulation that requires the publishing of the receipts and disbursements of money from time to time, like those in most of the States where they have provisions in the constitution requiring such publication?—A. None. We have no law requiring them to be published. There was an act passed to have the laws published from 1869 up to 1875, and an appropriation of \$3,500 was made to have them translated and published, but the money is exhausted, and we have no translation or publication of the laws. We demanded that it should be done by the secretary of the council. He asked for time, but I think it will be a long time. The money is exhausted, and there are no laws published.

By Mr. HUBBARD:

Q. Are there a number of those counties?—A. There are about fifteen.

Q. They all issue scrip?—A. Yes, sir.

Q. Considerable amounts by each county?—A. Yes, sir; a great deal.

By Mr. GARLAND:

Q. Will you state, if you can, how many public schools you have in your nation?—A. We have two public schools.

Q. Where are they?—A. One at New Hope, Skullyville County, and one near Doaksville. These two are seminaries. Of the neighborhood schools, I do not know exactly how many there are.

Q. You do not know how many there are; how many in each district?—A. No, sir; I do not. Our schools in our county will stop next month, the funds being exhausted, and they will stop all the schools in that district. They never run a whole year.

Q. Are there Chickasaws in your nation?—A. Yes, sir; a great many.

Q. Are they under instruction?—A. They never have been up to this year.

(NOTE BY THE STENOGRAPHER.—At this point, Col. B. F. Grafton, counsel for the Chickasaws, arose and objected to the investigation going on, because of the want of jurisdiction of the committee to inquire into the domestic affairs of the Chickasaw Nation in the Indian Territory, and asked for time to file a written protest. Granted.)

By Mr. GARLAND:

Q. Proceed, doctor, and answer the question in reference to the Chickasaw Nation.—A. There was an appropriation made in reference to them allowing so much for school purposes in our nation.

Colonel GRAFTON (counsel for the Chickasaw Nation). We object to this line of testimony.

Mr. CHAFFEE (chairman *pro tempore*). We can get it.

WITNESS. The only knowledge I have is from having some Chickasaw children boarding with me, and from a letter received from the superintendent.

Mr. CHAFFEE (chairman *pro tempore*). I do not think there can be any objection to his stating what he knows and how he knows it.

Governor OVERTON. I do object to his stating it, from the fact that I do not believe he knows anything about it. If you want it you can get it from some one better posted.

By Mr. GARLAND:

Q. You may say how many go to your schools in your nation. Could you state what would be the average number attending the neighborhood schools?—A. I presume the average is about twenty-five to each school; some are larger and some are smaller.

Q. How many months in the year are they kept in operation?—A. From five to six months. The school closes next month, and will remain closed until the next appropriation is made. The school fund is exhausted, and the schools must wait until the next appropriation.

Q. What is the minimum length of time they must be kept?—A. There is no length of time; they continue until the money is exhausted and then they close.

Q. What is the condition of the Choctaw Nation in reference to peace and order and protection to life and property, at this present time, going back five years, so as to be within the scope of this inquiry?—A. At the present time there is no disturbance there that I know of. Last summer we had considerable disturbance; in fact, several of our prominent men were arrested by order of the chief, and that created considerable excitement.

Q. Was this in any particular locality, or did it extend over the Territory generally?—A. In one particular locality, but extended to another part of the nation. I am speaking now of our nation. It originated at McAlester and extended to the eastern portion of the nation.

Q. You spoke of several being arrested. All for the same offense?—A. I do not know. The chief merely sent the "Light-Horse" with a writ for their arrest, and to bring them before him.

Q. The "Light-Horse;" that is a company?—A. This national Light-Horse is the messenger for the chief, and this requisition was to them to arrest the bodies of these parties, and bring them before him within two days thereafter.

Q. What did it specify?—A. Nothing. Simply to arrest these parties and bring them before him.

Q. Was that an unusual proceeding?—A. Yes, sir; very.

Q. What was understood to be the cause of this arrest being made?—A. The parties arrested had no knowledge as to what it was. I did not stay long enough to find out. The writ was served in the evening, but during the night they got away.

Q. How many were there?—A. Three—Mr. Pursley, Mr. McAlister, and Mr. Reams. There was another party to the writ whom they did not get, but those three were brought to McAlester, and during the night they got away and left for the States.

By Mr. HUBBARD:

Q. Have you a letter of Mr. Marston, the United States agent?—A. I have, sir.

Q. Will you be kind enough to produce it?—A. Yes, sir. It reads as follows:

OFFICE OF INDIAN AFFAIRS,
UNITED STATES UNION AGENCY,
Muskogee, Ind. Ter., August 3, 1877.

DEAR SIR: In answer to yours of the 2d, I would say, I have just written to Governor Cale, giving him the best friendly advice I can. Under the circumstances, I should not advise you to return home at present.

I shall be in Saint Louis the 10th, and would be glad to see you. Pursley Walker and Reams went to Fort Smith to-day. Pursley lost the election by 2 votes.

Very truly, yours, &c.,

S. W. MARSTON,
United States Agent.

JAMES Y. McALISTER,
East Saint Louis, care of Daily & Miller.

By Mr. GARLAND:

Q. How did you get this letter?—A. I got it from Mr. McAlister, one of the parties arrested.

Q. You say the letter refers to the matter of arrest?—A. Yes, sir.

Q. One of the gentlemen is here?—A. Yes, sir. Mr. Pursley is here.

Q. Where are the other two?—A. They are out home, on the line of the railroad.

Q. Did you understand they were arrested for the same cause?—A. I presume so. Nothing was said for what cause.

Q. Do you attend the court proceedings in the nation?—A. Yes, sir. I am clerk of the circuit court of the county in which I live.

Q. Are the proceedings of the court conducted regularly and orderly, as courts generally are in the States you have been in?—A. Yes, sir.

Q. In the general enforcement of the laws in the Territory, how does it compare with the States through which you have traveled?—A. It compares favorably.

By Mr. HUBBARD:

Q. Have you a national agent?—A. We have.

Q. What is his business?—A. His business is to collect the royalty on ties, coal, stone, and lumber.

Q. Has that been decided to be unconstitutional?—A. Yes, sir; by the Supreme Court. It was decided that the act creating the office was unconstitutional—decided in two instances; once in 1872, and last in 1875. The council re-enacted that law and it is still being enforced.

By Mr. CHAFFEE (chairman *pro tempore*):

Q. There has been no publication of the laws since 1869?—A. None, except half a dozen. The rest are in manuscript.

Q. Choctaw laws?—A. Yes, sir.

Q. What I want is this: The Choctaw Nation, as a nation, has a fundamental or organic law, has it?—A. Yes, sir.

By Mr. GARLAND:

Q. If you have them will you deposit them with the committee?—A. I have the code with me.

Q. You will leave with the committee, as part of your testimony, all the laws, of whatever character, you may have in reference to your nation, and including the fundamental or organic laws?—A. Yes, sir; I will.

By Mr. HUBBARD:

Q. Does he now collect taxes after they have been pronounced unconstitutional by the Supreme Court?—A. He does, indirectly.

By Mr. CHAFFEE, chairman *pro tempore*:

Q. I understood you to say that the law creating the office, and not the tax, has been decided unconstitutional?—A. Yes, sir.

By Mr. HUBBARD:

Q. They are still continuing to collect the tax?—A. Yes, sir.

By Mr. CHAFFEE (chairman *pro tempore*):

Q. Who are the parties who cut this timber?—A. The contractors that have contracts on the railroad to furnish ties.

Q. For organized companies within the nation?—A. No, sir; parties make contracts with the railroads, and then they make a contract with the national agent to pay him so much royalty.

By Mr. HUBBARD:

Q. The coal mines?—A. That is an organized company.

Q. By what authority do these companies work these coal mines?—A. In the first place, the coal mines were leased by citizens of the nation to the coal companies, which lease I have with me. It is the first and original lease. That was continued for several years, when this office was created, and then they forced the company to re-lease from them. The constitution gives to any citizen who may find a mine the exclusive right to work the same. I consider the law allows the citizen to have it worked or work it himself. Under that clause, I think the citizen has a right to lease, and under that right they leased them.

Q. Have you any right of appeal from the national agent?—A. We filed a protest or writ of injunction before the circuit court, and the case was decided in our favor. An appeal was taken to the Supreme Court, and it rendered this decision of which I have spoken.

Q. Does this company operate under authority of the nation, subject to the approval of the council?—A. They operate under the lease.

Q. They are operating under authority of the nation, subject to the approval or disapproval of the council?—A. They are operating under the lease of the individuals. I do not know as to the mines of the nation.

Q. Do you not know there are contracts to that effect?—A. Those contracts are in existence. As to my personal knowledge, I do not know. I do not think I have seen them, although I may have.

By Mr. GARLAND:

Q. Have you seen any of the contracts?—A. I do not think I have.

Q. Do you know where any could be found?—A. They can be found with the superintendent of the coal company, or you can make application to the national agent; they are on file there.

Q. Have you a census of the Choctaw Nation taken any time recently?—A. Not for ten or twelve years.

Q. Have you any information as to the colored people or negroes living in the Choctaw Nation?—A. No positive knowledge. I think at the last census there were from 2,000 to 2,500 in the nation. I am not positive. We have had no census since that time.

Q. Do the negroes go to the common schools?—A. No, sir.

Q. Do the adult males vote?—A. No, sir.

Q. Do they pay taxes?—A. No, sir.

Q. By what tenure do they hold lands? Do they hold in their individual right, or do they rent?—A. If they have any right at all they rent from citizens. A great many go down and enter upon land and rent from nobody.

By Mr. CHAFFEE (chairman *pro tempore*):

Q. If they commit any crime are they treated in the courts as citizens?—A. No, sir; they are tried in the United States courts.

Q. What right have they in the nation?—A. I do not know.

By Mr. HUBBARD:

Q. Are any of them born there?—A. Some are.

Q. Slaves, were they not?—A. Yes, sir.

By Mr. GARLAND:

Q. Their testimony received in the courts like the testimony of other people?—A. No, sir.

Q. Do they sit upon juries?—A. No, sir.

By Mr. HUBBARD:

Q. If they commit a crime what is done?—A. They are amenable to the laws of the United States.

By Mr. GARLAND:

Q. Suppose a negro commits a crime; what is done; does he go scot-free of punishment?—A. He is arrested and taken to Fort Smith by the officers, by whom he is arrested.

Q. Who are they?—A. They are persons who travel through the country for the purpose of making arrests.

Q. If a negro commits a crime, the marshal does not arrest him without a warrant, does he?—A. That is very hard to answer. It used to be that these persons carried a warrant in blank with them. I do not know now how it is. I know there was a time when they carried writs with them.

Q. Suppose a negro commits a crime 100 or 200 miles from Fort Smith, and he is arrested and taken to Fort Smith for trial, the witnesses have to be taken there too, do they?—A. Yes, sir.

Q. Who pays that expense?—A. The United States Government.

Q. Suppose a white man commits a crime within the nation?—A. He is treated in the same way.

By Mr. HUBBARD:

Q. Properly speaking, ordinarily is there any arrest made?—A. No, sir; if the marshal has any knowledge of it, or any parties inform him of it, or he get any knowledge of it himself; he makes up a case, but there are a great many cases that go free, because the citizens do not care to be annoyed by having to go to Fort Smith. If a negro steals a horse or a cow they would rather let it go than prosecute it. It is worth more to let it go than to prosecute it.

By Mr. GARLAND:

Q. As far as you can form an opinion, what is your impression as to the sentiment in the Choctaw nation in reference to changing their government from its present form to that of a territorial government proper of the United States?—A. My judgment of the sentiment of the people proper is to secure their land interests first. The territorial government does not annoy them so much as their land interests. They are fearful that the railroad companies will take their lands. They want the land secured to them in such shape that they can hold it.

Q. What do you mean by securing the land; secure it to them as a tribe or in severalty?—A. In severalty. They want a homestead so they can hold it. They want a pro rata division in order to settle this land-interest question.

Q. Suppose that the land question, or title, is disposed of—suppose that is out of the way—what would be the sentiment of the people in reference to changing the government, making it a Territory proper of the United States or remaining as they are?—A. A great many want a court and a Territory proper which will not interfere with their tribal organization.

Q. You think they would prefer to continue their own tribal organization?—A. Yes, sir.

Q. Then, if this tribal organization is continued, you feel you and the people are as well protected as you would be by a change of government? You would be as well protected in life, liberty, and property as if it were changed?—A. I think we would have every protection if we had a United States court.

Q. I am speaking of the broader question of your coming into territorial relations with the United States, like Montana, Wyoming, and the other Territories?—A. In our nation there are opponents, and there are parties who favor it.

Q. You are not prepared to say what would be the sentiment of the people, then?—A. The sentiment is the land interest first. It is immaterial what follows afterwards.

By Mr. HUBBARD:

Q. Is it this: Do the citizens prefer to remain as they are now or to have the lands apportioned in severalty, with a Territorial government which would not destroy their tribal relations?—A. They prefer to have the lands divided in severalty, with a Territorial government which does not destroy their tribal relations. They want this first, before any other action.

Q. Can there be any prosperity in the nation while these lands are held in common?—A. There can be some prosperity, but some trouble, too.

By Mr. GARLAND:

Q. Of course, you have given this subject more or less attention and consideration, and I suppose you have a good deal of interest in the land question, but suppose it was out of the way. Now, the tribal organization is the paramount question; has it occurred to you out there what other government could preserve that better than it is now?—A. If the United States undertakes to make this a Territorial government properly speaking—the land question is outside—it must do it preserving the tribal organization.

By Mr. HUBBARD:

Q. What has been the progress of the nation since you have been there?—A. The nation has advanced considerably.

Q. What has caused this advance ; has it been in consequence of the advance of the people or has it been caused by their coming in contact with outsiders ?—A. It has been advanced because parties have been introduced there—outsiders coming in there and mingling with the people, farming, &c. I think that it has been advanced by that means.

By Colonel ADAIR :

Q. Are not the schools in the Choctaw and Chickasaw country free to the children of that country—any person can send who chooses to do so ?—A. No, sir.

Q. Are they not so according to the laws of the Choctaw Nation, and according to the treaties of the nation ?—A. Yes, sir ; but the law and treaties do not give them the privilege of coming to their schools.

Q. I refer to citizens. Are not the schools free to their own people ?—A. Yes, sir.

Q. Does not the Choctaw and Chickasaw treaty provide the manner in which the lands shall be surveyed and the money applied ?—A. It does, and under that the Chickasaws have surveyed their land.

Q. When you speak of a certain class of Chickasaws and Choctaws who want their lands surveyed, you therefore mean, they want the treaties carried out ?—A. I presume they want their landed interest settled.

Q. You have no people who wish to violate their treaties ? You propose to carry out the terms of the treaty ?—A. Yes, sir ; that is the feeling.

Q. These colored people of whom you spoke—do not the Choctaw and Chickasaw treaties regulate or prescribe the rights of those colored people ?—A. Certain classes it does. There are colored people there for whom there is no provision at all. The treaty provides for those who were owned previous to the war, or born there. Since that time, there is no provision that I know of.

Q. Do you regard those citizens of the United States, who are there without authority, as being intruders in that country ?—A. I so consider the treaty.

Q. Does not the treaty provide that the government shall remove them ?—A. Yes, sir ; that is my understanding.

Q. Do you know anything about the decision in the Interior Department, made some two or three years ago, declaring that the matter in regard to the leasing of coal mines was a subject under the control of the legislatures of the Choctaw and Chickasaw nations ?—A. I understood so, but I believe it was afterwards set aside.

Colonel ADAIR addressed the committee, asking time to file a statement in regard to the investigation, and asked permission to file a protest in reference to the jurisdiction of the committee.

The committee then adjourned until half-past ten o'clock, Monday, March 25, 1878.

MARCH 23, 1878.

The subcommittee met pursuant to adjournment, and, in the absence of the chairman, was called to order by Mr. Chaffee.

The CHAIRMAN *pro tempore*. Mr. Garland, you had better go on with the examination of the witness.

D. M. HAILY recalled :

By Mr. GARLAND :

Question. Doctor, have you the papers which you stated you would

furnish the committee?—Answer. Yes, sir. (Witness produces the papers and hands them to Mr. Garland for examination.)

At this point Mr. B. F. Grafton arose and said:

Mr. Chairman, if it is in order, I desire to enter a protest this morning on behalf of the Chickasaw and Choctaw nations.

The CHAIRMAN *pro tempore*. Dr. Haily is being examined, and he is testifying concerning the Choctaw Nation.

Mr. GRAFTON. I am now appearing for the Choctaws as well as the Chickasaws, and I desire to spread upon the records of this committee a protest from both nations, together with the authorities from the judicial decisions and treaties.

Mr. Grafton then submitted the following *protest* and “Extracts from Judicial Decisions and Treaties”:

To the Senate of the United States:

On behalf of the Choctaw and Chickasaw nations, we respectfully protest against the proposed investigation of the internal affairs of those nations by the Senate of the United States on the following grounds: For ninety years the Government of the United States has, by treaties, judicial decisions, and statutory enactments, recognized the unrestricted right of self-government as inherent in the Indian nations. In the case of *Worcester v. The State of Georgia* (6 Pet., 556), the Supreme Court of the United States said:

“It must be admitted that the Indians sustain a *peculiar relation* to the United States. *They do not constitute, as was decided at the last term, a foreign State, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a State. In the management of their internal concerns they are dependent on no power. They punish offenses under their own laws, and in doing so, they are responsible to no earthly tribunal. In the executive, legislative, and judicial branches of our government we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a State or separate community—not a foreign, but a domestic community—not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.*”

From the numerous judicial decisions and treaties, recognizing the unrestricted right of self-government as inherent in these nations, and not conferred upon them by the United States, we beg leave to cite the extracts hereto appended.

We respectfully submit that the proposed investigation will be an invasion of rights of the Choctaw and Chickasaw nations, always hitherto recognized by the Government of the United States.

D. F. HARKINS,

Delegate and National Agent of the Choctaws.

B. F. OVERTON,

Governor and delegate of the Chickasaw Nation.

MARCH 23, 1878.

EXTRACTS FROM JUDICIAL DECISIONS AND TREATIES.

Worcester v. the State of Georgia (6 Pet., 556).—Opinion by Chief Justice Marshall:

“This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self-government, thus guaranteeing their lands, assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force.” (P. 556.)

“All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.” (P. 557.)

“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term *nation*, so generally applied to them, means a *people distinct from others*. The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words ‘treaty’ and ‘nation’ are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have ap-

plied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense." (Pp. 559, 560.)

"In opposition to this *original right*, possessed by the undisputed occupants of every country, to this *recognition of that right which is evidenced by our history in every change through which we have passed*, is placed the charters granted by the monarch of a distant and distinct region, parceling out a territory in possession of others whom he could not remove, and did not attempt to remove, and the cession made of his claims by the treaty of peace.

"The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterward, that of the United States. *These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it, and the settled doctrine of the law of nations, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. 'Tributary and feudatory states,' says Vattel, 'do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state.'* At the present day more than one state may be considered as holding its rights of self-government under the guaranties and protection of one or more allies.

"The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States." (Pp. 560, 561.)

"It must be admitted that the Indians sustain a *peculiar relation* to the United States. *They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a state. In the management of their internal concerns they are dependent on no power. They punish offenses under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war and form treaties of peace. The exercise of these and other powers gives to them a distinct character as a people, and constitutes them, in some respects, a State, although they may not be admitted to possess the right of soil.*" (P. 581.)

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word 'allotted,' in reference to the land guaranteed to the Indians in certain treaties, *indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.*" (P. 582.)

"By numerous treaties with the Indian tribes we have acquired *accessions of territory of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.*"

"In the executive, legislative, and judicial branches of our government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state, or separate community—not a foreign, but a domestic community—not as belonging to the confederacy, but as existing within it, and, of necessity bearing to it a peculiar relation." (P. 583.)

"Much has been said against the existence of an independent power within a sovereign state; and the conclusion has been drawn that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a state. The refutation of this argument is found in our past history. That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance where the State laws have been generally extended over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently."

"The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated; but that it must be suppressed as soon as it shall be administered upon the enlightened principles of reason and justice?"

"Are not those nations of Indians who have made some advances in civilization, better neighbors than those who are still in a savage state? And is not the principle as to their self-government, within the jurisdiction of a State, the same?" (Pp. 589, 590.)

"The residence of Indians, governed by their own laws, within the limits of a State, has never been deemed incompatible with State sovereignty until recently. And yet this has been the condition of many distinct tribes of Indians, since the foundation of the Federal government." (P. 591.)

"It has been shown that the treaties and laws referred to come within the due exercise of the Constitutional powers of the Federal government; that they remain in full force, and, consequently, must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guaranteed to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be obtained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces, the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them for the exercise of those rights which have been most solemnly guaranteed to them by the national faith." (P. 595.)

"Indian tribes are States, in a certain sense, though not foreign States or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign States, citizens or subjects. They are not States within the meaning of any one of those clauses of the constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are States, and have been uniformly so treated since the settlement of our country, and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative departments, plainly recognize such tribes or nations as States, and the courts of the United States are bound by those acts." (Holden v. Joy, 17 Wallace, 242.)

TREATY WITH THE DELAWARES, SEPTEMBER 17, 1778.

"ARTICLE 2. That a perpetual peace and friendship shall from henceforth take place and subsist between the contracting parties aforesaid through all succeeding generations; and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their liabilities, till their enemies are brought to reasonable terms of accommodation; and that, if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timely measures may be taken to prevent their ill effect." (7 U. S. Stats., p. 13.)

TREATY WITH THE WYANDOTS, JANUARY 21, 1785.

"ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Wyandot and Delaware nations in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please." (7 U. S. Stats., p. 17.)

TREATY WITH THE CHEROKEES, NOVEMBER 28, 1785.

"ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary, which are hereby allotted to the Indians for their hunting-grounds, or having already settled, and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish him or not, as they please: Provided, nevertheless, That this article shall not extend to the people settled between the fork of French Broad and Holstein Rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by." (7 U. S. Stats., 19.)

TREATY WITH THE WYANDOTS, JANUARY 19, 1789.

"ARTICLE 9. If any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said nations, he and they shall be out of the protection of the United States; and the said nations may punish him or them in such manner as they see fit." (7 U. S. Stats., 30.)

TREATY WITH THE CREEKS, AUGUST 7, 1790.

"ARTICLE 6. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the Creeks' lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please." (7 U. S. Stats., 36.)

TREATY WITH THE CHEROKEES, JULY 2, 1791.

"ARTICLE 8. If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please." (7 U. S. Stats., 40.)

TREATY WITH THE WYANDOTS, ETC., AUGUST 3, 1795.

"ARTICLE 6. If any citizen of the United States, or other white person or persons, shall presume to settle upon the lands now relinquished by the United States, such citizen or other person shall be out of the protection of the United States; and the Indian tribe on whose land the settlement shall be made may drive off the settler, or punish him in such manner as they shall think fit; and, because such settlements, made without the consent of the United States, will be injurious to them, as well as to the Indians, the United States shall be at liberty to break them up, and remove and punish the settlers, as they shall think proper, and so effect that protection of the Indian lands hereinbefore stipulated." (7 U. S. Stats, 52.)

TREATY WITH THE CHOCTAWS, SEPTEMBER 27, 1830.

"ARTICLE 4. The government and people of the United States are hereby obliged to secure to the said Choctaw nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw nation of red people and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw nation from and against all laws except such as, from time to time, may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as may and which have been enacted by Congress, to the extent that Congress, under the Constitution, are required to exercise a legislation over Indian affairs." (7 U. S. Stats., pp. 333, 334.)

SAME TREATY.

"ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property, within their own country, belonging to their people, or such persons as have connected themselves with them: Provided, always, that they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as may have been or may be passed regulating trade and intercourse with the Indians, and also that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same." (7 U. S. Stats., 481.)

TREATY WITH THE CREEKS AND SEMINOLES, JAN. 4, 1845.

"ARTICLE 1. The Creeks agree that the Seminoles shall be entitled to settle in a body or separately, as they please, in any part of the Creek country: that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinction shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other." (9 U. S. Stats., 821.)

TREATY WITH THE CHEROKEES, AUGUST 6, 1847.

"ART. 2. No one shall be punished for any crime or misdemeanor, except on conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offence. And it is further agreed all fugitives from justice, except those included in the general amnesty herein stipulated, seeking refuge in the territory of the United States, shall be delivered up by the authorities of the United States to the Cherokee Nation for trial and punishment." (9 U. S. Stats., 872.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, JUNE 22, 1855.

"ARTICLE 4. The government and laws now in operation and not incompatible with this instrument shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

"ARTICLE 7. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption, or otherwise citizens or mem-

bers of the Choctaw or Chickasaw tribes, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agent (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals as are now, or may be, in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes." (11 U. S. Stats., 612, 613.)

TREATY WITH THE CREEKS AND SEMINOLES, AUG. 7, 1856.

"ARTICLE 15. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the *Creeks and Seminoles shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; and all persons not being members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agents for said tribes respectively (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals, with their families, as may be in the employment of the Government of the United States; all persons peaceably traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such persons as may be permitted by the Creeks or Seminoles, with the assent of the proper authorities of the United States, to reside within their respective limits without becoming members of either of said tribes.*"

"ARTICLE 25. *The Creek laws shall be in force and continue to operate in the country herein assigned to the Seminoles, until the latter remove thereto, when they shall cease and be of no effect.*" (11 U. S. Stats., 703, 704, 705.)

TREATY WITH THE SEMINOLES, MARCH 21, 1866.

"ARTICLE 7. The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs.*" (14 U. S. Stats., 758.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, APRIL 28, 1866.

"ARTICLE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however, Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively.*" (14 U. S. Stats., 771.)

"ARTICLE 38. 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."

"ARTICLE 45. All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation theretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty." (14 U. S. Stats., 779, 780.)

TREATY WITH THE CREEKS, JUNE 14, 1866.

"ARTICLE 10. The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of person and property within the Indian Territory: *Provided, however, That said legislation shall not, in any manner, interfere with or annul their present tribal organization, rights, laws, privileges, and customs.*" (14 U. S. Stats., 788.)

TREATY WITH THE CHEROKEES, JULY 19, 1866.

"ARTICLE 5. The inhabitants electing to reside in the district described in the preceding article, shall have the right to elect all their local officers and judges, and the number of delegates, to which, by their numbers, they may be entitled in any general council, to be established in the Indian Territory under the provisions of this treaty, as stated in article 12; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district not inconsistent with the constitution

of the Cherokee Nation or the laws of the United States: *Provided*, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district, as hereinbefore provided, and shall hold the same rights and privileges, and be subject to the same liabilities, as those who elect to settle in said district under the provisions of this treaty: *Provided, also*, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules and regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void." (14 U. S. Stats., 800, 801.)

Mr. Chairman, I now desire to suggest that by the second paragraph of these resolutions, as I understand it, the committee is instructed "to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school-funds of any of such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purpose."

By the CHAIRMAN *pro tempore*. That is the resolution about which you desire to protest?

Mr. GRAFFON. That is one branch of the resolution. I do not object to the first one at all. The railroads are the creatures of the government. The other branch to which I desire to object, is the third paragraph, that said committee "be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations."

Mr. GARLAND. You enter this protest on behalf of both the Chickasaws and the Choctaws against the jurisdiction of the committee or of Congress to inquire into the matters covered by those two sections you have read?

Mr. GRAFTON. Yes, sir. The third resolution, I take it, Mr. Chairman, is rather a question of law than of fact; whereas the second resolution is a clear invasion of all the recognized rights of these Indian tribes. Article nine of the treaty of 1866, between the Choctaw and Chickasaw Nations and the United States provides that—

Such sums of money as have, by virtue of treaties existing in the year 1861, been invested for the purpose of education, shall remain so invested, and the interest thereof, including any arrears which may have accrued, shall be applied for the same purposes, in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw Nations, respectively. (14 U. S. Stats., pp. 773, 774.)

And article ten of the same treaty contains the following provision:

ARTICLE 10. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th of June, in the year 1866.

Mr. Chairman, I submit that, under the decisions of the Supreme Court and the treaties of the United States, this committee, the Senate, or the Congress of the United States has no more right to investigate the domestic affairs of these Indian nations than it has to inquire how the school fund of the State of Ohio is disbursed; and upon this proposition I shall be glad to be heard.

The CHAIRMAN *pro tempore*. Do you prefer to have it disposed of to-

day, or would you prefer that the protest should be made before the whole committee?

Mr. GRAFTON. I would prefer to have it disposed of by the whole committee, because if it is disposed of as I think it should be, and as I think the Senate will dispose of it when it comes to understand the question, I think there will be a great deal of labor saved.

Mr. GARLAND. We cannot have a meeting of the full committee before Friday.

Mr. GRAFTON. I would apprehend the proper way would be for the committee to arrive at a conclusion and then report back to the Senate and ask for instructions.

The CHAIRMAN *pro tempore*. I doubt very much whether Congress will ever admit that these Indian nations are entirely separate from the United States.

Mr. GRAFTON. I do not mean, Mr. Chairman, that they are wholly sovereign States in that sense; they are not in my opinion; but yet they are States in a certain domestic sense. The right of self-government is inherent in them. They had that right before the country was discovered by the Europeans. It existed here then, and our government has always recognized that right and has confirmed it by every treaty ever made with the Indians. Our highest tribunals have decided they have that right. It has been decided they are capable of making treaties; that they are capable of sustaining the relations of peace and war; that they are incapable of committing treason. These decisions are uniform and unbroken.

The CHAIRMAN *pro tempore*. All that has a certain degree of poetical justice about it which everybody is willing to admit they had as inhabitants of this country before white men settled it, but—

Mr. GRAFTON. I say this right of self-government has been assured to them by treaties with the United States; that there is no act of Congress that has ever attempted to take away that right; there is no treaty that takes away that right; and now for this committee of the Senate to undertake to investigate their domestic affairs is a violation of all the treaty stipulations that have ever been made with these nations.

Mr. BOUDINOT. I take an entirely different view of the case as presented this morning by Colonel Grafton, and I am satisfied the decisions will bear me out and show that he is mistaken. After he has made his argument I shall desire to be heard in reply.

Mr. ADAIR. I was going to state that the question that has been raised by Mr. Grafton is substantially the question that we proposed to raise. If that question is to be settled before we proceed further with the inquiry, the Cherokees would like to have the privilege of filing their protest in regard to it. We have endeavored to make a statement. We are now so endeavoring to make such a statement as will be an answer to the whole gist of the resolutions, and for that reason we have been a little slow about it. We have had to send for facts from our executive department so as to make our statement official. We take it the object of the Senate is to ascertain the real legal facts as they exist. If the question as now made is to be decided by the committee, we would like to have the privilege of getting our papers and submit them so the committee can take the question into consideration, as it relates to all tribes, because a decision made in one case will bear as a precedent in regard to the other cases.

As regards the question of sovereignty no principles have been more clearly established than those by the decisions of the Supreme Court and

the treaties of this government, and we wish to show that. I wish to illustrate it by stating a fact within the memory of all. You will remember the Senate Committee on Judiciary made a very elaborate report on the question as to whether the Indians were citizens under the fourteenth amendment to the Constitution. That report was made by Mr. Carpenter, and it is a very able and elaborate discussion of this question. Then the question came up before the Indian Committee in a case involving the question as to whether the Indians had a right to assess a tax upon persons driving stock through that country. I allude to this to show that this question has already been substantially settled, and to show that our request is not unreasonable. We can show the same thing has been decided by the Attorney-General as well as the Supreme Court.

The CHAIRMAN *pro tempore*. I do not believe it is worth while to argue it now, as that question will be argued before the whole committee.

Mr. GARLAND (to Mr. Grafton). Whom do you represent?

Mr. GRAFTON. I appear for both the Choctaws and Chickasaws.

Mr. GARLAND. Is your employment by the council or the Secretary of the Interior?

Mr. GRAFTON. By the governor, B. F. Overton, and the delegates on the part of the Chickasaws, and by Colonel Harkins, the delegate on the part of the Choctaws.

Captain MOORE. I shall desire to be heard on behalf of the Creeks.

The CHAIRMAN *pro tempore*. Cannot you, gentlemen, arrange so that one can present the case? Would not the same decision cover the cases of all?

Mr. GARLAND. That is my impression.

Mr. GRAFTON. There may be some difference in the treaties.

The CHAIRMAN *pro tempore*. Well, we will have a meeting Friday morning.

Mr. GARLAND. The further hearings will be upon these points, so it is not worth while to continue the examination of the witness any further this morning until these points are decided.

The examination of Dr. Haily was discontinued, and the committee, at eleven o'clock and fifteen minutes a. m., adjourned until ten o'clock a. m. Friday, the 29th instant.

MARCH 29, 1878.

Committee met pursuant to adjournment.

G. D. L. HUILIER sworn by the chairman *pro tempore*, and examined by Mr. Garland:

Question. Where do you reside?—Answer. In New York.

Q. What is your business?—A. Well, I am an expert accountant.

Q. Have you had any business connection at all with the railroads mentioned in the first part of the resolution? (Resolution handed to witness.) Look at it, and read the first paragraph.—A. Yes, sir.

Q. State, in your own way, what that business connection was, when it was, and the object of it; and what was the result of it, and of what road?—A. In January, 1874, the company mentioned defaulted in the interest due on the bonds of the Union Pacific Railroad, on Southern branch, part of the Missouri, Kansas and Texas Railroad, and at the request of the bondholders of Amsterdam, where most of the bonds were held, I was requested by Mr. L. H.

Meyer to make an examination of the affairs of the company, also of the bonds, and generally go through the whole of the books as an expert. I began in December, 1873, and got through sometime before the latter part of January, 1874. After that there was some compromise made with the bondholders, and to have a chief auditor appointed in their behalf. I was appointed to that position until a receiver was appointed in 1874; and I remained as secretary representing the bondholders, and went out there to examine into the accounts of the receiver; and I held the same position when, under an agreement, the Union Trust Company took possession under the mortgage.

Q. How many bonds were there held at Amsterdam in 1874?—A. Fourteen millions or fifteen millions.

Q. Did you ever make a report of the result of your examination?—

A. I made a report at the time.

Q. Where is it; have you a copy?—A. It could be furnished from our books.

Q. Were any printed in New York or in Amsterdam?—A. I reported to Mr. Meyer; there is no printed copy left. The exhibits were printed in Dutch, but there was none printed in English. This report was made in January, 1874, about two months after I began.

Q. You spoke of a receiver; who was he?—A. Mr. William Bond.

Q. About what time was he appointed?—A. Thirtieth of December, 1874.

Q. What time did the Union Trust Company take possession of the road?—A. On the 1st of July, 1876. I went out there for the Trust company at the time it took possession.

Q. Was there a list of bondholders made about that time?—A. Between May, 1876, and the time this agreement went into effect, between the bondholders and the company, the bonds began to come in to be stamped under this agreement, and for the owners at the same time to sign the agreement. From 1st May, 1876, the great bulk came in within two months, the balance has since come gradually. I stamped one bond the day before I left New York.

Q. Have you a copy of the list of the names of the bondholders with you?—A. I have not got a copy, but it can be made. It is of record in New York.

Q. The agreement that was then made was signed by the bondholders?—A. By the bondholders, and scrip issued in their names for the coupons; nothing has been issued to "bearer," so we had to have the names of the holders.

By the CHAIRMAN *pro tempore*:

Q. What part of the road did they cover?—A. They covered from Sedalia down to Denison, Texas.

Q. How many miles?—A. Between 400 and 500 miles.

Q. What were they; six per-cent. bonds?—A. Seven per cent. gold bonds.

Q. What are those bonds worth?—A. Forty-two or forty-three cents.

Q. Where are they now held?—A.

In Amsterdam.....	\$6, 600, 000
In London.....	900, 000
In Paris.....	1, 700, 000
In New York.....	5, 400, 000

14, 600, 000

There is a large amount of the bonds presented by the New York parties which comes through banking-houses; out of them I cannot tell what comes for collection and what is owned by New York parties.

The witness submitted the following papers, on request by the committee, marked Exhibits A, B, C.

EXHIBIT A.

This indenture, made the first day of November, one thousand eight hundred and seventy-two, between the Missouri, Kansas and Texas Railway Company of the one part, and the Union Trust Company of New York, of the other part; whereas the said party of the first part did heretofore, and on or about the first day of February, one thousand eight hundred and seventy-one, duly make, execute, and deliver unto the said party of the second part, a certain trust deed or consolidated mortgage, whereby the said party of the first part did duly grant, bargain, sell, assign, transfer and convey unto the said party of the second part, all the property, both real and personal and mixed, and all the corporate rights, powers, franchises and privileges therein fully set forth and described, to have and to hold the same unto the said party of the second part, its successor or successors and assigns, in trust to secure the payment of bonds in the sum of one thousand dollars each, amounting to the aggregate principal sum of fourteen millions of dollars, and numbered from one to fourteen thousand, both inclusive, and for the uses, intents, and purposes in the said indenture of mortgage fully expressed and declared, as by reference thereto, now being in the proper custody of the party of the second part, and also duly recorded, among other places, in the office of the recorder of the county of Pettis, in the State of Missouri, will more fully and at large appear.

And whereas, among the other terms, provisions, and articles in the said indenture of mortgage contained, the tenth article therein is in the words following, that is to say: "Article tenth.—It is further mutually agreed by and between the parties hereto that if the said party of the first part shall hereafter, under any right or franchise now owned by it, and not conveyed by this trust deed or mortgage, further extend its said road, or shall under any right or franchise now owned, or hereafter to be acquired construct any other railroad or rail roads, or become the owner of any other railroad already constructed, then, for every such extension and every such railroad constructed or to be constructed, a further issue of bonds may be made hereunder by the said party of the first part, the aggregate amount of which shall not exceed the rate of twenty thousand dollars for every mile of road where lands shall not have been granted by any State, or by the United States, to aid in the construction thereof, and twenty-five thousand dollars per mile in all cases where lands shall have been so granted; such bonds to be issued in the same proportions and upon the same conditions as hereinbefore provided in article fourth for the issue of the bonds to which said article relates, and, in case said bonds are sold, the proceeds to be paid over, as also in said article provided. And all such bonds shall be of the same tenor as that provided for in the form of bonds hereinbefore set forth, subject only to necessary variation as to the distinguishing numbers and the dates thereof, and shall bear numbers running from the number fourteen thousand upward, and shall be entitled to the benefit of a sinking fund, to be created in the same manner as is hereinbefore provided. And the said party of the first part hereby agrees to execute and deliver to the said party of the second part, its successor or successors, upon every such further issue of bonds, any further reasonable and necessary trust deed or mortgage, to bring in and subject to the conditions of these presents every such extended or future acquired road, and every other land and property, real or personal, that may hereafter be acquired by it, for the purpose and with the intent of securing the payment of the said bonds composing every such increased issue, as well as the bonds hereinabove described, equally and alike upon the property of the said party of the first part, with the interest due and to grow due thereon, and the payment to said trustee of the said sinking fund, in the same manner as if all said bonds had been originally secured by one and the same trust deed or mortgage: *Provided, however,* That if any railroad or railroads which may hereafter be acquired by the party of the first part, shall, at the time of such acquisition, be subject to the lien of any trust deed or mortgage theretofore made to secure bonds then outstanding, no more bonds shall be issued hereunder on any such railroad or railroads than such an amount as shall, together with such outstanding bonds, be equal to the rate per mile hereinbefore mentioned; but bonds may be issued hereunder on any such railroad or railroads in exchange for an equal amount of such outstanding bonds."

And whereas the fourth article in the said indenture of mortgage contained in the words following to wit:

"Article fourth. The remaining four thousand of the bonds secured hereby, being those numbered from ten thousand and one to fourteen thousand, both inclusive, shall be issued and used only for the construction of the proposed extension of the railway of the party of the first part, south of the Arkansas River, and extending southerly a distance of one hundred and sixty miles, more or less, through the Indian Territory, as hereinbefore recited. Such

bonds shall only be issued and delivered to the party of the first part in proportionate amounts, and upon the completion of any section or sections of said road, the length of which completed section or sections shall be determined by the certificates of the chief engineer and general superintendent, and the president of the party of the first part: *Provided, however,* That whenever any contract or contracts for the construction of any fifty miles of such proposed extension shall be made, a proportionate amount of said bonds shall, at the option of the party of the first part, be issued and delivered to it by the party of the second part, to be used in the construction, completion, and equipment of such portion or portions of road: *And, provided further,* That all or any part or portion of such bonds may be offered for sale at any time hereafter; and in case sales thereof shall be made, the proceeds shall be received by the party of the second part, its successor or successors in this trust, and proportionate amounts thereof, determined in like manner, shall be paid to the party of the first part, in place of a delivery of bonds as in this article is provided."

And whereas the said party of the first part is the owner of the right and franchise by virtue of two several acts of Congress, approved July 25 and July 26, 1866, and the order and approval of the President of the United States thereupon, to extend, construct, and operate their said railroad from a point in their main line at or near Fort Gibson, in the Indian Territory, southeast to Fort Smith, in the State of Arkansas, a distance of eighty miles.

And whereas the said party of the first part has made and entered into a contract for the construction of said railroad extending, as aforesaid, from a point at or near Fort Gibson, in the Indian Territory, to Fort Smith, in the State of Arkansas, and is desirous of borrowing money for the purpose of building, equipping, and operating the railroad herein described, and for that purpose has resolved to make a further issue of bonds under and by virtue of the right and privilege reserved in and by the said "Article tenth," hereinbefore set forth and recited, which said bonds shall be in the sum of one thousand dollars each, amounting to the aggregate principal sum of two million dollars, and numbered from sixteen thousand five hundred and one to eighteen thousand five hundred, both inclusive; and that each of the said bonds shall be in the words and figures following, subject only to necessary variation as to the distinguishing numbers and amount thereof:

[United States of America—States of Kansas and Missouri.]

Missouri, Kansas and Texas Railway Company—first-mortgage seven per cent.—land-grant and sinking-fund.

No. .] Gold bond—free of United States Government tax. \$1,000.

Know all men by these presents that the Missouri, Kansas and Texas Railway Company is indebted to the Union Trust Company of New York, or bearer, in the sum of one thousand dollars, in gold coin of the United States, which the said railway company promises to pay to the bearer hereof, on the first day of November, in the year nineteen hundred and five, in the city of New York, with interest thereon from the date hereof, at the rate of seven per cent. per annum, payable in gold coin aforesaid, semi-annually, at its office or agency in the city of New York, on the first days of August and February in each year, upon the presentation and surrender of the coupons hereto attached, as they severally become due as provided therein; and in case of default in the payment of any half-yearly installments of interest, which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust-deeds or mortgages hereinafter mentioned.

This bond is one of a further issue of bonds numbered consecutively from sixteen thousand five hundred and one to eighteen thousand five hundred, both inclusive, each for the sum of one thousand dollars, amounting in the aggregate to the sum of two million dollars, all of which are of like tenor, date, and effect; and such further issue is made pursuant to article tenth of a certain trust-deed or mortgage, dated the first day of February, in the year eighteen hundred and seventy-one, duly executed and delivered by the said railroad company, and recorded in the proper offices in the States of Missouri, Kansas, and elsewhere, and conveying to the said Union Trust Company of New York, in trust, the corporate property, real and personal, of the party of the first part herein described, and all its franchises and the privileges appertaining thereto, as set forth in said trust-deed or mortgage; and this further issue of bonds, together with the sixteen thousand five hundred bonds above named, are secured equally and alike thereby; and by another trust-deed or mortgage, bearing date the first day of June, one thousand eight hundred and seventy-two; and also by another trust-deed or mortgage, bearing date the first day of November, one thousand eight hundred and seventy-two, all duly executed and delivered by the said railway company and duly recorded, conveying to the said trust company the corporate property, real and personal, therein severally described.

This bond is entitled to the benefit of a sinking-fund, as provided by said trust-deeds or mortgages, whereby the principal of said bond will be redeemed in thirty-three years from the date hereof. Bonds equal in amount to the accumulations in said sinking-fund will be redeemed at their par value annually, commencing after the first day of February, 1875.

Notice of the numbers of the bonds so allotted for redemption will be published in two or more daily newspapers printed in the city of New York for sixty days, at the expiration of which time interest thereon shall cease.

This bond shall pass by delivery or by transfer on the books of the company in the city of New York, and such other places in this country and in Europe as said company may hereafter designate. After a registration of ownership, certified hereon by the secretary of the company or its transfer agent, no transfer, except on the books of the company shall be valid, unless the last transfer shall have been to bearer; the bond to be entitled to successive registrations and transfers to bearer at the option of each holder, and other privileges in that behalf mentioned in said trust-deed or mortgage.

This bond shall not become obligatory until it shall have been authenticated by a certificate indorsed hereon, duly executed by the trustee aforesaid, to the effect that the same is properly issued.

In witness whereof the said Missouri, Kansas and Texas Railway Company has caused these presents to be executed by its president and secretary, and its corporate seal to be hereto affixed, this first day of November, A. D. eighteen hundred and seventy-two.

Secretary.

President.

And whereas the said party of the first part, in pursuance of its agreement contained in article tenth aforesaid, and subject to the restrictions in said article contained, is desirous of executing and delivering to the said party hereto of the second part, upon such further issue of bonds, a further trust-deed or mortgage conveying the property hereinafter described and so acquired as aforesaid, for the purpose and with the intent of securing the payment of the said bonds composing such further issue, according to the tenor and effect of the provision in the said article contained:

Now, therefore, this indenture witnesseth that the said party hereto of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party hereto of the second part, and in order to secure the payment of the principal and interest of the said further issue of bonds according to the tenor thereof, hath granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant, bargain, sell, assign, transfer, and convey, unto the said party of the second part, its lawful successor or successors in the trust hereby created, and assigns:

All and singular the railroad so as aforesaid contracted to be built, extending from a point at or near Fort Gibson, in the Indian Territory southeasterly to Fort Smith, in the State of Arkansas, as the same is now located and surveyed a distance of eighty miles, together with all the privileges and franchises acquired by the party of the first part under and by virtue of two several acts of Congress, approved July 25 and July 26, 1866, and the order and approval of the President of the United States thereupon to extend, construct, and operate its railroad through the Indian Territory to Preston and Fort Smith; and also all the right, title, and interest which the party of the first part now has or may hereafter acquire by reason of constructing the extension or branch of its said railroad to Fort Smith aforesaid, in and to any land or lands granted by the acts of Congress aforesaid, or which the said party of the first part now has or may hereafter acquire under or by virtue of any treaty or treaties from any Indian nation or tribe, or otherwise howsoever, appertaining to the aforesaid branch or extension, together with all the rights, privileges, tenements, hereditaments, and appurtenances in any wise belonging or appertaining thereto, the land granted under said acts of Congress being ten alternate sections of land on each side of said railroad:

To have and to hold all and singular the above-mentioned and described premises, right, franchise, railroad, and real and personal property, unto the said party of the second part, its successor or successors and assignee, in trust and for the uses, intents, and purposes hereinafter expressed and declared of and concerning the same; that is to say—

ARTICLE FIRST. No one of the said bonds shall be deemed issued, or be valid or secured by this mortgage, until there shall have been indorsed upon it a certificate duly signed by the party of the second part, its successor or successors in this trust, to the effect following, viz, "The within bond is one of a further issue of two thousand bonds under and in pursuance of article tenth of the consolidated mortgage made by the Missouri, Kansas and Texas Railway Company, and is secured thereby and by further trust-deeds or mortgages as in said article provided."

ARTICLE SECOND. Twelve hundred and fifty of said bonds, being those numbered from sixteen thousand five hundred and one to seventeen thousand seven hundred and fifty, both inclusive, shall be issued and forthwith delivered to the party of the first part. The remaining seven hundred and fifty of the bonds secured hereby, being those numbered from seventeen thousand seven hundred and fifty-one to eighteen thousand five hundred, both inclusive, shall be issued and used for the construction of the extension of the railway of the party of the first part, from a point at or near Fort Gibson to Fort Smith aforesaid, a distance of eighty miles. Such last-named bonds shall only be issued and delivered to the party hereto of the first part in proportionate amounts and upon the completion of any section or sections of said road, the length of which completed section or sections shall be determined

by the certificates of the chief engineer, the general superintendent, and the president of the party of the first part: *Provided, however,* That when any contract or contracts for the construction of any fifty miles of such extension shall be made, a proportionate amount of said bonds shall, at the option of the party of the first part, be issued and delivered to it by the party of the second part, to be used in the construction, completion, and equipment of such part or section of road: *And provided further,* That all or any part or portion of such last-mentioned bonds may be offered for sale at any time hereafter; and in case sales thereof shall be made, the proceeds shall be received by the party of the second part, its successor or successors in this trust, and proportionate amounts thereof determined in like manner shall be paid to the party of the first part in the place of a delivery of bonds as herein provided for.

ARTICLE THIRD. And for the purpose of providing a sinking-fund for the redemption of the bonds secured hereby, the party of the first part further agrees to pay to the party of the second part, its successor or successors in this trust, on the first day of February, in the year one thousand eight hundred and seventy-five, a sum equal to one per cent. in gold coin aforesaid, of the aggregate principal of said bonds; and also, to pay on or before the first day of February in every year thereafter, a like sum, and interest at the rate of seven per cent., in the same coin, upon all payments theretofore made, such payments to be made into the sinking-fund created by article fifth of the consolidated mortgage aforesaid, and to be applied equally and alike with the fund thereby created to the redemption of all the bonds of the party hereto of the first part.

ARTICLE FOURTH. The said party of the first part shall have the right, at its option, to issue, or exchange and reissue, either or any of the bonds hereby secured, in subdivisions of fifty, one hundred, or five hundred dollars each, in such form as shall be approved by the said party of the second part, such subdivision bonds to be authenticated by certificates indorsed thereon, duly signed by the said party of the second part, and each of them to bear the number of the bond to which it shall belong; and in addition thereto, a letter of the alphabet, commencing with the letter A for the first subdivision of every bond so subdivided, and so on in the consecutive order of the letters of the alphabet for the remaining subdivisions of every such bond.

ARTICLE FIFTH. The party of the first part doth hereby further covenant and agree to and with the party of the second part and its successor or successors in this trust, that the party of the first part shall at all times hereafter keep at its office in the city of New York, and at such other places in this country or in Europe as it may hereafter appoint, a book or books which shall be respectively designated as "The Register of Bonds issued under the Consolidated mortgage"; and that any holder of any of the bonds issued under the provisions of this indenture may there register his bonds upon presenting the same; and that when a bond is so registered in the name of any person, such person shall be deemed and regarded as the owner of such bond; and that all payments of either principal or interest thereon shall thereafter be made to him or to his order only; and that such payments to him or his order shall be valid payments of such principal or interest, and a discharge to the party of the first part to the extent of the sums so paid. And also that such registry may be changed upon presentation of the bond with the written order of the person in whose name it is registered, properly authenticated to the name of such person as may by the said written order be designed for the purpose, and he shall thereafter be deemed and regarded as the owner of the bond and its interest coupons under the same circumstances and conditions, and with the same rights as the prior owner, including the right to change the registration in manner aforesaid, and so from time to time, as the owner for the time being may desire; and that the registered holder may also have the right to register the bond as payable to bearer, in which case the bonds and interest coupons shall be payable to the holder presenting the same. And any holder of a bond so registered as payable to bearer may again cause it to be registered in his name, with the same effect as the first registration, and successive registrations may in the same manner be made from time to time as may be desired; and also, that the holder of any of said bonds may, at his option, surrender the coupons attached thereto to be canceled, in which case interest thereon will thereafter be payable to him or his order only.

ARTICLE SIXTH. The said party of the first part hereby further agrees that it will pay or cause to be paid the bonds herein mentioned, and the interest thereon according to the terms thereof, and all taxes, levies, and assessments imposed and assessed, or which may hereafter be imposed or assessed upon the premises, franchises, and property hereby conveyed or intended so to be, and also the United States Government tax upon the interest payable on said bonds and each of them, and represented by the coupons annexed to said bonds, and will, at its own cost and expense, do, or cause to be done, all things necessary to preserve and keep valid and intact the lien or incumbrance hereby created.

ARTICLE SEVENTH. In case default shall be made in the payment of any interest upon either of said bonds when the same shall become due and payable, or in the payment of any sum or sums of money hereinbefore provided to be made for the creation of said sinking-fund, and such default shall continue for six months after the same has been demanded, the whole principal sum mentioned in each and all of this said further issue of bonds then outstanding shall, at the option of the holders of a majority in interest of said bonds, forth-

with become due and payable, and thereupon all the terms and provisions contained in articles twelfth, thirteenth, and fourteenth of the said consolidated mortgage are hereby made applicable to such further issue of bonds, secured by this trust deed or mortgage, and to all the property, real, personal, and mixed, and the rights and franchises hereby conveyed.

ARTICLE EIGHTH. In case of the resignation, removal, insolvency, or incapacity, or inability for any other reason, of the said party hereto of the second part to act in execution of the trust hereby created, then the provisions contained in article fifteenth of said consolidated mortgage, for the appointment of a new or provisional trustee or trustees, are made applicable hereto.

ARTICLE NINTH. The party of the first part shall from time to time, and at all times hereafter, and as often as thereunto requested by the party of the second part, its successor or successors, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the better assuring unto the party of the second part, its successor or successors in the trust hereby created, upon the trusts herein expressed, the lands, railroad, equipments, and appurtenances hereinbefore conveyed or intended so to be, and all other property and things whatsoever which may be hereafter acquired for used in connection with the same or any part thereof, and all franchises now held, including the franchise to be a corporation, as by the party of the second part, its successor or successors, or by their counsel learned in the law, shall be reasonably advised, devised, or required.

ARTICLE TENTH. Provided, nevertheless, and it is hereby further agreed by and between the parties hereto, that in case the said party of the first part shall at any time hereafter desire to grant, bargain, sell, assign, transfer, and set over, divest itself of, and part with the said hereinbefore-described railroad, being the aforesaid extension from Fort Gibson to Fort Smith hereby conveyed and corporate railroad property, real, personal, or mixed, rights, powers, and franchises, or any part or portion of said corporate railroad property, real, personal, or mixed, rights, powers, and franchises hereinbefore described and conveyed by this trust-deed, or mortgage, to any other corporation or corporations authorized by law to purchase and take the same, then upon the surrender or cancellation of the whole of such further issue of bonds outstanding, the said party of the second part shall and hereby covenants to release the whole of said railroad property from the lien and operation of this trust-deed or mortgage, and to cancel and satisfy the same, or to release any part or portion of said railroad property, less than the whole, upon the surrender or cancellation of the number of said bonds issued in proportion to the part or portion of said railroad property so sold, and to release such part or portion from the lien and operation of this trust-deed or mortgage, including a release of a proportionate amount of the sinking fund hereinbefore provided for the payment of said bonds.

Provided always, And this grant and conveyance is upon the express condition that until some default shall be made in the performance or observance of the conditions, obligations, or requirements herein contained, the said party of the first part shall be permitted to possess, manage, operate, and enjoy all the said railroads, with their equipments and appurtenances, and all other the lands and premises, property, and franchises hereinbefore described; and that upon the payment in full of said bonds, and the interest due thereon, then the estate, title, and interest hereby granted shall cease, determine, and be void; and the said party of the second part, its successor or successors in this trust, shall convey, assign, transfer, and deliver over to said party of the first part, and its successors, all the said railroads, their equipments, and appurtenances, and all moneys, notes, bills bonds, mortgages, choses in action, and property, real, personal, and mixed, and things of value remaining in its possession, and shall duly execute and deliver to the said party of the first part a proper release or satisfaction of this mortgage.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of the president and secretary; and the said party of the second part, to evidence its acceptance of the trust hereby created, has also caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary the day and year first above written.

EXHIBIT B.

Appendices.

APPENDIX A.

CHAPTER XLIV.—INCORPORATION OF RAILROADS.

AN ACT to provide for the incorporation and regulation of railroad companies.

Be it enacted by the legislature of the State of Kansas:

SECTION 1. That any number of persons, not less than nine, associating for the purpose of constructing a railroad, shall subscribe a statement which shall specify as follows: First, the name assumed by such company, and by which it shall be known,

Second, the name and place of residence of each of the persons forming the association. Third, the name of the place or places of the termini of said road. Fourth, the proposed amount of capital stock of said company, which shall not be less than five thousand dollars per mile of said railroad. Such statement, verified by the affidavit of three or more of the persons therein named, shall be acknowledged before some one authorized to take the acknowledgment of deeds, and filed in the office of the secretary of state, to be by him recorded in a book kept for that purpose, and a copy thereof, duly certified by the secretary of state, shall be evidence of the existence of such company.

SEC. 2. That when such certificate shall have been filed and recorded as aforesaid, the persons named as corporators therein are hereby authorized to carry into effect the objects named in said certificates, in accordance with the provisions of this act; and they and their associates, successors, and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the object of the incorporation, to make and use a common seal, and the same to alter at pleasure, and to do all acts necessary to carry into effect the objects for which said company was created, and such company shall possess all the powers and be subject to all rules, liabilities, and restrictions provided by this act: *Provided*, That any corporation or corporations formed and organized or consolidated under the provisions of this act, exercising or attempting to exercise any banking powers under any pretense whatever or the business of broker or brokerage, shall forfeit their right of incorporation and consolidation under or by virtue of this act.

SEC. 3. Any corporation formed in pursuance of this act shall be, and is hereby, authorized to construct and maintain a railroad with single or double track, with such side tracks, turn-outs, offices, and depots, as it may deem necessary, between the points named in the certificate, commencing at or within and extending to or into any town, city, or village along the line of said road, or named as the place of the termini of such road, and construct branches from the main line to other towns or places within the limits of any county through which the said road may pass.

SEC. 4. The capital stock of such company shall be divided into shares of one hundred dollars each, and consist of such sums as may be named in the certificate; such shares shall be regarded as personal property and shall be subject to execution at law.

SEC. 5. An installment of two per cent. on each share of stock shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments, and at such times and places, and to such persons, as may be required by the directors of such companies.

SEC. 6. If any installment of stock shall remain unpaid for sixty days after the time it may be required, whether such stock is held by an assignee, transferee, or the original subscriber, the same may be collected by civil action, or the directors may sell the stock so unpaid at public auction, for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper in general circulation in the county where such delinquent stockholder resided at the time of making such subscription, or becoming such assignee or transferee, or in the county of his actual residence at the time of making such assignment or transfer, or if such stockholder reside out of the State, or his residence shall be unknown, such publication shall be made in the county where the principal office of the company is located; and if any residue of money shall remain after paying the amount due on said stock, the same shall on demand be paid over to the owner. If the whole of said installment be not paid by such sale the remainder shall be recoverable by a civil action against the subscriber, assignee, or transferee.

SEC. 7. That whenever any railroad company heretofore incorporated or created and incorporated under the provisions of this act shall, in the opinion of the directors thereof, require an increased amount of capital stock, they shall, if authorized by the holders of a majority of the stock, file with the secretary of state a certificate setting forth the amount of desired increase, which shall not exceed fifty thousand dollars per mile of said railroad, and thereafter such company shall be entitled to have such increased capital as is fixed by such certificate.

SEC. 8. That the persons named in said certificate of incorporation, or a majority of them, shall, within three months after the filing of said certificate, cause books to be opened for receiving subscriptions to the capital stock of said company, at such time or times and at such place or places as they may determine, after having given at least thirty days' notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books, which books shall be kept open till the whole amount of capital stock is subscribed; and, so soon as ten per centum of the capital stock shall be subscribed, they shall give like notice for the stockholders to meet, at such time and place as they may designate, for the purpose of choosing eleven directors from the stockholders of

the company, who shall continue in office until the time fixed for the annual election and until their successors are chosen and qualified. At the time and place appointed, directors shall be chosen by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a majority of votes shall be necessary for a choice, but no person shall vote at any election of directors on any share on which any installment is due or unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of election, and shall certify what persons are elected directors, and appoint the time and place of holding the first meeting. A majority of said directors shall form a board and be competent to fill vacancies in their board, and (to) transact all business of the corporation. An annual election shall be held for directors at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number president, and shall appoint a secretary and treasurer of the corporation. The directors, before entering on their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they shall, from time to time, make such dividends of the profits of said company as they may think proper.

SEC. 9. The stock of any railroad company created under this act shall be transferable only on the books of said company; and no person shall, at any election, be entitled to vote on any stocks of any such company unless the same shall have been standing in the name of the person so claiming to vote on said stocks upon the books of said company at least thirty days prior to such election.

SEC. 10. Such corporation is authorized to enter upon any land for the purpose of examining and surveying its railroad line, and may appropriate thereof as may be deemed necessary for its railroads, including necessary side tracks, depots and workshops, and water-stations, material for construction, except timber, a right of way over adjacent lands sufficient to enable such companies to construct and repair their roads, and a right to conduct water by aqueducts, and the right of making proper drains; but no appropriations of private property to the use of any corporation provided for in this act shall be made until full compensation therefor be first made in money or first secured by deposit of money, to the owner or owners, irrespective of any benefit from any improvement proposed by such corporation, or in such manner as is or may be prescribed by law.

SEC. 11. That whenever any railroad heretofore incorporated, or which may hereafter be incorporated, shall find it necessary for the purpose of avoiding annoyance, public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds, or foundations, or for other reasonable causes, to change the location or grade of any portion of their road, whether heretofore made or hereafter to be made, such railroad companies shall be and are hereafter authorized to make such changes of grade and location, not departing from the general route prescribed in the certificate of such company; and for the purpose of making any such change in the location and grade of any such road as aforesaid, such company shall have all the rights, powers, and privileges to enter upon and take and appropriate such lands, and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules, and regulations as are or shall be prescribed by law, and shall also be liable in damages when any have been caused by such changes to the owner or owners of the lands upon which said road was heretofore constructed, to be ascertained and paid or deposited as aforesaid; but no damages shall be allowed unless claimed within ninety days after actual notice of such intended change shall be given to such owner or owners, if residing on the premises, or notice by publication or four successive weeks in some newspaper in general circulation in the county, if non-residents.

SEC. 12. If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind or any part thereof, it shall be competent for the municipal or any other corporation or public officer or public authorities owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used and occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such company, to use or occupy such road, street, alley, or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of said road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals by the ninth section of this act. But no railroad company shall be entitled, under the provisions of this act, to build any street railroad in any incorporated town or city, without the consent of the authorities thereof, and of the citizens of such city, expressed by a majority at some general election.

SEC. 13. Such corporation may demand and receive for the transportation of passengers on said road such reasonable rates as may be from time to time prescribed by laws.

SEC. 14. Such companies shall have power to borrow money on the credit of the cor-

poration, not exceeding its authorized capital stock, and may execute bonds or promissory notes therefor, in sums not less than one hundred dollars; and to secure the payment thereof may pledge the property and the income of such company.

SEC. 15. Such company may acquire, by purchase or gift, any land in the vicinity of such road, or through which the same may pass, so far as may be deemed convenient or necessary by said company to secure the right of way, or such as may be granted to aid in the construction of such roads, and the same to hold or convey in such manner as the directors may prescribe; and all deeds and conveyances made by such company shall be signed by the president, under the seal of the corporation; and any existing railroad corporation may accept the provisions of this act, and after such acceptance all conflicting provisions of their respective charters shall be null and void.

SEC. 16. It shall be lawful for such corporation, whenever it may be necessary in the construction of such road to cross any road or stream of water, to direct the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

SEC. 17. Such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line or at the terminus of its road, and may change the same at pleasure, giving public notice in some newspaper published in the county where the said principal office is located, of such establishment or change.

SEC. 18. Every company organized under this act shall be required to erect, at all points where their road shall cross any public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such sign shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

SEC. 19. That whenever any railroad company now existing, or which may hereafter organize under this act, shall deem it necessary to extend their line of road across any navigable waters of this State, it shall be lawful, and they are hereby granted full power, to construct such bridge or bridges as may be required for the purpose of the said road across such navigable waters, and to repair and maintain the same in such manner as may best subserve the interest of such company: *Provided*, That such bridge shall not be constructed in a manner to obstruct or impede in any wise the free navigation of said waters: *And provided*, That nothing herein contained shall be construed as violative of the laws of the United States in respect to the navigable waters therein.

SEC. 20. Any railroad corporation may extend its road, with the consent of the stockholders holding two-thirds of the capital stock of the company, and for that purpose may increase its capital as provided in this act, and the directors, for that purpose, shall open books of subscription to such increased stock upon the same condition as the original stock, and, when subscribed, the same shall become a part of the capital stock of said company, and the president of said company shall make a certificate under his hand and the seal of said company, which shall state the length of said extension, as near as may be, the point from and to which the same is to be made, and the estimated cost of such extension, and file the same with the secretary of state, who shall record the same in his office, and a copy thereof, duly certified by the secretary of state, shall be evidence of the extension of such railroad, and such extension shall be a part of the said railroad.

SEC. 21. That every railroad company in this State shall cause all its trains of cars for passengers to stop, upon each arrival at a station advertised by such company as a station for receiving passengers upon such trains, at least one minute, and shall also cause all its trains of cars to entirely stop not more than sixty rods and not less than ten rods before each arrival at the crossing of any other railroad; and every company, and every person in the employment of such company, that shall violate, or cause or permit to be violated, the provisions of this section, shall be liable to a forfeiture of not more than one hundred dollars, nor less than twenty dollars, to be recovered in a civil action before any justice of the peace of the county in which such violation shall occur; upon the complaint of any person, to go to the use of common schools in the county; and such company shall be further liable in the full amount of damages done to property or persons in consequence of any neglect on the part of its agents or employees to comply with the requirements of this section, and in all cases in which the forfeiture shall occur under the provisions of this section, the company whose agents shall cause or permit such violation shall be liable for the amount of such forfeiture.

SEC. 22. Any railroad company in this State, forming a continuous or connected line with any other railroad company, may consolidate with such other company, either in or out of this State, into a single corporation, in the manner following: First. Any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the names and places of residence and

number of the directors thereof, which shall not exceed nineteen, the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, which shall not be less than one hundred dollars, the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation, the manner of compensating stockholders in each said two or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of this act: *Provided*, That all the stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid at least par value for each of the shares so held by them, if they shall so require previous to said consolidation being consummated. Second. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of said corporations, separately, at a meeting thereof, to be called upon a notice of at least thirty days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of said stockholders, when their place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders by a vote of at least two-thirds (of the) amount of the stock represented at such meeting, either in person or by proxy, voting by ballot in regard to such agreement, each share of capital stock being entitled to one vote; and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

SEC. 23. Upon making the agreement mentioned in the preceding section in the manner required therein, and filing a duplicate thereof in the office of the secretary of state, the said two or more corporations, mentioned or referred to in the first section of this act, shall be merged in the new corporation provided for in the agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

SEC. 24. Upon the election of the first board of directors of the corporation created by the agreement in the twentieth section of this act mentioned, and by the provisions of this act, all and singular, the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular, the rights and interests in and to every species of property, real, personal, and mixed, and things in action, shall be deemed to be transferred to and vested in such new corporation without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of every and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporation; and the titles and real estate acquired by either of said two or more (corporations) shall not be deemed to revert, or be impaired by means of anything in this act contained: *Provided*, That all rights of creditors and all liens upon the property of either of said corporations, parties to said agreement, shall be, and are hereby, preserved unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same: *And provided further*, That all the debts, liabilities, and duties of either company shall thenceforth attach to such new corporation, and be enforced from the same to the same extent and in the same manner as if such debts, liabilities, and duties had been originally incurred by it.

SEC. 25. Any railroad company, heretofore or hereafter incorporated, may, at any time, and by means of subscription to the capital (stock) of any other company, or otherwise, aid such company in a construction of its railroad, for the purpose of forming a connection of said last-mentioned road with the road owned by the company furnishing said aid; or any railroad company, organized in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other company; and if said company's lines of railroad are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively; or any two or more railroad companies, whose lines are so connected, may enter into any arrangement for their common benefit, consistent with and calculated to promote the object for which they were created: *Provided*, That no such aid shall be furnished, nor any purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in such manner as they may designate, and the holders of at least two-thirds of the stock of such company represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto.

SEC. 26. All acts of a general nature relating to railroad corporations, and relating to the condemnation and appropriation of lands, and not inconsistent with this act, shall be applicable to corporations created under this act.

SEC. 27. Every company, organized under this act, shall commence construction of its railroad within one year after filing its articles of association with the secretary of state; and in default thereof said corporation shall become and be dissolved.

SEC. 28. This act shall take effect and be in force from and after its publication once in the Topeka State Record.

Approved February 13, 1865.

S. J. CRAWFORD,
Governor.

I hereby certify the foregoing to be a true copy of the enrolled law on file in my office, and that the same was published in the Topeka State Record for February 22, 1865.

R. A. BARKER,
Secretary of State.

CHAPTER XLV.—INCORPORATION OF RAILROADS.

AN ACT to amend an act entitled "An act to provide for the incorporation and regulation of railroad companies," approved February, 1865.

Be it enacted by the legislature of the State of Kansas:

SECTION 1. That section six (6) of act entitled "An act to provide for the incorporation (and regulation) of railroad companies," approved February, 1865, be, and the same is hereby, amended so as to read as follows: Section 6. Whenever a call is made upon the capital stock of the company, notice of the making of such call shall be given by publishing a notice for twenty days in some newspaper published or of general circulation in the county where the principal office of the company is located, specifying the amount of such call and the time and place when and where the same is required to be paid; and if the installment or installments called for shall not be paid within ten days after the same shall be required to be paid, whether such stock is held by an assignee, transferee, or the original subscriber, the same may be collected by civil action, or the directors may sell the stocks upon which the installments so remain unpaid at public auction, for the payment of the installment or installments then due thereon, first giving ten days' public notice of the time and place of sale, in some newspaper published or of general circulation in the county where such delinquent stockholder resided at the time of making subscription, or becoming such assignee or transferee, or in the county of his actual residence at the time of making such assignment or transfer, or, if such stockholder reside out of the State, or his residence be unknown, such publication shall be made in some newspaper published or of general circulation in the county where the principal office of the company is located; and if any residue of money shall remain after paying the amount due on said stocks, the same shall, on demand, be paid over to the owner. If the whole of said installment be not paid by the proceeds of such sale, the remainder shall be recoverable by action against the subscriber, assignee, or transferee. Any railroad company heretofore organized and now in existence, under any special or general law of the Territory or State of Kansas, may, if such company shall by a vote of its board of directors so elect, have and exercise all the rights, powers, and privileges conferred by this section of this act. And any person who shall perform any labor or furnish any material for the construction, repairing, or altering of any railroad, shall have a lien for the same, in the same manner as though the same were a building, and such lien shall extend to the whole railroad, together with all the real property connected with the road.

SEC. 2. Section six of this act to which this is amendatory is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication once in the State Record.

Approved February 14, 1865.

S. J. CRAWFORD,
Governor.

I hereby certify the foregoing to be a true copy of the enrolled law on file in my office, and that the same was published in the Topeka State Record for February 22, 1865.

R. A. BARKER,
Secretary of State.

APPENDIX B.

Certificate of incorporation of Union Pacific Railway, Southern Branch.

We, whose names are hereunto subscribed, viz, Robert McBratney, James R. McCune, and S. M. Strickler, of Davis County; S. S. Huffaker, M. Coun, G. M. Sinnock, R. B. Lockwood, of Morris County; E. Goddard, R. H. Abraham, P. B. Maxon, J. H. Watson, G. R. Harper, Peter Harvey, M. M. Baker, of Lyon County; John S. Cox, H. Kelly, F. W. Potter, S. S. Prouty, J. B. Scott, A. C. Coffin, of Coffey County; N. S. Goss, Isaac W. Dow, and James Crane, Woodson County, do hereby associate ourselves as a railroad company under the act of the legislature of the State of Kansas, entitled "An act to provide for the incorporation of railroad companies," approved February 13, A. D. 1865, to be known as the Union Pacific Railway Company, Southern Branch. The object of this association shall be the construction of a railway, commencing at or near Fort Riley, or the junction of the Republican and Smoky Hills forks of the Kansas River, and on the line of the Union Pacific Railway, E. D., running thence, via Clarke's Creek and the Neosho River, to a point at or near where the southern boundary line of the State of Kansas crosses the said Neosho River.

The ultimate object of this association being to secure the construction of a continuous line of railway from the points above named, via the Arkansas and Red Rivers, to the city of New Orleans, in the State of Louisiana.

The capital stock of this association shall be one million of dollars, divided into shares of one hundred dollars each.

In testimony whereof we hereunto subscribe our names.

R. McBRATNEY.
J. R. McCUNE.
S. M. STRICKLER.
S. S. HUFFAKER.
M. COUN.
G. M. SINNOCK.
R. B. LOCKWOOD.
JOHN S. COX.
H. KELLY.
F. W. POTTER.
S. S. PROUTY.
E. GODDARD.

R. H. ABRAHAM.
P. B. MAXON.
J. H. WATSON.
G. R. HARPER.
PETER HARVEY.
M. M. BAKER.
A. V. COFFIN.
J. B. SCOTT.
N. S. GOSS.
ISAAC W. DOW.
JAMES CRANE.

STATE OF KANSAS, *Coffey County, ss:*

Before me, a notary public in and for the county and State aforesaid, personally appeared A. V. Coffin, J. B. Scott, and H. Kelly, three of the subscribers to the foregoing statement of association, to me personally known, who, being sworn in due form of law, on oath say that the foregoing is a true statement of the association entered into by the parties whose names are thereto subscribed, and for the purposes therein set forth.

In testimony whereof, I have hereunto subscribed my name and official seal, this 20th day of September, A. D. 1865.

[SEAL.]

JOHN S. COX,
Notary Public, Coffey County, Kansas.

STATE OF KANSAS, EXECUTIVE OFFICE,
Office of Secretary of State, Topeka, September 25, 1865.

I, R. A. Barker, secretary of state, do hereby certify that the foregoing is a true and correct copy of the original, on file in my office.

In testimony whereof, I have hereunto subscribed my name and fixed the official seal of my office, the day and year written aforesaid.

[SEAL.]

R. A. BARKER,
Secretary of State.

[U. S. internal-revenue stamp, 5 c., canceled.]

APPENDIX C.

AN ACT granting lands to the State of Kansas to aid in the construction of a Southern Branch of the Union Pacific Railway and Telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding the Union Pacific Railroad Company, Southern Branch, the same being a corporation organized under the laws of the

State of Kansas, to construct and operate a railroad from Fort Riley, Kansas, or near said military reservation, thence down the valley of the Neosho River to the southern line of the State of Kansas, with a view to an extension of the same through a portion of the Indian Territory to Fort Smith, Arkansas, there is hereby granted to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land or parts thereof, designated by odd numbers, to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten alternate sections per mile; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the section above specified, so much land as shall be equal to the amount of such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands, thus indicated by the direction of the Secretary of the Interior, shall be reserved and held for the State of Kansas, for the use of said company by the said Secretary, for the purpose of the construction and operation of said railroad, as provided by this act: *Provided*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever, be and the same are hereby reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way, two hundred feet in width, is hereby granted, subject to the approval of the President of the United States: *And provided further*, That said lands hereby granted shall not be selected beyond twenty miles from the line of said road.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by the aforesaid grant shall remain in the United States within ten miles on each side of said road, shall not be sold for less than double the *minimum* price of public lands when sold: *Provided*, That actual *bona-fide* settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement, and occupation: *And provided also*, That settlers under the provisions of the homestead act, who make their settlement after the passage of this act, and comply with the terms and requirements of said act, shall be entitled, within the said limits of ten miles, to patents for an amount not exceeding eighty acres each.

SEC. 3. *And be it further enacted*, That the grant of lands hereby made is upon condition that said company, after the construction of its road, shall keep it in repair and use, and shall at all times transport troops, munitions of war, supplies, and public stores upon its road for the Government of the United States, free from all cost or charge therefor to the government, when required to do so by any department thereof. And the lands hereby granted shall inure to the benefit of said company as follows: When the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner as a first-class railroad, then the said Secretary of the Interior shall issue to the said company patents for so many sections of the land herein granted within the limits above named and coterminous with said completed section hereinbefore granted; and when certificates of the governor aforesaid shall be presented to said Secretary of the completion as aforesaid of each successive section of ten consecutive miles of said road, the said Secretary shall in like manner issue to said company patents for the land for each of said sections of road, as in the first instance, until said road shall be completed: *Provided*, That if said road is not completed within ten years from the date of the acceptance of the grant hereinbefore made, the lands remaining unpatented shall revert to the United States.

SEC. 4. *And be it further enacted*, That as soon as said company shall file with the Secretary of the Interior maps of its line, designating the route thereof, it shall be the duty of said Secretary to withdraw from the market the lands granted by this act, in such manner as may be best calculated to effect the purposes of this act and subserve the public interest.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported on said road, and under the direction of the Post-Office Department, at such price as Congress may by law provide: *Provided*, That until such price is fixed by law the Postmaster-General shall have power to fix the compensation.

SEC. 6. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to said Pacific Railroad Company, southern branch, its successors and assigns, for the construction of a railroad as proposed; and the right is hereby given to said corporation to take from the public lands adjacent to the line of said road material for the construction thereof. Said way is granted to said railroad

to the extent of one hundred feet in width on each side of said road where it may pass through the public domain; also all necessary ground for station buildings, workshops, depots, machine-shops, switches, side track, turn-tables, and water-stations.

SEC. 7. *And be it further enacted*, That the acceptance of the terms, conditions, and impositions of this act by the said Pacific Railroad Company, southern branch, shall be signified in writing, under the corporate seal of the said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within one year after the passage of this act and not afterwards, and shall be deposited with the Secretary of the Interior.

SEC. 8. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, is hereby authorized and empowered to extend and construct its railroad from the southern boundary of Kansas south through the Indian Territory, with the consent of the Indians, and not otherwise; along the valley of Grand and Arkansas Rivers to Fort Smith in the State of Arkansas; and the right of way through said Indian Territory is hereby granted to said company, its successors and assigns, to the extent of one hundred feet on each side of said road or roads, and all necessary ground for stations, buildings, workshops, machine-shops, switches, side tracks, turn-tables, and water-stations.

SEC. 9. *And be it further enacted*, That the same grants of lands through said Indian Territory are hereby made as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands become a part of the public lands of the United States.

SEC. 10. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, shall have the right to negotiate with and acquire title to land for railroad purposes from any Indian nation or tribe authorized by the United States to dispose of lands, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the President of the United States, or from any company or parties incorporated or authorized for such purposes by such nation or tribe, or which such parties may have acquired under the laws of the United States.

SEC. 11. *And be it further enacted*, That any railroad company chartered under any law of the United States, or of any State, which may have been heretofore, or shall hereafter be, organized by any act of the Congress of the United States, may connect with and consolidate with this railroad company, after the same shall be located, to the valley of the Neosho or Grand River, upon just, fair, and equitable terms, to be agreed upon between the parties, as shall not be against the public interest or the interest of the United States.

Approved, July 26, 1866.

APPENDIX D.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 8, 1868.

SIR: Referring to my decision of the 8th November last, as to the right of the State of Kansas to certain lands for railroad purposes, ceded to the United States by the first article of the treaty of September 29, 1865, with the Osage Indians, I now transmit a map showing the definite location of the Union Pacific Railway, southern branch, through said lands to the southern line of the State of Kansas.

I also inclose a certified copy of a resolution of the board of directors of said company accepting the "terms, conditions, and impositions" of the grant made to the State of Kansas for said road by the act approved July 26, 1866. This acceptance was filed within the time prescribed by law. You will instruct the local land-officers to withhold, on account of said railroad, the lands falling to the grant situate within the ceded country. In this connection I would call your attention to the second section of said act of 1866, increasing the price of those sections remaining to the United States within the grant to the double minimum.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. JOSEPH S. WILSON,
Commissioner of the General Land Office.

EXHIBIT C.

APPENDIX A.

Mortgage or deed of trust from the Union Pacific Railway Company, southern branch, to Russell Sage and N. A. Cowdrey.

In trust to secure the payment of \$4,250,000, it being a first mortgage of \$16,000 per mile, on 170 miles of railroad, extending from Junction City, Davis County, Kansas, to the Kansas State line, and a first mortgage on about 1,300,000 acres of land donated by Congress to aid in building said railroad. The proceeds of the sales of lands are set apart to redeem or pay said bonds at the market-price, not exceeding 120 per centum. In the event of the makers extending their railroad from the Kansas State line southerly to Fort Gibson, about 90 miles, and acquiring the lands donated by Congress to aid in the construction thereof, then they may increase said mortgage debt \$2,500,000 more, \$16,000 per mile on the said road, and the whole amount upon the lands donated for that extension; and if it extends the same as above from Fort Gibson to Fort Smith, about 65 miles, then they have liberty to increase said mortgage debt the same as above \$1,600,000; and if extended the same as above from Fort Gibson to the Red River, about 160 miles, they have liberty to increase said mortgage debt the same as above, \$4,000,000. Principal and interest payable in gold; interest at 6 per cent. per annum, 1st of January and July. Bonds received at par in payment of lands.

This indenture, made at Junction City, Davis County, State of Kansas, on the 14th of November, A. D. 1868, between the Union Pacific Railway Company, southern branch, a corporation duly and legally incorporated by and under the laws of the State of Kansas, parties of the first part, and Russell Sage and N. A. Cowdrey, both citizens of the city and county of New York, parties of the second part, witnesseth:

That whereas the said railway company are desirous of building, equipping, and operating a railroad from Junction City, Davis County, Kansas, southerly via Council Grove, Emporia, Burlington, and Neosho Falls to the State line;

And whereas, in aid thereof, the Congress of the United States have granted to the State of Kansas ten sections of land, 640 acres each, for each mile of railroad built, as more fully appears by reference to the act of Congress relating thereto;

And whereas the State of Kansas has accepted said grant from Congress and re-granted the same to the party of the first part for the purpose of aiding in the construction of said railroad;

And whereas, to carry into effect the desire of said railroad company to build, equip, and operate said railroad, it is necessary for them to borrow the sum of \$4,250,000, and for that purpose, and in evidence thereof, to make and issue bonds in sums of \$1,000 each, in manner and form as herein below set forth; and to secure the payment thereof, to mortgage their entire property, real and personal, and also all their franchises applicable to the railroad between the points above named, to which end the said railway company have consented to make, issue, and negotiate the sum of \$4,250,000, evidenced by bond, as herein below set forth.

Which bonds now to be issued hereunder are numbered 1 to 4250, all of which are duly and legally made and delivered by said Union Pacific Railway Company, southern branch, and are in the form following, viz:

United States of America, State of Kansas.

Union Pacific Railway Company, southern branch.

No. —.]

[\$1,000.

Know all men by these presents, That the Union Pacific Railway Company, southern branch, are indebted to Russell Sage and N. A. Cowdrey, or bearer, in the sum of one thousand dollars, which they promise to pay to the bearer thereof, in the gold coin of the United States of America, on the first day of January, A. D. 1899, at their office or agency in the city of New York, with interest thereon from the first day of January, A. D. 1869, at the rate of six per centum per annum, payable semi-annually in said gold coin, at their office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of the non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable in the manner and with the effect provided in the deed of trust given to secure the payment of this bond.

The makers of this bond reserve the right to themselves and to their successors to redeem or pay this bond at their option, upon giving the notice provided in the deed of trust, at one hundred and twenty per centum and the accrued interest thereon. The holder of this bond is entitled at any time within ten days after any dividend shall be declared and become payable upon the capital stock, to convert the principal thereof

into the stock of said railway company, at par, receiving stock therefor, dollar for dollar, upon the surrender of this bond, with the unpaid coupons attached. This bond is one of a series amounting to \$4,250,000; but in the event of said railway company extending their railroad from the Kansas State line to Fort Gibson, and acquiring the lands donated to aid in the construction thereof, then this issue of bonds may be increased \$2,250,000; and if extended the same as above from Fort Gibson to Fort Smith, then this issue of bonds may be increased \$1,600,000; and if extended from Fort Gibson to the Red River, the same as above, then this issue of bonds may be increased \$4,000,000; all of which are or are to be executed and delivered in conformity with the laws of Kansas and the vote and resolution of the board of directors of said railway company, the makers thereof. The bearer hereof is entitled to all the security derived from a mortgage, or deed of trust, of even date herewith, executed and delivered to Russell Sage and N. A. Cowdrey, trustees, conveying the line of railroad and its equipment from Junction City, Davis County, Kansas, southerly to the State line, about 170 miles; and also about 1,300,000 acres of land granted by Congress to aid in building said railroad; the proceeds of the sales of said lands are to be a sinking-fund for the payment of the principal and interest of said bonds. This bond shall not be valid or obligatory until it shall have been authenticated by a certificate indorsed hereon, duly signed by both trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage or trust-deed.

In witness whereof the Union Pacific Railway Company, Southern Branch, have caused their corporate name and seal to be hereto affixed by their president and secretary, on the 14th day of November, A. D. 1868.

Union Pacific Railway Company, Southern Branch, by

_____, President.
_____, Secretary.

(Printed on back of bond.)

\$1,000 Gold Bond, No. —.

Union Pacific Railway Company, Southern Branch. First mortgage on railroad at \$16,000 per mile, and on or about 1,300,000 acres of land. Interest first of January and July, 6 per cent., in gold. Bond convertible into stock. Bonds receivable at par in payment for lands at minimum price.

This is to certify that the within bond is included in a mortgage to us, dated November 14th, A. D. 1868, in trust to secure the payment of \$4,250,000, purporting to be a first mortgage on about 1,300,000 acres of land, and a first mortgage of \$16,000 per mile on the line of railroad from Junction City, Davis County, Kansas, southerly to the Kansas State line, about 170 miles. And if the railroad company extend their road to Fort Gibson, about 90 miles, and acquire the lands donated by the United States to aid said extension, then the mortgage indebtedness may be increased \$2,250,000; and if extended in the same way from Fort Gibson to Fort Smith, about 70 miles, then it may be increased \$1,600,000; and if extended in the same way from Fort Gibson to the Red River, about 160 miles, then it may be increased \$4,000,000; for all which proposed extensions and increased indebtedness, mortgages or trust-deeds of further assurance, making the security as complete as possible, are to be given.

And we further certify that said mortgage is properly stamped with United States internal-revenue stamps, and that we have caused the same to be duly recorded according to the laws of Kansas.

_____,
_____,
Trustees.

Now, therefore, the said Union Pacific Railroad Company, Southern Branch, for and in consideration of the premises and of the sum of four million two hundred and fifty thousand dollars received, to the full satisfaction of said trustees, and for the purpose and with the intent of securing the payment of all said bonds, with the interest due and to grow due thereon, in the manner following, that is to say, sixteen thousand dollars per mile of finished railroad upon the railroad, its equipment and appurtenances hereinafter described, and the whole four million two hundred and fifty thousand dollars upon the lands donated by Congress to aid in building said railroad hereinafter more particularly described, hath granted, bargained, sold, conveyed, assigned, transferred, and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer, and confirm, to said Russell Sage and to N. A. Cowdrey, citizens of the city and State of New York, as trustees and in trust, and to the survivor or survivors of them, and to their successors or successor, the entire corporate property of the said railway company, and all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending from Junction City, Davis County, State of Kansas, down the valley of the Neosho River, through the counties of Davis, Morris, Lyon, Coffey, Woodson, Allen, Neosho, and Labette, to the State line between the Neosho River and western boundary of Labette County.

Also, all the right of way and land occupied by said railroad and appurtenances thereto belonging, and all the lands acquired and appertaining or which may hereafter be acquired and appropriated for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, workshops, superstructures, erections, and fixtures, together with all the appurtenances, rights, and privileges thereunto belonging at any and all points on said road.

And also, all and singular, the locomotives, tenders, passenger-cars, freight-cars, and every and all other cars, carriages, tools, machinery, wood, coal and fuel, and equipments for said railway, and now owned or which shall hereafter be owned by said company; and also all goods and chattels, wood, fuel, oil, or supplies now owned or which shall hereafter be owned by said company, and in any way relating or appertaining or belonging to or connected with said railway, or the running or operating the same; and also all rents, issues, income, tolls, profits, currency, moneys, rights, benefits, and advantages derived or to be derived, had, or received therefrom by said company in any way whatsoever.

And also, free and clear from all incumbrances, all the lands and claims to lands which were granted to the State of Kansas by the act of Congress aforesaid, and then granted by said State to said railway company, or which shall hereafter be donated or granted by, or in any other manner acquired from, the United States, or from or through the State of Kansas, to aid in building the railroad of said railway company, or any part of it; and any such lands not required for use by the railroad for their traffic, to which said railway company are or shall hereafter be entitled, shall be specially set aside and appropriated to the purposes of this mortgage, together with, all and singular, the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property-claim, and demand whatsoever, in law or in equity, of the said parties of the first part of, in, and to the same, and each and every part and parcel thereof, with the appurtenances.

It is mutually agreed, by and between the parties hereto, that in the event of said company extending their railroad as hereinafter set forth, then they reserve to themselves the right to reserve from this mortgage such *pro rata* of the income, equipment, and supplies of said railroad as the length in miles of new extension bears to the distance in miles from Junction City to the State line.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said trustees, and to the survivors and survivor of them, and to their and his successors and successor, and their and his assigns, in trust and upon the trust, uses, and purposes hereinafter expressed of and concerning the same, for the use and benefit of the person or persons, firm or firms, bodies politic or corporate, who shall hereafter, at any time, become the purchasers or holders, owners or bearers, of any or either of said bonds, subject to the terms, provisions, and stipulations in said bonds contained, and also subject to the possession and management of said railroad and property by said railroad company, and its successors and assigns, so long as no default shall be made in the payment of either interest or principal of said bonds, or in any or either of them, or in payment of either interest or principal of said bonds, or in any or either of them, or in payment of the amount of money as hereinafter provided for the sinking-fund, and so long as the said railway company shall well and truly observe, keep, and perform all and singular the covenants, agreements, conditions, and stipulations in said bonds and in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of said railway company.

It is further agreed that said railway company, with the consent in writing of said trustees, or their or his successor or successors, may sell and convey any lands herein mortgaged, and not necessary or required to be retained for the convenience and use of the company; and that the proceeds of said sales, whenever they amount to the sum of one thousand dollars, shall be applied to the purchase and cancellation of one or more of said mortgage bonds, or of some claims which are or may be a prior lien upon the premises mortgaged; and said trustees shall then be authorized to release the premises sold from this mortgage. In lieu of purchasing and canceling said bonds, the proceeds of said sale may be invested, under the sanction and with the approval of said trustees, in the purchase of other property, real or personal, required for use by said railway company, which shall be embraced in and covered by this mortgage.

It is mutually agreed by and between the parties hereto that the words "finished railroad," as herein used, shall mean a railroad so far finished as to be in actual operation for carrying persons and property over the same.

And this indenture further witnesseth, that the said railway company doth hereby covenant, promise, and agree to and with the said parties of the second part that the said party of the first part will, with all reasonable dispatch, make and deliver to the said parties of the second part, true and accurate list, schedules, and maps, showing the numbers, precise quantity of lands, location, position, and boundaries of each and every piece, parcel, section, or parts of sections of the aforesaid lands, not required for

the necessary or convenient operation of the railroad of the party of the first part, and also, 1st and schedules showing the minimum valuation and prices at which the respective pieces, parcels, sections, or parts of sections of said lands may be sold and conveyed, as hereinafter provided, which shall be approved by the board of directors, and signed by the president and secretary of the party of the first part, and also approved and signed by the parties of the second part. But it is understood and agreed by and between the parties hereto, that the said party of the first part, by and with the consent and approval in writing of the parties of the second part, or of the survivors of them, or of their successor or successors, may, at any time not oftener than once in each year from the date of the last approval by the parties of the second part, revalue all of said lands not then sold, and reattach to each parcel or section of the then unsold lands a minimum price, and upon the approval of the said parties of the second part of such new valuation of minimum prices, the same shall thereafter become binding upon all the parties hereto.

And it is further agreed that whenever the said railway company shall, from time to time, certify to said trustees that it has sold or contracted for the sale of any sections, parcel or parcels of said lands at a sum not less than the minimum price thereof, fixed for the same in the manner aforesaid, the said trustees or the survivor or survivors of them, or their successors or successor, shall and will join with the said company in duly executing a deed or contract sufficient in law to convey to the purchaser, his heirs or assigns, all the right, title, interest, property, possession, claim, demand, and estate, of both the parties to this indenture in and to the parcel or section of land so sold. And the said parties of the second part shall and will deliver such deed or contract to such purchaser upon receiving from him the whole price of such parcel or section of land, either in cash or in the mortgage-bonds hereby secured at the par value thereof, or partly in cash and partly in bonds; or, if such land is sold upon credit, then upon receiving from such purchaser such portion of the said price as shall be agreed to be paid in cash (which shall not be less than ten per cent. of the whole price), together with a bond for the residue of the purchase-money secured by mortgage upon the land thus sold, executed by the purchaser to the said parties of the second part in due form, to secure to them the payment of the residue, with interest thereon at the rate of not less than three per cent. per annum, payable semi-annually or annually; and every such bond and mortgage shall contain a provision to the effect that in case the interest thereon shall remain in arrear and unpaid for six months after the same shall become due, then the whole amount of the principal sum mentioned therein shall thereupon, immediately after the expiration of said six months, become due and payable; and every such mortgage shall also contain a personal obligation on the part of the purchaser and mortgagee to pay the principal and interest thereby secured at the times and according to the terms, tenor, and legal effect of said bond therein mentioned. The deed so to be given shall bear even date with the bonds and mortgages so to be executed, and shall specify the actual and true amount of the whole consideration money or price, and the manner in which the same has been paid or secured. Every such bond and mortgage shall be held by said trustees for the purpose of the trusts herein declared and as part of the trust estate, and as security for the bonds this mortgage is given to secure.

And it is further agreed that the consideration money on any such sales of lands may be paid either in whole or in part by delivering to said parties of the second part to be canceled, one or more of the bonds secured by this mortgage at their par value; and payments upon any bonds and mortgages so received by said parties of the second part, either for principal or interest, may be made by delivering to said parties of the second part, to be canceled, one or more of the bonds secured by this mortgage at their par value.

And it is further agreed, that the holders of any of the bonds or past-due coupons thereof, secured by this mortgage, shall have the right and privilege of purchasing any of said lands not required by the company for the necessary or convenient operation of their railroad, at the then minimum price fixed by said company and approved by said trustees, and to pay therefor in said bonds or coupons, secured by this mortgage at their par value.

And the said company further covenant and agree to and with the said trustees, their or his successors or successor in the trust created by this deed, that for the further security and ultimate redemption of the bonds secured by this mortgage, all moneys and bonds and mortgages, and the proceeds and avails of all such bonds and mortgages, which may be received by said trustees and the survivors or survivor of them or their successors or successor, as proceeds of the aforesaid lands, or otherwise under the trust herein declared, shall constitute a sinking-fund for the redemption and payment of the bonds issued by said railway company and secured by this mortgage.

And it is mutually agreed that said trustees shall, immediately after any payment in money is made to them, deposit the amount in the United States Trust Company, of the city of New York, or some other good and safe place of deposit in the city of New York. Whenever, from time to time, there shall be any money so on deposit, said par-

ties of the second part may, in their discretion, apply the same to the purchase or redemption of so many of the aforesaid mortgage-bonds as such money shall, from time to time, be adequate to redeem at their market value in the city of New York, provided such market value shall not exceed one hundred and twenty per centum, exclusive of accrued interest. And whenever said moneys so on deposit or in the hands of the said parties of the second part shall amount to the sum of twenty thousand dollars, it shall then be the imperative duty of the said parties of the second part to apply the same to the redemption of so much of said mortgage-bonds as such sinking-fund is adequate to redeem and pay.

In the event of said trustees not being able to purchase said bonds at a price not exceeding one hundred and twenty per cent., exclusive of accrued interest, they shall, so often as they have fifty thousand dollars or more in their hands applicable to the payment of bonds secured by this mortgage, without delay designate by lot so many of said bonds as they have money to pay, to which the money received by them shall be applied in payment at the rate of one hundred and twenty per centum and accrued interest. The trustees shall give notice of the numbers designated. If the owner or holder of the bonds designated for payment is known to them, a personal notice shall be sufficient; if they do not know the owners or holders of said bonds so designated, then said trustees shall give notice of the numbers of the bonds so designated in two or more of the daily newspapers printed in the city of New York, and shall continue said notice at least once in each week until the first day of the succeeding April or October, when the interest on the bonds so designated shall cease, and neither the company nor their successors shall be any longer liable for the payment of the principal or interest thereof; and the premises embraced in this mortgage shall thereafter be discharged from so much of the lien hereby imposed thereon as the bonds amount to thus designated for payment. And it is further mutually agreed that the said trustees shall and will cancel and discharge each and every of the bonds secured by this mortgage, with all the interest-warrants annexed thereto or accompanying the same, which they shall pay, purchase, or redeem as aforesaid, or which they may receive in any payment for land as aforesaid, and that they will make, or cause to be made, upon each bond a brief note or memorandum, stating how, when, and for what consideration the same was canceled, from whom the said mortgage-bond was received, and in such manner and form as will enable the said company to trace the transaction. The said trustees shall immediately return so many bonds as are paid by them to the company canceled; and both the company and said trustees shall keep a proper registry and account of all the bonds paid by them or designated to be paid as aforesaid, which registry or account shall be open for the examination and the inspection of any parties in interest at all reasonable times; and the number or amount of said bonds canceled shall be reported by said company to the stockholders of said company in each annual statement of the company made to the stockholders. And it is further mutually agreed that the payment and cancellation of said mortgage-bonds shall not relieve the mortgage-lien of \$16,000 per mile upon the railroad until after said mortgage-lien shall have become completely extinguished upon said lands; that is to say, the proceeds of the sales of lands shall first be applied to extinguish the mortgage-liens upon the lands, and the mortgage upon the railroad shall remain at \$16,000 per mile until the lands are all sold and the proceeds applied to extinguish the lien of said mortgage-bonds upon said land.

It is mutually agreed by and between the parties hereto that in the event of a conflict of claims to the title to any of the above-described lands on the part of the pre-emptors or other claimants or actual settlers thereon, the said railway company and the said trustees shall have power to amicably compromise, settle, and adjust such claims on such terms as said trustees shall approve.

And it is also mutually agreed by and between the parties hereto, that in the event of said railway company desiring to extend their railroad from the Kansas State-line southerly to Fort Gibson, about ninety (90) miles, and said trustees or their successors being of the opinion that by so doing the railway company will acquire a good and valid claim for lands granted by Congress to aid in building said extended road, and said railway company, making such proper and suitable supplemental deeds as the said trustees shall be advised by counsel, learned in the law, to be necessary and proper for the further and better security for the payment of said mortgage-bonds, then and thereupon, and for the purpose of constructing and equipping said extended road, said railway company may increase the amount of bonds secured by this mortgage two millions two hundred and fifty thousand (\$2,250,000) dollars, and in the same manner, if they desire to extend said railroad from Fort Gibson to Fort Smith, about sixty-five (65) miles, then the bonds secured by this mortgage may be increased one million six hundred thousand (\$1,600,000) dollars; and in the same manner, if they desire to extend said railroad from Fort Gibson to the Red River, about one hundred and sixty (160) miles, at a suitable point to connect with a line of railroad running southerly to Galveston or Houston, then the bonds secured by this mortgage may be increased four million (\$4,000,000) dollars. And the said company do hereby covenant, promise, and

agree, for itself, its successors, and assigns, to and with the said trustees, the survivor and survivors of them, and their and his successors, that the said company will well and truly pay each and every of said bonds issued by them and secured by this mortgage, together with the semi-annual interest to become due thereon, at the rate of six per cent. per annum, at the times, in the manner, and at the place specified within.

And that in case said company shall, for the space of six months, make default in the payment of the said semi-annual interest to become due upon any, either, or the whole of said mortgage-bonds, then, after the expiration of six months from the time it became due, and without demand or notice, at the election or option of a majority of the holders of said bonds, the whole principal sum mentioned in each and all of said mortgage-bonds then outstanding shall forthwith become due and payable, and the lien or incumbrance hereby created for the security and payment thereof may at once be enforced.

And it is agreed, in case of the default of the payment of the semi-annual interest as above provided, that said trustees, and survivor or successors of them, are hereby expressly authorized and empowered, upon the request in writing of a majority in interest of the owners or holders of said bonds, to enter into and upon, and to take actual possession of, all the property, real and personal, and rights, and every part thereof, and by themselves, or by their attorneys or agents, have, hold, use, and enjoy the same, and from time to time to make all repairs and replacements and all useful alterations, additions, and improvements thereto, as fully as the parties of the first part might have done before such entry; and to collect and receive all tolls, freight, incomes, rents, issues, and profits of the same, and of every part thereof; and the said trustees, and the survivors and survivor of them, and their successors and successor, shall and may, and hereby are, expressly authorized and empowered to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises, and privileges herein conveyed. Said sale shall be either in Junction City, Davis County, or the city of New York. At least three months' notice shall be given of the time, place, and terms of said sale by advertising the same in one or more newspapers of good circulation in each of the cities of Saint Louis and New York, and wherever else required by law and continuing such advertisement at least once a week until the time of sale; and they may, at their discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place. And the attorney or attorneys in fact of the said company or their successors shall have full power and authority to make, execute, and deliver to the purchaser or purchasers thereof good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee-simple or otherwise, of the entire property herein conveyed, and all the rights, franchises, and privileges of the company or its successors; which conveyance or conveyances, transfer or deeds, shall vest in the purchaser or purchasers all the right, title, interest, and estate whatsoever, reversionary or in possession, or which they may be entitled to receive, have, or hold of the said company; and said sale shall be a complete and perpetual bar or estoppel, both in law and in equity, against said company, its successors and assigns, and all persons or parties claiming by, from, or under it or them, in anywise or manner whatsoever. And the said company hereby covenant and agree to waive, and expressly covenant and agree that neither the company nor their successors shall have or claim any advantage of, any valuation, appraisement, or extension of laws.

The amount of the purchase-money on said sale may be paid and satisfied in whole or in part by the outstanding mortgage-bonds or any of them secured hereby, and said bonds shall be received in whole or in part payment and satisfaction of the said trustees, their survivors or survivor, successors or successor, according to their value, to be ascertained and determined by the net amount arising from said sale. And out of the moneys received from said tolls, freights, incomes, rents, profits, and earnings of said railroad and premises, or out of or from the proceeds of said sale so to be made as aforesaid, after first deducting the expenses, disbursements, costs, charges, and counsel fees incurred in and about the conducting of said sale, or the working and opening said railroad, including the compensation and commission of said trustees in and about the execution of this trust and all expenses of repairs, replacements, alterations, additions, and improvements, and all payments for taxes, assessments, charges, or liens on said premises, or any part thereof, the said trustees shall, if the amount received be sufficient for that purpose, pay said mortgage-bonds, or so many of them as shall be then outstanding and unpaid, together with all interests then due upon the same; and if the amount be insufficient, then to divide the same *pro rata* among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall, be paid to said company or their successors or assigns.

And it is further covenanted and agreed by and between the parties hereto, that in case of any judicial foreclosure-sale or other sale of the premises embraced in this mortgage, under the decree of any court having jurisdiction thereof, based upon the foreclosure of this mortgage, and the holders of a majority of the then outstanding bonds secured by this mortgage shall in writing request the said trustees, they or his survivors or survivor, successors or successor, they are or he is authorized to purchase

the premises embraced herein, for the use and benefit of the holders of the then outstanding bonds secured by this mortgage.

And that, having so purchased said premises, the right and title thereto shall vest in said trustee or trustees, and no bondholder shall have any claim upon the premises or to the proceeds except for his *pro rata* share of the proceeds of said purchased premises, as represented in a new company or corporation to be formed for the use and benefit of the holders of the bonds secured hereby. And that said trustees, or their successors or successor, survivors or survivor, may take such lawful means as he or they may deem for the interest of said bondholders to organize a new company or corporation for the benefit of the holders of the bonds secured by this mortgage. Said new company or corporation shall be organized upon such terms, conditions, and limitations, and in such manner, as the holders of a majority of said outstanding bonds secured by this mortgage shall in writing request or direct; and said trustees so purchasing shall thereupon reconvey the premises so purchased by him or them to said new company or corporation.

And it is further agreed that the said trustees, his or their survivor, successors, or successor, may appoint and employ, at the expense of the said trust estate, all such attorneys, counselors, clerks, book-keepers, engineers, or other agents, as may be reasonably necessary in the execution of any of the trusts herein or hereby declared, and shall not be answerable for the defaults or other misconduct or neglect of such attorneys, counselors, clerks, book-keepers, engineers, or other agents, unless chargeable with culpable negligence in their selections; and, further, that neither of said trustees shall be answerable for the acts, omissions, or defaults of his associates, nor shall either of them, or their survivor, successor, or successors, be responsible for anything short of gross negligence or willful frauds in the discharge of his duties.

And it is further mutually agreed by all parties hereto that the said trustees, their or his successors or successor, survivors or survivor, shall receive from said company for his or their services in the acceptance of this trust and the signing and delivery of the \$4,250,000 bonds issued hereunder, four bonds of \$1,000 each, and for signing and delivery the \$2,250,000 of bonds above named two bonds of \$1,000, and for the \$1,600,000 two bonds of \$1,000, and for the \$4,000,000 four bonds of \$1,000 each.

And for any further services hereunder he or they shall receive as follows, viz: For services under any foreclosure proceeding to foreclose this mortgage, the sum of one per centum on the par amount of the bonds to be secured by this mortgage, then outstanding, exclusive of all cash disbursements; for services in selling and conveying the lands herein described and applying the proceeds to the sinking fund, as herein provided, the sum of two per centum on the par amount of the bonds canceled in that manner, exclusive of all cash disbursements; the above commissions to be in full payment of both trustees, and to be equally divided between them.

And it is further mutually agreed that said trustees, his or their successors or successor, survivor or survivors, may be removed from the office of trustees or trustee hereunder, by a vote of a majority in interest of the holders of said bonds, at any meeting called for that purpose; and also that said trustees or trustee, his or their successors or successor, survivors or survivor, may resign this trust and be thereby discharged from future liabilities thereunder by notice of thirty days in writing to said company or its successors. And it is further mutually agreed that in case of death, removal, resignation, incapacity, or inability of both or either of the said trustees to act in the execution of the trust hereby created, then a majority of the holders of said bonds may select and designate, in writing, one or more competent persons to fill the vacancy so occurring in manner aforesaid; and until the bondholders make such selection, the remaining active surviving trustee and president of the company are hereby empowered to select and appoint, by an instrument in writing, a competent person to fill the vacancy so created; and if there be no remaining or surviving trustee, then the president of the company, with the consent in writing of the owners or holders of said bonds to the amount of two hundred thousand dollars, may select and appoint as aforesaid one or more persons to fill the vacancy, until the bondholders make an appointment of said trustee or trustees; and in either case the person or persons selected shall have and possess and be vested with the same rights and powers, as a trustee or trustees, as he or they would have had and possessed or been vested with had he or they been originally made a party or parties to this indenture, and shall perform such duties in all respects until such appointment shall be made in manner aforesaid; and notwithstanding any vacancy or vacancies as aforesaid, said remaining, surviving, acting, or competent trustee shall have full power and authority to execute each and all trusts hereby created. The said company and their successors and assigns hereby covenant to make, execute, and deliver all such other or further instruments, deeds, or indentures as may be necessary to enable the person or persons so appointed to execute the trust hereby created as fully and perfectly in all respects as he or they could have executed the same if originally a party to this indenture. And it is further mutually agreed that whenever, and so often as any contingency shall arise, in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or

power, it shall be the duty of said trustees, and each of them, and he or they are hereby authorized and required, to call a meeting of all the holders of the bonds secured by this mortgage, to be held in the city of New York, by advertisement to be published at the expense of the said company, three times a week for three weeks, in at least two newspapers of large circulation among the business community in said city; and at such meeting so convened a majority in interest of the holders of said bonds shall be competent to exercise, in person or by proxy, all the powers and authorities conferred upon them herein.

And any person appearing at such meeting of bondholders and claiming the right to participate therein shall, if requested by any bondholder present thereat, produce the bond or bonds upon which such person may claim the right to vote at such meeting, or file an affidavit with the chairman of such meeting that he, the person so claiming the right to participate in such meeting, is a holder of one or more of the bonds aforesaid, or the duly authorized proxy of such holder, in which affidavit he shall specify the amount and numbers of the bonds he claims to hold or to represent before being allowed to vote at such meeting, except for the purpose of temporarily organizing the same; and on the adjournment of such meeting all such affidavits shall be delivered to the railroad company or its successors, to be filed among the records of said company.

And the said company, for themselves and their successors and assigns, hereby covenant and agree, for the consideration aforesaid, to execute and deliver any further reasonable and necessary deed or deeds, conveyance or conveyances, to the said trustees, their survivor, successor or successors, for the more fully securing the payment of said bonds, particularly for the conveyance of any right, interest, or property acquired by said company subsequent to the date hereof: Provided always, and this grant and conveyance is upon the express condition, that upon the payment in full of said bonds and the interest due thereon, or on the conversion thereof into the stock in manner named in said bonds, on exhibiting the said bonds canceled to the said trustees, his or their survivor, successors or successor, then the estate, title, and interest of the said trustees, his or their survivor, successors or successor, shall cease, determine, and become void, and he or they shall, upon request of the company or their successors, duly execute and deliver a proper release or satisfaction of this mortgage.

In witness whereof the Union Pacific Railway Company, Southern Branch, have caused this indenture to be subscribed in its corporate name by its president and secretary, and have caused its corporate seal to be hereto affixed.

UNION PACIFIC RAILWAY COMPANY, SOUTHERN BRANCH,
By J. B. DICKINSON, *President*.
GEO. C. CLARK, *Secretary*.

In presence of THOS. SADLER, 11 Wall street.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on the twenty-second day of January, A. D. one thousand eight hundred and sixty-nine, before me, the subscriber, Thos. Sadler, a commissioner in and for the State of New York, appointed by the governor of the State of Kansas, to take proof and acknowledgment of deeds, mortgages, or any other instrument to be used or recorded in the said State of Kansas, personally appeared John B. Dickinson and George C. Clark, who are personally known to me to be the identical persons whose names are affixed to the foregoing indenture as, respectively, president and secretary, and acknowledged the same to be the voluntary act and deed of the said Union Pacific Railway Company, Southern Branch, and each being by me duly sworn, deposes and says, each for himself, that he, John B. Dickinson, is president, and that he, George C. Clark, is secretary of said railway company; that they signed the foregoing instrument as such president and secretary, and caused the corporate seal of said company to be affixed hereto, all as the act and deed of said company, by order and authority of said company, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal in the city of New York on the day and year above written.

[NOTARY SEAL.]

THOS. SADLER,
Commissioner for the State of Kansas, 11 Wall Street, New York

EXHIBIT D.

APPENDIX 16.

Mortgage of the Missouri, Kansas, and Texas Railway Company to Union Trust Company of New York, dated February 1, 1871.

This indenture made the 1st day February, one thousand eight hundred and seventy-one, between the Missouri, Kansas and Texas Railway Company of the one part and the Union Trust Company, of New York, of the other part.

Whereas a railroad company, known as the Union Pacific Railway Company, southern branch, was duly incorporated on or about the twenty-fifth day of September, one thousand eight hundred and sixty-five, under and by virtue of an act of the legislature of the State of Kansas, entitled "An act to provide for the incorporation of railroad companies," approved February 13, 1865, to construct and operate a railroad extending from Junction City (near Fort Riley) in Davis County, in the State of Kansas, thence down the valley of the Neosho River to the southern boundary line of said State;

And whereas said railway company by virtue of divers acts of Congress and of the legislature of the State of Kansas acquired the title to certain lands situate in said State to aid in the construction of said railroad;

And whereas said railway company for the construction and equipment of said railroad, heretofore issued its bonds for the sum of one thousand dollars each, amounting in the aggregate to the principal sum of four million two hundred and fifty thousand dollars, and numbered from one to four thousand two hundred and fifty, both inclusive, all of which said bonds bear date the fourteenth day of November, one thousand eight hundred and sixty-eight, and are secured by a trust-deed or mortgage of the same date, executed by said railway company to Russell Sage, and N. A. Cowdrey, of the city of New York, and duly recorded in the State of Kansas, conveying the right of way, road, franchises, property, real and personal, and the lands granted to said railway company, and providing for the creation of a sinking fund for the payment of said bonds, as by reference thereto will more fully appear;

And whereas the said railway company afterward and in pursuance of the power and authority conferred by the laws of the State of Kansas, changed its name to the Missouri, Kansas and Texas Railway Company;

And whereas a certain other railroad company was duly incorporated under and by virtue of the laws of the State of Kansas by the name of the Labette and Sedalia Railway Company, to construct and operate a railroad from a point in Labette County in said State, on the line of the railroad of the Missouri, Kansas and Texas Railway Company aforesaid, northeastwardly through Neosho, Crawford, and Bourbon Counties, to the boundary-line between the States of Kansas and Missouri, and to the point in such boundary-line where the same intersects the road of the Tebo and Neosho Railroad Company, a corporation duly created under and by virtue of an act of the general assembly of the State of Missouri, approved March 12, 1859;

And whereas by virtue of the laws of the State of Kansas, the said Missouri, Kansas and Texas Railway Company and the Labette and Sedalia Railway Company were consolidated and became one corporation under the name of the Missouri, Kansas and Texas Railway Company;

And whereas the said, the Missouri, Kansas and Texas Railway Company, for the purpose of building, equipping, and operating that portion of its said railroad formerly owned by the Labette and Sedalia Railway Company, as above described, heretofore issued its bonds for the sum of one thousand dollars each, amounting in the aggregate to the principal sum of one million two hundred thousand dollars, and numbered from one to twelve hundred, both inclusive, all of which bear date from the first day of August, one thousand eight hundred and seventy, and are secured by a trust-deed or mortgage of the same date, executed by said company to the Union Trust Company of New York, conveying all that portion of its railroad above mentioned, with the right of way, franchises, and all the property, real and personal thereto belonging, and providing for the creation of a sinking fund for the payment of said bonds, as by reference to said trust-deed or mortgage duly recorded in the State of Kansas, will more fully appear;

And whereas the Tebo and Neosho Railroad Company, duly incorporated as hereinbefore mentioned, for the purpose, among other things, of building, equipping, and operating a railroad running from Sedalia, in Pettis County, and State of Missouri, southwesterly to the boundary-line between the said State and the State of Kansas, did for that purpose issue its bonds for the sum of one thousand dollars each, amounting in the aggregate to the principal sum of two million dollars, and numbered from one to two thousand, both inclusive, all of which are dated the first of June one thousand eight hundred and seventy, and are secured by a trust-deed or mortgage of the same date, executed by the said company to the Union Trust Company of the city of New York, conveying the said railroad, its rights, franchises, and property, real and personal, and providing for the creation of a sinking-fund for the payment of said bonds, as by reference to said trust-deed or mortgage, duly recorded in the proper office in the State of Missouri, will more fully appear;

And whereas after the issue of said bonds and the execution of said trust-deed or mortgage by the Tebo and Neosho Railroad Company, the said company, by virtue of the power and authority conferred by the statutes of the State of Missouri, sold the railroad above described, and all the corporate rights and franchises held and owned by said company, to the Missouri, Kansas and Texas Railway Company, and the last named company became the owner thereof, and vested with all the corporate rights, powers, and franchises appertaining thereto, and to the said Tebo and Neosho Railway

Company belonging, subject to the lien and operation of the trust-deed or mortgage aforesaid;

And whereas the said The Missouri, Kansas and Texas Railway Company is the owner of the site and franchise, under and by virtue of two several acts of Congress, approved July 25 and July 26, 1866, respectively, and the order and approval of the President of the United States thereupon, to extend, construct, and operate their said railroad from the present terminus of their main line in the southern boundary-line of the State of Kansas, through the Indian Territory, to a point at or near Preston, in the State of Texas;

And whereas the party of the first part is the owner of other corporate rights and franchises not included in this deed of trust or mortgage;

And whereas the party of the first part to this indenture is the said The Missouri, Kansas and Texas Railway Company, owning and operating their main line from Junction City aforesaid to the southern boundary-line of the State of Kansas, with the right and franchise to extend the same through the Indian Territory as above mentioned, and those other portions of their railroad extending from the junction with the said main line in Labette County, northeasterly to the boundary-line between the States of Kansas and Missouri, and thence still farther northeasterly to Sedalia, in last-mentioned State;

And whereas the party of the second part is a corporation duly organized in the city of New York, with power to take and hold property in trust and for such uses and purposes as the party creating such trust may direct and appoint;

And whereas the said party of the first part is desirous of calling in and retiring all the bonds so as aforesaid issued by the said The Union Pacific Railway Company, southern branch, the Tebo and Neosho Railroad Company, and the Missouri, Kansas and Texas Railway Company, respectively, or so many thereof as may be still outstanding, by issuing its own bonds in exchange therefor; and also of borrowing money by the issue of other of its own bonds, for the purpose of building, equipping, and operating all such of its roads and portions of roads hereinbefore described as are not yet fully constructed and equipped, and, for the several purposes aforesaid, has resolved to issue such bonds, in the sum of one thousand dollars each; amounting to the aggregate principal sum of fourteen millions of dollars, and numbered from one to fourteen thousand, both inclusive, and that each of the said bonds shall be in the words and figures following, subject only to necessary variation as to the distinguishing numbers and amount thereof:

United States of America—States of Kansas and Missouri—Missouri, Kansas, and Texas Railway Company—First mortgage seven per cent.—Land-grant and sinking-fund—Gold fund—No. —.—\$1,000—Free of U. S. Government tax.

Know all men by these presents, that the Missouri, Kansas, and Texas Railway Company is indebted to the Union Trust Company of New York, or bearer, in the sum of one thousand dollars in gold coin of the United States, which the said railway company promises to pay to the bearer hereof on the first day of February, in the year nineteen hundred and four, in the city of New York, with interest thereon from date hereof at the rate of seven per cent. per annum, payable in gold coin aforesaid semi-annually, at its office or agency in the city of New York, on the first days of August and February in each year, upon the presentation and surrender of the coupons hereto attached as they severally become due, as provided therein; and in case of default in the payment of any half-yearly installment of interest, which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust-deed or mortgage hereinafter mentioned. This bond is one of a series numbered consecutively from one to fourteen thousand, both inclusive, each for the sum of one thousand dollars, amounting in the aggregate to the sum of fourteen millions of dollars, all of which are of like tenor, date, and effect, and all equally secured by a trust-deed or mortgage, dated the first day of February, in the year eighteen hundred and seventy-one, duly executed and delivered by the said railway company, and recorded in the proper offices in the States of Kansas and Missouri, and elsewhere, and conveying to the said Union Trust Company of New York, in trust, the corporate property, real and personal, of the said party of the first part therein described, and all its franchises and the privileges appertaining thereto, as more fully set forth in said trust-deed or mortgage. This bond is entitled to the benefit of the sinking-fund, as provided by said trust-deed or mortgage, whereby the principal of said bond will be redeemed in thirty-three years from the date hereof. Bonds equal in amount to the accumulations in said sinking-fund will be redeemed at their par value annually, commencing after three years from date hereof. Notice of the numbers of the bonds so allotted for redemption will be published in two or more daily newspapers printed in the city of New York, for sixty days, at the expiration of which time interest thereon shall cease. This bond shall pass by delivery or by transfer on the books of the company in the city

of New York, and such other places in this country and in Europe as said company may hereafter designate. After a registration of ownership, certified hereon by the secretary of the company or its transfer agent, no transfer except on the books of the company shall be valid unless the last transfer shall have been to bearer, the bond to be entitled to successive registrations and transfers to bearer, at the option of each holder, and other privileges in that behalf mentioned in said trust-deed or mortgage. This bond shall not become obligatory until it shall have been authenticated by a certificate indorsed hereon, duly executed by the trustee aforesaid, to the effect that the same is properly issued.

In witness whereof the said Missouri, Kansas and Texas Railway Company has caused these presents to be executed by its president and secretary, and its corporate seal to be hereto affixed, this first day of February, A. D. eighteen hundred and seventy-one.

President.

Secretary.

Now, therefore, this indenture witnesseth that the said party hereto of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party hereto of the second part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, hath granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant, bargain, sell, assign, transfer, and convey unto the party of the second part, its lawful successor or successors in the trust hereby created, and assigns—

First. All and singular the railroad, as the same is constructed, extending from Junction City, in Davis County, State of Kansas, down the valley of the Neosho River, through the counties of Davis, Morris, Lyon, Coffey, Woodson, Allen, Neosho, and Labette, to a point in the southern boundary-line of said State between the Neosho River and the western boundary of Labette County, a distance of one hundred and eighty-two miles, more or less.

And also all the right, title, and interest which the party of the first part has, by reason of the construction of said line of said road to and in any land or lands heretofore granted by any act of Congress to the State of Kansas, to aid such construction, the said lands being the same, or so much thereof as remain unsold, which were granted by acts of Congress to the State of Kansas, and by said State to the Union Pacific Railway Company, Southern Branch, above mentioned; and also all the right, title, and interest of the said party of the first part in and to the proceeds of such of said lands as may have been sold which heretofore belonged to the said railway company, or in which the said company was in any way interested; and also all the right, title, and interest of the said party of the first part in and to any proceeds of lands granted to the State of Kansas by act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant pre-emption rights," approved September 4, 1841, and heretofore sold by said State under and by virtue of an act of the legislature of the State of Kansas entitled "An act providing for the sale of public lands to aid in the construction of certain railroads," approved February 23, 1866; and also all the right, title, and interest of the party of the first part in and to such of the lands granted by the act of Congress aforesaid, which were heretofore sold and conveyed by the State of Kansas to the Land Grant Railway and Trust Company, and by said company to the party of the first part; together with all and singular the tenements, hereditaments, rights, privileges, easements, income, advantages, and appurtenances to the said land and premises belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, property, claim, and demand whatsoever at law or in equity of the said party of the first part of, in, and to the same, and any and every part or parcel thereof (the extent and aggregate area of the lands to which the party of the first part is so entitled being estimated at 1,200,000 acres of land) situate in the State of Kansas.

Second. All the privileges and franchises acquired by the said party of the first part under and by virtue of two several acts of Congress, approved July 25 and July 26, 1866, and the order and approval of the President of the United States thereupon, to extend, construct, and operate the said railroad from the said southern boundary-line of the State of Kansas, southerly through the Indian Territory, to the northern boundary-line of the State of Texas, to a point at or near the town of Preston, in said State, a distance of two hundred and fifty miles, more or less; and also the right, title, and interest which the party of the first part now has, or may hereafter acquire, by reason of constructing the extension of the said line of railroad through the Indian Territory, in and to any land or lands granted by the acts of Congress aforesaid, or which the said party of the first part now has, or may hereafter acquire, under and by virtue of any treaty or treaties from any Indian nation or tribe, or otherwise, howsoever appertaining.

ing to the aforesaid extension, together with all the rights, privileges, tenements, hereditaments, and appurtenances that may belong or appertain thereto, the land granted under said acts of Congress being ten alternate sections of land on each side of said railroad, reserving therefrom any right, franchise, or privilege or land appertaining thereto, under the acts of Congress aforesaid, to extend said road or construct a branch thereof through a portion of the Indian Territory to Fort Smith.

Third. All and singular the railroad as the same is now constructed, extending from Sedalia, in Pettis County, in the State of Missouri, to the western boundary of said State, a distance of one hundred miles, more or less, being the railroad acquired by the party of the first part by purchase from the Tebo and Neosho Railroad Company, as hereinbefore mentioned.

Fourth. All and singular the railroad which the Labette and Sedalia Railway Company were authorized to construct and operate, as hereinbefore mentioned, and which is now being constructed by the party of the first part from the town of Parson, in Labette County, in the State of Kansas, on the main line of the railroad of the party of the first part, northeasterly through Labette, Neosho, Crawford, and Bourbon Counties to the boundary-line between the States of Kansas and Missouri, and to the point in said boundary-line where the same intersects the railroad acquired by the said party of the first part from the Tebo and Neosho Railroad Company, as aforesaid, a distance of sixty miles, more or less.

Fifth. And also all the following property, real and personal, now owned, or which may be at any time hereafter acquired by the party of the first part, for the use of any or all the railroads above described, including the said extension of the main line of said railroad and thereto belonging, namely, all the lands, tenements, and hereditaments, and right of way, and all lands appropriated, or which may hereafter be appropriated, for depots, superstructures, buildings, erections, and fixtures; and also all tracks, bridges, viaducts, culverts, fences, and other structures; depots, engine-houses, car-houses, freight-houses, wood-houses, and other buildings; and all machine-shops and other shops; and, also, all locomotives, tenders, cars, and other rolling-stock or equipments; and also all machinery, tools, implements, fuel, supplies, and materials for constructing, operating, repairing, or replacing the said railroads, or any or either of them; and also all corporate and other franchises, powers, rights, and privileges now held and owned, or which may be hereafter acquired by the party of the first part, connected with or relative to the said railroads, or any or either of them. To have and to hold, all and singular, the above-mentioned and described premises, rights, franchises, railroads, and real and personal property, unto the said party of the second part, its successor or successors and assigns, in trust and for the uses, interests, and purposes hereinafter expressed and declared of and concerning the same, that is to say:

Article first. No one of the said bonds shall be deemed issued, or be valid or secured by this mortgage, until there shall have been indorsed upon it a certificate duly signed by the party of the second part, its successor or successors in this trust, to the effect following, viz: "The within bond is one of fourteen thousand bonds issued under and in pursuance of the consolidated mortgage made by the Missouri, Kansas and Texas Railway Company, and is secured thereby."

Article second. Seven thousand three hundred and forty-five of said bonds, being those numbered from one to seven thousand three hundred and forty-five, inclusive, or so many thereof as shall be necessary, shall be issued and used only in exchange for bonds equal in amount and now outstanding, heretofore issued as hereinbefore recited, either by the said Union Pacific Railway Company, southern branch, or by the said Tebo and Neosho Railroad Company, or by the said party hereto of the first part; and until so exchanged for a bond of equal amount, as aforesaid, no one of said seven thousand three hundred and forty-five bonds, so numbered as aforesaid, shall be deemed issued or shall be secured by this mortgage. And whenever any one of said outstanding bonds shall have been so received by the party of the second part, its successor or successors in this trust in exchange, the same shall be registered as an exchanged bond, together with date of exchange, the name of the person from whom it was received, and the number of the bond given in exchange therefor, and shall be safely kept until all the bonds of like description shall have been in a like manner received in exchange, or shall have been redeemed or otherwise paid off and satisfied; and thereupon the bonds so received in exchange, and comprising all of the like description, tenor, and effect, not otherwise redeemed and paid, shall be cancelled by the party of the second part, its successor or successors in this trust, and securing the same, shall thereupon be duly satisfied and discharged of record. And the books of registry and account of said bonds so exchanged shall be kept open for the examination and inspection of any party in interest at all reasonable times.

And it is further mutually agreed by and between the parties hereto that whenever, under and by virtue of the provisions of either of the aforesaid trust deeds and mortgages, either of the bonds so received in exchange as aforesaid shall be drawn by lot for redemption, the bond issued in exchange for the one so drawn shall be redeemed.

and paid off by the said party of the second part, its successor or successors, and the said exchanged bond and the one so issued for it shall be cancelled and delivered up to the party of the first part, and in case upon the satisfaction and discharge of either of said trust deeds or mortgages, there shall be in the possession or under the control of the trustee or trustees thereunder any moneys, notes, bills, bonds, choses in action, or other things of value received and held by it or them, as and for or on account of and belonging to the sinking fund created by either of said trust deeds or mortgages, the same and every part and parcel thereof shall thereupon be paid, transferred, assigned, and made over unto and be held by the party of the second part, its successor or successors, in this trust, subject to the trusts herein expressed and declared.

Article third.—Two thousand six hundred and fifty-five of the bonds hereby secured, being those numbered from seven thousand three hundred and forty-six to ten thousand, both inclusive, shall be issued and forthwith delivered to the party of the first part.

Article fourth.—The remaining four thousand of the bonds secured hereby, being those numbered from ten thousand and one to fourteen thousand, both inclusive, shall be issued and used only for the construction of the proposed extension of the railway of the party of the first part south of the Arkansas River, and extending southerly a distance of one hundred and sixty miles, more or less, through the Indian Territory, as hereinbefore recited; such bonds shall only be issued and delivered to the party of the first part in proportionate amounts, and upon the completion of any section or sections of said road, the length of which completed section or sections shall be determined by the certificates of the chief engineer and general superintendent and the president of the party of the first part: *Provided, however,* That whenever any contract or contracts for the construction of any fifty miles of such proposed extension shall be made, a proportionate amount of said bonds shall, at the option of the party of the first part, be issued and delivered to it by the party of the second part, to be used in the construction, completion, and equipment of such portion or portions of road; *and provided further,* that all or any part or portion of such bonds may be offered for sale at any time hereafter; and in case sales thereof shall be made the proceeds shall be received by the party of the second part, its successor or successors in this trust, and proportionate amounts thereof determined in like manner, shall be paid to the party of the first part in place of a delivery of bonds as in this article is provided.

Article fifth.—And for the purpose of providing a sinking fund for the redemption of the bonds secured hereby, it is further understood and agreed between the said parties hereto as follows: The party of the first part shall pay to the party of the second part, its successor or successors in this trust, on the first day of February, one thousand eight hundred and seventy-four, a sum equal to one per cent. in gold coin aforesaid of the aggregate principal of the bonds mentioned in articles third and fourth, which shall have then been delivered to the said party of the first part or sold, and of the bonds set apart in article second to be exchanged for outstanding bonds secured by the said trust deeds or mortgages made by the Union Pacific Railway Company, southern branch, and the Tebo and Neosho Railroad Company and the party hereto of the first part, or by either of said trust deeds or mortgages, if they or either of them shall have then been satisfied and discharged of record as provided in article second; and shall also pay on or before the first day of February in every year thereafter a like sum, and interest at the rate of seven per cent. in the same coin upon all payments theretofore made. If the last-mentioned trust-deeds or mortgages, or either of them, shall not have been satisfied and discharged of record, as provided in article second, on or before the 1st day of February, 1874, then whenever either of said trust-deeds or mortgages shall have been so satisfied and discharged, the party of the first part shall, on the 1st day of February next succeeding such satisfaction and discharge, pay to the party of the second part, its successor or successors in this trust, such sum in gold coin aforesaid, as, taken together with the amount then standing to the credit of the sinking-fund created by such trust-deed or mortgage, would, by the provisions of this article, have been received on that day by the said party of the second part, its successor or successors, on account of the bonds set apart to be exchanged for those secured by such trust-deed or mortgage if such trust-deed or mortgage had been so discharged on or before the 1st day of February, 1874, and the said party of the first part shall also pay, on or before the 1st day of February in every year after such first payment, a sum equal to one per cent. in the gold coin aforesaid of the aggregate principal of such bonds, and interest at the rate of 7 per cent. in the same coin on all payments theretofore made. If all the bonds mentioned in article 4 shall not have been delivered to said party of the first part or sold by the said 1st day of February, 1874, then on the 1st day of February next succeeding the issue of any portion of such bonds, either by delivery to the party of the first part or by sale thereof, the party of the first part shall pay to the party of the second part, its successor or successors, such sums in gold coin aforesaid as by the provisions of this article would have been received to that date by the party of the second part, its successor or successors, on account of such bonds if such issue had been made on or before the said

1st day of February, 1874, and the said party of the first part shall also pay, on or before the 1st day of February in every year after such first payment, a sum equal to 1 per cent. in gold coin aforesaid on the aggregate principal of such bonds and interest at the rate of 7 per cent. in the same coin on all payments theretofore made. And in case such satisfaction and discharge of said trust-deed or mortgage of the Union Pacific Railway Company, Southern Branch, shall have been in consequence of the payment or redemption of the bonds secured by such deed of trust or mortgage under provisions in that behalf therein contained, then the moneys, notes, bills, bonds, choses in action, mortgages, and all other funds of value remaining in the possession or held by the trustees of said bonds, deed of trust, or mortgage, shall be paid, assigned, transferred, set over unto the party of the second part, its successor or successors in this trust, and shall thereafter become and be held upon the trust herein expressed and declared, and the moneys so paid and all other sums collected or received from the said choses in action and other securities so transferred as aforesaid shall be and become a part of the trust-fund created and set apart for the payment of the interest upon and redemption of the bonds issued under and by virtue of these presents. It is further expressly understood that before the party of the first part shall be required to make either or any of the payments in this article directed, it shall receive credit on account thereof for all moneys that shall have been received during the year in which such payment is to be made by the party of the second part, its successor or successors, from any source from which by the provisions of these presents moneys forming a part of the sinking-fund are to be derived.

And it is further mutually agreed by and between the parties hereto, that immediately after the payment into the sinking-fund of any sum of money hereby required to be paid, the party of the second part, its successor or successors in this trust, will designate by lot a number of bonds sufficient to equal as near as may be the accumulations of said funds applicable thereto for redemption at the par value thereof, and shall thereupon cause a notice to be printed in two or more of the daily newspapers published in the city of New York for sixty days, stating the numbers of the bonds so designated for redemption, and at the expiration of such time interest on said bonds shall cease.

Article sixth. And it is further understood and agreed by and between the parties hereto, that if, after passing to the credit of the party of the first part, on account of the moneys to be paid into the sinking-fund, as hereinbefore provided, all moneys proceeds of the sales of any of the lands hereby conveyed other than the lands conveyed by the trust-deed or mortgage of the Union Pacific Railway, Southern Branch, and, after the satisfaction of said last-named mortgage, then all moneys proceeds of the lands conveyed thereby, there shall remain in the hands or under the control of the party of the second part any surplus over and above the amount to be paid in each year into said sinking-fund, the party of the second part, its successor or successors, shall apply such surplus as the party of the first part may elect either directly to the payment of the interest-coupons hereby secured at its office in the city of New York, or by the payment of such surplus to the party of the first part on the presentation and surrender of a like amount of such coupons paid by the party of the first part.

Article seventh. The said party of the first part shall have the right, at its option, to issue, or exchange and reissue, either or any of the bonds hereby secured, in subdivisions of \$50, \$100, or \$500 each, in such form as shall be approved by the said party of the second part, such subdivision-bonds to be authenticated by certificates indorsed thereon, duly signed by the said party of the second part, and each of them to bear the number of the bond to which it shall belong, and in addition thereto a letter of the alphabet, commencing with the letter A for the first subdivision of every bond so subdivided, and so on in the consecutive order of the letters of the alphabet for the remaining subdivisions of every such bond.

Article eighth. The party of the first part doth hereby further covenant and agree to and with the party of the second part, and its successor or successors in this trust, that the party of the first part shall at all times hereafter keep at its office in the city of New York, and in such other places in this country or in Europe as it may hereafter appoint, a book or books which shall be respectively designated as "The register of bonds issued under the consolidated mortgage," and that any holder of any of the bonds issued under the provisions of this indenture may there register his bonds upon presenting the same; and that when a bond is so registered in the name of any person, such person shall be deemed and regarded as the owner of such bond; and that all payments of either principal or interest thereon shall thereafter be made to him or his order only; and that such payments to him or to his order shall be valid payments of such principal or interest, and a discharge to the party of the first part to the extent of the sum so paid. And also that such registry may be changed upon presentation of the bond with the written order of the person in whose name it is registered, properly authenticated, to the name of such person as may, by the said written order, be designated for the purpose, and he shall hereafter be deemed and regarded as the owner of the bond and its interest-coupons, under the same circumstances and conditions

and with the same rights as the prior owner, including the right to change the registration in manner aforesaid, and so from time to time as the owner for the time being may desire; and that the registered holder may also have the right to register the bond as payable to bearer, in which case the bond and interest-coupons shall be payable to the holder presenting the same. And any holder of a bond so registered as payable to bearer may again cause it to be registered in his name with the same effect as the first registration, and successive registrations may in the same manner be made from time to time as may be desired; and, also, that the holder of any of said bonds may, at his option, surrender the coupons attached thereto to be canceled, in which case interest thereon will thereafter be payable to him or his order only.

Article ninth. It is further mutually agreed, by and between the parties hereto, that the said party of the first part will, with all reasonable dispatch, make and deliver to the said party of the second part true and accurate lists, schedules, and maps, showing the number, precise quantity of lands, location, and position, and boundaries of each and every piece, parcel, section, or parts of sections of the aforesaid lands now owned, or any lands which may be hereafter owned or acquired by it, not required by the necessary or convenient operation of the railroads of the party of the first part; and also lists and schedules showing the minimum valuation and prices at which the respective pieces, parcels, sections, or parts of sections of said lands may be sold and conveyed, as hereinafter provided, which shall be approved by the board of directors, and signed by the president and secretary of the party of the first part, and also approved and signed by the party of the second part. But it is understood and agreed, by and between the parties hereto, that the said party of the first part, by and with the consent and approval in writing of the party of the second part, or of its successor or successors in this trust, may at any time, not oftener than once in each year from the date of the last approval by the party of the second part, revalue all of said lands not then sold, and reattach to each parcel or section of the then unsold lands a new minimum price, and upon the approval of the said party of the second part of such new valuation or minimum prices, the same shall thereafter become binding upon both parties hereto.

And the said party of the first part, with the consent in writing of the said party of the second part, its successor or successors in this trust, may sell and convey any such lands not necessary or required to be retained for the convenience and use of the company, and that whenever the said party of the first part shall, from time to time, certify to said trustee that it has sold or contracted for the sale of any sections, parcel, or parcels of said lands, the said trustee, its successor or successors in this trust, shall and will join with the said party of the first part in duly executing a deed or contract sufficient in law to convey to the purchaser, his heirs or assigns, all the right, title, interest, property, possession, claim, demand, and estate of both parties to this indenture in and to the parcel or section of land so sold. And the said party of the second part shall and will deliver such deed or contract to such purchaser, upon receiving from him the whole price of such parcel or section of land, either in cash, or, if such land be sold upon credit, then upon receiving from such purchaser such portion of the said price as shall be agreed to be paid in cash (which shall not be less than ten per cent. of the whole price), together with a bond for the residue of the purchase-money, secured by mortgage upon the land thus sold, executed by the purchaser, to said party of the second part, in due form, to secure to it the payment of the residue, with interest thereon at the rate of not less than seven per cent. per annum, payable semi-annually, or annually; and every such bond or mortgage shall contain a provision to the effect that, in case the interest thereon shall remain in arrear and unpaid for six months after the same shall become due, then the whole amount of the principal sum mentioned therein shall thereupon, immediately after the expiration of said six months, become due and payable; and every such mortgage shall also contain a personal obligation on the part of the purchaser and mortgagor to pay the principal and interest thereby secured, at the times and according to the terms, tenor, and legal effect of said bond therein mentioned. The deed so to be given shall bear even date with the bond and mortgage so to be executed, and shall specify the actual and true amount of the whole consideration money, or price, and the manner in which the same has been paid or secured; every such bond and mortgage shall be held by said trustee for the purpose of the trusts herein declared, and as a part of the trust-estate, and as security for the bonds this mortgage is given to secure, subject, however, until the above-mentioned mortgage of the said Union Pacific Railway Company, Southern Branch, shall have been fully satisfied, to the right of the trustees therein to receive or claim the consideration for the sale of any portion of the lands included in said mortgage.

And it is further agreed, between the parties hereto, that out of the proceeds of sales of the aforesaid lands, the said party of the second part shall pay, from time to time, as required by said party of the first part, all necessary and proper expenses of the land department of said party of the first part, as shown by accounts thereof, to be duly verified, including salaries, office expenses of land commissioners, expenses of appraising, surveying, and locating lands; taxes, stamps, and fees, expenses of advertising, printing, and stationery, and of foreign agents, commissions on sales made by agents,

gratuities and allowances for improvements, and legal expenses. And that said party of the second part shall retain to its own use out of the proceeds of said sales its own just allowances for services rendered and expenses incurred in the premises. And that the balance of proceeds of sales of the aforesaid lands shall be appropriated to the purposes of the sinking-fund herein above provided for the redemption of the bonds hereby secured, except as otherwise herein directed.

And it is further mutually agreed, by and between the parties hereto, that in the event of a conflict of claims to the title to any of the above-described lands, on the part of pre-emptors or other claimants or actual settlers thereon, the said party of the first part, and the said trustees, shall have power to amicably compromise, settle, and adjust said claims, on such terms as said trustees shall approve.

Article tenth. It is further mutually agreed, by and between the parties hereto, that if the said party of the first part shall hereafter, under any right or franchise now owned by it and not conveyed by this trust-deed or mortgage, further extend its road, or shall under any right or franchise now owned, or hereafter to be acquired, construct any other railroad or railroads or become the owner of any other railroad already constructed, then, for every such extension, and every such railroad constructed or to be constructed, a further issue of bonds may be made hereunder by the said party of the first part, the aggregate amount of which shall not exceed the rate of twenty thousand dollars for every mile of road, where lands shall not have been granted by any State or by the United States to aid in the construction thereof, and twenty-five thousand dollars per mile in all cases where lands shall have been so granted; such bonds to be issued in the same proportions and upon the same conditions as hereinbefore provided in article fourth for the issue of the bonds to which said article relates; and in case said bonds are sold, the proceeds to be paid over as also in said article provided. And all such bonds shall be of the same tenor as that provided for in the form hereinbefore set forth, subject only to necessary variation as to the distinguishing numbers and dates thereof, and shall bear numbers running from the number fourteen thousand upward, and shall be entitled to the benefit of a sinking-fund, to be created in the same manner as is hereinbefore provided. And the said party of the first part hereby agrees to execute and deliver to the said party of the second part, its successor or successors, upon every such further issue of bonds, any further reasonable and necessary trust-deed or mortgage, to bring in and subject to the conditions of these presents every such extended or future acquired road, and every other land and property, real and personal, that may hereafter be acquired by it for the purpose and with the intent of securing the payment of the said bonds composing every such increased issue, as well as the bonds hereinbefore described, equally and alike upon the property of the said party of the first part, with the interest due and to grow thereon, and the payment to said trustee of the said sinking-fund, in the same manner as if all the said bonds had been originally secured by one and the same trust-deed or mortgage: *Provided, however,* That if any railroad or railroads which may hereafter be acquired by the said party of the first part shall, at the time of such acquisition, be subject to the lien of any trust-deed or mortgage theretofore made to secure bonds then outstanding, no more bonds shall be issued hereunder on any such railroad or railroads than such an amount as shall, together with such outstanding bonds, be equal to the rate per mile hereinbefore mentioned; but bonds may be issued hereunder on any such railroad or railroads in exchange for an equal amount of such outstanding bonds.

Article eleventh. The said party of the first part hereby further agrees that it will pay or cause to be paid the bonds herein mentioned, and the interest thereon according to the terms thereof, and all taxes, levies, and assessments imposed and assessed, or which may hereafter be imposed or assessed, upon the premises, franchises, and property hereby conveyed or intended so to be, and also the United States Government tax upon the interest payable on said bonds and each of them, and represented by the coupons annexed to said bonds, and will at its own cost and expense do or cause to be done all things necessary to preserve and keep valid and intact the lien or incumbrance hereby created.

Article twelfth. In case default shall be made in the payment of any interest upon either of said bonds when the same shall become due and payable, or in the payment of any sum or sums of money hereinbefore provided to be made for the creation of said sinking-fund, and such default shall continue for six months after the same has been demanded, the whole principal sum mentioned in each and all of said bonds then outstanding shall, at the option of the holders of a majority in interest of said bonds, forthwith become due and payable; and in such case it shall be lawful for the said party of the second part, its successor or successors, to enter upon all and singular the railroads, property, and premises hereby conveyed or intended to be conveyed, and to have, hold, use and operate the same until the same shall have been sold or otherwise disposed of in pursuance of the power hereinafter mentioned, or by virtue of the decree of some court of competent jurisdiction, and until such time, and from time to time, to make all needful repairs and replacements, and such useful alterations, addi-

tions, and improvements to said railroad as may be necessary for the proper working of the same, and to receive tolls, freight, income, rents, issues, and profits thereof; and after deducting the expenses of operating and managing the said railroads and other property, and of the said repairs, replacements, additions, and improvements, as well as just compensation for its own services, and for the services of such managers, servants, agents, attorney and counsel as may have been by it employed, to apply the moneys accruing as aforesaid to the payment of said bonds, *pro rata*, and without discrimination or preference, and thereafter to pay over any surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall order, and to restore the said railroads and other property to the said party of the first part; *Provided, nevertheless*, That if the said party of the second part, its successor or successors in this trust, shall think it expedient after such entry as aforesaid, it shall be lawful for it or them to demise or let the said railroad or railroads and premises to any person or persons, corporation or corporations willing to work and operate the same, for such term or period, at such rent or proportion of receipts and profits, and generally upon such terms and conditions as the said parties to any such lease shall think fit; and the revenue or income to arise from such demise shall be applied in the same manner as the net revenue or income to arise in the event of the said railroad being worked and operated by the said trustee or trustees, is applicable under the provision immediately hereinbefore contained.

Article thirteenth. In case default shall be so made and continue as aforesaid, the party of the second part, its successor or successors in this trust, may also, and upon the written request of the holders of at least one thousand of such bonds then outstanding, amounting to one million dollars, shall foreclose this mortgage by legal proceedings, or sell or cause to be sold the said railroad, franchises, and property, real and personal, hereby conveyed or intended so to be, and all benefits and equity of redemption of the party of the first part in and to the same and every part thereof, with the benefit of the franchises aforesaid, which said last-mentioned sale shall be at public auction at the city of New York, or at either of the capitals of said States of Kansas and Missouri, on previous notice of the time and place of such sale by advertisement, published not less than three times a week for ten weeks in at least two newspapers of general circulation published in the city of New York, and two in each of the said States of Kansas and Missouri, and in such other places as may be required by law; and in such case said party of the second part, its successor or successors in this trust, shall make and deliver to the purchasers of the said premises good and sufficient deeds of conveyance for the same in fee-simple, and said sale and conveyance shall be a perpetual bar, both in law and equity, against the party of the first part, its successors and assigns, and all other persons claiming by, through, or under them, of all right, title, interest, claim in or to said railroads, premises, and property, and every part and parcel thereof. And in case of such sale, the party of the second part, its successor or successors, may bid for and purchase said property, real or personal, or any part thereof, in behalf of the holders of said bonds.

Article fourteenth. The said party of the second part, and its successors in this trust, may employ, at the expense of the said party of the first part, such attorneys, counsel, or other agents as may be necessary in the execution of the trusts hereby created, and shall be entitled to just compensation for all services rendered in the execution of this trust, and to be reimbursed for all necessary expenditure in and about the same.

Article fifteenth. And it is further mutually agreed, that in case of the resignation, removal, insolvency, or incapacity, or inability, for any other reason, of the said Union Trust Company to act in execution of the trust hereby created, then the holders of majority in interest of said bonds may select and designate in writing one or more competent persons, or another corporation competent to act, in the place of said Union Trust Company, to execute said trust. And until the bondholders make such selection, the president of the party of the first part, with the consent in writing of the owners or holders of said bonds to the amount of two hundred thousand dollars, may select and appoint one or more persons, or another corporation, competent to act, to fill the vacancy, and the person, persons, or corporation so selected shall have and possess, and be vested with, the same rights and powers as a trustee or trustees, as he, they, or it would have had and possessed, or been vested with, had he, they, or it been originally made a party or parties to this indenture; and the said party of the first part hereby covenants to make, execute, and deliver all such other or further instruments, deeds, or indentures, as may be necessary to enable the person or persons or corporation so appointed to execute the trust hereby created, and successors of any such new trustee or trustees may be appointed in like manner as often as a vacancy in said trust, for either of the causes above mentioned, shall occur.

Article sixteenth. The party of the first part shall, from time to time, and at all times hereafter, and as often as thereunto requested by the party of the second part, its successor or successors, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law, for the better assuring unto the party of the second part, its successor or successors in the trust hereby created, upon the trusts herein ex-

pressed, the lands, railroads, equipments, and appurtenances hereinbefore conveyed, or intended so to be, and all other property and things whatsoever, which may be hereafter acquired for use in connection with the same or any part thereof and all franchises now held, including the franchise to be a corporation, as by the party of the second part, its successor or successors, or by their counsel learned in law shall advised, devised or required.

Article seventeenth. And it is further agreed that the stamps required by the United States revenue laws, instead of being placed on this mortgage, shall be placed on the bonds secured hereby, as the same shall be issued: *Provided*, Always and this grant and conveyance is upon the express condition that, until some default shall be made in the performance or observance of the conditions, obligations, or requirements herein contained, the said party of the first part shall be permitted to possess, manage, operate, and enjoy all the said railroads, with their equipments and appurtenances, and all other the lands and premises, property and franchises, hereinbefore described; and that upon the payment in full of said bonds and the interest due thereon, then the estate, title, and interest hereby granted shall cease, determine, and be void; and the said party of the second part, its successor or successors in this trust, shall convey, assign, transfer, and deliver over to said party of the first part and its appurtenances, and all moneys, notes, bills, bonds, mortgages, choses in action, and property, real, personal, and mixed, and things of value remaining in its possession, and shall duly execute and deliver to the said party of the first part a proper release or satisfaction of this mortgage.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary; and the said party of the second part to evidence its acceptance of the trust hereby created, has also caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, the day and the year first above written.

Missouri, Kansas and Texas Railway Company, by—

[L. s.]

LEVI PARSONS,
President.

H. B. HENSON,
Secretary.

Union Trust Company of New York, by—

[L. s.]

J. H. FROTHINGHAM,
President.

C. T. CARLTON,
Secretary.

COMMITTEE ON TERRITORIES, UNITED STATES SENATE,
March 29, 1878.

G. D. L. HUIPLIER cross-examined.

Mr. GARLAND. Mr. Grafton, do you desire to ask any questions of the witness?

Mr. GRAFTON. Yes, sir.

Mr. Hubbard made objection because it had been stated in evidence that these nations had refused to send delegates to represent them and that no one was authorized to appear in that behalf.

Mr. Grafton stated that he was duly authorized to appear in behalf of the Choctaws and Chickasaws, and that their power to authorize him to appear for the nations was on file in the Interior Department.

Mr. Adair said his authority was also on file in the same department. The objection was overruled.

By Mr. GRAFTON:

Question. Is this a correct copy of the original mortgage issued by the Missouri, Kansas and Texas Railroad? (Exhibit A.)—Answer. Yes, sir.

Mr. HUBBARD. The one in the book is the original (Mr. Hubbard hands book to Mr. Grafton.)

Mr. GRAFTON (to the witness). Have you examined this mortgage, as

submitted in this book, as far as submitted in evidence, from pages 225 to 228?

The WITNESS. This very book?

Mr. GRAFTON. Yes, sir.

The WITNESS. I have compared it myself with the original, but not in this very book; there have been several editions.

Mr. GRAFTON. You have compared like editions?

The WITNESS. Yes, sir.

Mr. GRAFTON. So you can state whether this is a true copy of the original mortgage or not?

The WITNESS. It is a true copy.

Mr. GRAFTON. I will ask you if this was the mortgage issued to secure the bonds that were issued in the original construction of the road?

The WITNESS. Beg your pardon, sir; I do not get the question exactly.

Mr. GRAFTON. Perhaps I can make it clearer. How many classes of bonds did they issue?—A. They issued four classes.

Q. Please state them, and give the dates when each class of bonds was issued, and state what the mortgage covered to secure them.

The CHAIRMAN *pro tempore*. That is all in the mortgage; that is in evidence. It is no use for him to give the dates; the papers are here.

The WITNESS. The first \$14,000,000, dated 1st February, 1871, covers the road from Sedalia to Dennison, Texas.

Mr. GRAFTON. What does it cover? Is that a mortgage on the road-bed, rolling-stock, or what?

The WITNESS. On everything the company owned.

Mr. GRAFTON. Land-grants as well?

The WITNESS. Yes, sir.

The CHAIRMAN *pro tempore*. Do you not think it is better to take the paper itself than have the witness state it? The papers are in evidence.

Mr. GRAFTON. The witness has not compared that with the original. He has compared it with another volume. It is not competent evidence, as Judge Garland knows, so far as that is concerned.

The CHAIRMAN *pro tempore*. I do not care to take up the time in asking questions that can be answered by the papers.

The WITNESS. I wish to remark, I would have brought the original mortgage if the president of the Union Trust Company had been home. But in his absence there is no one authorized to act for him.

The CHAIRMAN *pro tempore*. I understand the witness to say it is a true copy; if he can answer the question I do not object.

Mr. GARLAND (to witness). You had better get a certified copy of the original and send it here.

The CHAIRMAN *pro tempore*. That does not seem necessary if he swears it is a correct copy.

Mr. GRAFTON. All the point I care to bring out is, I want him to state briefly what these various mortgages cover.

The WITNESS. I am not a lawyer; I never went to see if the paper was legal or not. I examined it very carefully and took one of them and compared the books with the original in the possession of the Union Trust Company. I examined them very carefully in behalf of the bondholders, and found the mortgage covered everything that it purported to cover.

Mr. HUBBARD. I would say that when the colonel has examined the papers, if there is any question I cannot answer to his satisfaction, I will have the witness appear again.

Mr. GRAFTON. Very well, sir; that is satisfactory.

By Mr. ADAIR:

Q. What company do you represent?—A. The Union Trust Company.

Q. What corporation are they connected with?—A. Well, connected in this way: they are trustees under the mortgage, and now in possession of the railroad.

Q. The Union Trust Company are trustees of what road?—A. Trustees under the mortgage of the Missouri, Kansas and Texas Railroad.

Q. What amount of bonds?—A. The paper will show exactly what they are.

(NOTE.—The paper handed to Colonel Adair shows the amount to be \$14,600,000.)

ARGUMENT OF B. F. GRAFTON, MARCH 29, 1878.

Mr. GRAFTON. Mr. Chairman, I would like to have gentlemen on both sides state whom they respectively represent.

Mr. BOUDINOT. I appear for myself. I am a Cherokee, and I think it is important for the interest of my people that an investigation should be made. I appear for myself and those who think with me.

Mr. GRAFTON. This is not a question that goes to the merits of the case at all. This is a plea to the jurisdiction of the committee and not one that touches the merits of the case.

The CHAIRMAN *pro tempore*. The committee is not very anxious to hear either side; at least that is my sentiment, for I think we are able to judge of that without argument, but I am willing to hear both sides on the question.

Mr. GARLAND. In view of the ruling made a little while ago I think Mr. Boudinot or anybody else can appear here if he claims he is interested; we ought to hear him as well as anybody. The inquiry is broadening all around, both in regard to the law and to the facts.

Mr. GRAFTON. *Mr. Chairman and gentlemen of the committee:* Our plea to the jurisdiction of the committee is based on the following resolution:

Resolved further, That the said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school-funds of any such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school funds from their legitimate purpose.

To that resolution I propose to address my remarks at present. I submit that the Senate of the United States has no jurisdiction whatever to make such an inquiry, and hence can confer none upon this committee. These nations have an *inherent* right of self-government. They have always had it. It has been recognized for more than ninety years by our treaties. It has been decided by our highest judicial tribunal that they have the right of self-government. So that that can hardly be an open question. That they are dependent domestic States has been determined, over and over again, by the Supreme Court of the United States; and the current of decisions is unbroken on that point; and we have guaranteed to them this right by solemn treaties. The Choctaws and Chickasaws, and all other tribes, have that right.

The first treaty between the United States and the Choctaw Nation is as follows:

The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of red people the jurisdiction and government of all the persons and

property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people, and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws except such as from time to time may be enacted in their own national councils, not inconsistent with the constitution, treaties and laws of the United States, and except such as may and which have been enacted by Congress to the extent that Congress, under the constitution, are required to exercise a legislation over Indian affairs. (7 U. S. Stats., pp. 333, 334.)

The treaty with the Chickasaw Nation of Indians of 1834, contains the following:

The Chickasaws are about to abandon their homes, which they have long cherished and loved; and though hitherto unsuccessful, they still hope to find a country adequate to the wants and support of their people, somewhere west of the Mississippi, and within the territorial limits of the United States. Should they do so, the Government of the United States hereby consent to protect and defend them against the inroads of any other tribe of Indians, and from the whites, and agree to keep them without the limits of any State or Territory. (Art. 2, Stats. at Large, p. 450.)

Article V of the treaty of 1835, between the United States and the Cherokees, is in the following words:

The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property, within their own country, belonging to their people, or such persons as have connected themselves with them. (7 U. S. Stats., p. 481.)

Then, again, the treaty of June 22, 1855, between the United States and the Choctaws and Chickasaws (11 Stats. at Large, p. 612), contains the following:

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however*, No part thereof shall be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

The third and fourth articles of the treaty between the United States and the Creeks and Seminoles contain the following guaranty:

ARTICLE 3. The United States do here solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention; and to the Creek Indians the lands included within the boundaries defined in the second article hereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and tenure by which they were guaranteed and secured by the 14th article of the treaty of March 24, 1832; the 3d article of the treaty of February 14, 1833, and by the letters patent issued to the said Creek Nation on the 11th day of August, 1852, and recorded in volume 4 of records of Indian deeds in the Office of Indian Affairs, pages 446 and 447: *Provided, however*, That no part of the tract of country so ceded to the Seminole Indians shall ever be sold, or otherwise disposed of, without the consent of both tribes, legally given.

ARTICLE 4. The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the 1st and 2d articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same. (11 U. S. Stats. at Large, p. 700.)

The treaty between the United States and the Seminole Indians of March 21, 1866, contains the following guaranty:

ARTICLE 7. The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however*, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 U. S. Stats., p. 758.)

The treaty of April 28, 1866, between the United States and the Choctaws and Chickasaws, contains the following guaranty:

ARTICLE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively. (14 U. S. Stats., p. 771.)

The 38th article of the same treaty is 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.

The 45th article of the same treaty contains the following guaranty:

The United States promise and agree that no white person, except officers, agents, and employes of the government, and of any internal improvement company, or persons traveling through or temporarily sojourning in the said nations or either of them, shall be permitted to go into said territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages. (14 U. S. Stats., p. 779.)

The treaty of June 14, 1866, between the United States and the Creeks contains the following guaranty:

ARTICLE 10. The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs.

ARTICLE 12. The United States reaffirm and reassume all obligations of treaty stipulations with the Creek Nation entered into before the treaty of said Creek Nation with the so-called Confederate States, July 10, 1861, not inconsistent herewith, and further agree to renew all payments of annuities accruing by force of said treaty stipulations from and after the close of the present fiscal year, June 30, 1866, except as is provided in article eleventh. (14 Stats., p. 788.)

And there are many other guarantees in regard to self-government. From 1786 down to the present time, in almost every treaty with the Indian nations, the right of self government has been secured to them. Certainly in every treaty where the matter has been mentioned, the Supreme Court has determined it by a great many decisions, the most exhaustive of which was delivered by Chief Justice Marshall, as long ago as 1832. He was the greatest of our Chief Justices. His opinion upon this subject seems to be unanswerable.

In *Worcester vs. The State of Georgia* (6 Pet., 515), Chief Justice Marshall again reviewed, in his clear and masterly style, the relations existing between our government and the Indian tribes, examined history, treaties, laws, usages, and every other source of information, and deduced the conclusion which, it is believed, no man acknowledging the authority of reason can gainsay, that the States had no authority or dominion over the Indian tribes within their limits, and demonstrated that the United States had no such jurisdiction. Referring to history, he says:

Certain it is that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the Crown to interfere with the internal affairs of the Indians, further than to keep out the agents of foreign powers who, as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to sell, but never coerced a surrender of them. He also purchased their alliance and dependence by sub-

sides, but never intruded into the interior of their affairs, or interfered with their self-government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr Stewart, superintendent of Indian affairs, in a speech delivered at Mobile in presence of several persons of distinction, soon after the peace of 1763. Toward the conclusion he says:

"Lastly, I inform you that it is the King's order to all his governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly, all individuals are prohibited from purchasing any of your lands, but, as you know that your white brethren cannot feed you when you visit them, unless you give them ground to plant, it is expected that you will cede lands to the King for that purpose. But whenever you shall be pleased to surrender any of your territories to His Majesty, it must be done for the future at a *public meeting of your nation*, when the governors of the provinces, or the superintendent, shall be present and obtain the consent of all your people. The boundaries of your hunting-grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with your people will be faithfully kept, so it is expected that you, also, will be careful strictly to observe them."

This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self-government; thus guaranteeing their lands, assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force. (P. 556.)

All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States. (P. 557.)

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term nation, so generally applied to them, means a people distinct from others. The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense. (Pp. 559, 560.)

In opposition to this original right, possessed by the undisputed occupants of every country, to this recognition of that right which is evidenced by our history in every change through which we have passed, are placed the charters granted by the monarch of a distant and distinct region, parceling out a territory in possession of others whom he could not remove, and did not attempt to remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterward that of the United States. These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it, and the settled doctrine of the law of nations, that a weaker power does not surrender its independence, its right to self-government, by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its rights of self-government under the guarantees and protection of one or more allies.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States. (Pp. 560, 561.)

It must be admitted that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a state. In the management of their internal concerns they are dependent on no power. They punish offenses under their own laws, and in doing so they are responsible to no earthly tribunal. They make war and form treaties of peace. The exercise of these and other powers gives to them a distinct character as a people, and constitutes them, in some respects, a state, although they may not be admitted to possess the right of soil. (P. 581.)

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. (P. 582.)

By numerous treaties with the Indian tribes, we have acquired accessions of territory of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our government we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state, or separate community—not a foreign, but a domestic community; not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation. (P. 583.)

Much has been said against the existence of an independent power within a sovereign State, and the conclusion has been drawn that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a State. The refutation of this argument is found in our past history. That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance where the State laws have been generally extended over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently.

The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated; but that it must be suppressed as soon as it shall be administered upon the enlightened principles of reason and justice?

Are not those nations of Indians who have made some advances in civilization better neighbors than those who are still in a savage state? And is not the principle as to their self-government within the jurisdiction of a State the same? (Pp. 589, 590.)

The residence of Indians, governed by their own laws, within the limits of a State, has never been deemed incompatible with State sovereignty until recently. And yet this has been the condition of many distinct tribes of Indians, since the foundation of the Federal Government. (P. 591.)

It has been shown that the treaties and laws referred to come within the due exercise of the constitutional powers of the Federal Government; that they remain in full force, and, consequently, must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guaranteed to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be obtained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces, the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them for the exercise of those rights which have been most solemnly guaranteed to them by the national faith. (P. 595.)

Indian tribes are states, in a certain sense, though not foreign states, or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens or subjects. They are not states within the meaning of any one of those clauses of the Constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are states, and have been uniformly so treated since the settlement of our country, and

throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts. (*Holden v. Joy*, 17 Wallace, 242.)

The decision of the Supreme Court in *Holden v. Joy*, referred to, was delivered at the December term, 1872.

The Cherokee tobacco case, reported in 11 Wallace, 616, and relied on by the movers in this investigation as an authority that Congress may repeal an Indian treaty, was decided at the December term, 1870.

It may be asserted that this treaty-making power does not extend to Indian nations; but it is too late now to raise that question. That has also been adjudicated by the Supreme Court of the United States in many cases. I refer the committee to the following: *Wilson v. Wall*, 6 Wallace, 89; *Insurance Company v. Carter*, 1 Peters, 542; *Doe v. Wilson*, 23 Howard, 461; *Mitchell et al. v. United States*, 9 Peters, 749; *United States v. Brooks et al.*, 10 Howard, 460; *The Kansas Indians*, 5 Wallace, 737; *Foster et al. v. Wilson*, 2 Peters, 254; *Crews et al. v. Burcham*, 1 Black, 356; *Worcester v. Georgia*, 6 Peters, 562; *Holden v. Joy*, 17 Wallace, 211; *Cherokee Nation v. Georgia*, 5 Peters, 17; *Worcester v. Georgia*, 6 Peters, 543; *Doe v. Braden*, 16 Howard, 635; *Fellows v. Blacksmith*, 19 Howard, 372; *Meigs v. McClung*, 9 Cranch, 11; *Lattimer v. Poteet*, 14 Peters, 4; *United States v. Brooks*, 10 Howard, 442; *Mann v. Wilson*, 23 Howard, 457; *United States v. Stone*, 2 Wallace, 525; *Godfrey v. Beardsley*, 2 McLean, 412; *Garcia v. Lee*, 12 Peters, 519; *Holmes v. Jenison et al.*, 14 Peters, 569; *Johnson v. McIntosh*, 8 Wheat., 573.

Now, then, if these people have the right of self-government, and that right has been acknowledged by the Government of the United States—if they have the right to manage their own domestic affairs and are responsible to no earthly tribunal, then an inquiry into their domestic affairs cannot be made by the Senate of the United States without trampling under foot all these treaty stipulations—without trampling under foot all these decisions of the Supreme Court, without violating the national honor.

The relation of these Indian tribes to the Government of the United States is a peculiar one. Because they have placed themselves under the protection of the United States, they have not surrendered thereby their right to manage their own domestic concerns, and this doctrine is in no way incompatible with the idea of separate nationality. "Sovereign states may be bound together by treaty alliances very unequal in their terms and still remain sovereign states." (See *Vat.*, B. 1, ch. 16, sec. 194.)

As to the management of their domestic concerns, they have this unqualified right and are not responsible to the United States or to any other earthly tribunal.

If there is any power, then, in and by virtue of which this inquiry may be made, it must be found in the treaties between these nations and the Government of the United States. I will read the treaties appertaining to their school-funds, as that is the particular fund to which this inquiry is directed by the resolution of the Senate. I will take up, first, the Chickasaw treaties in regard to that. In 1832 and 1834 the Chickasaw Nation abandoned their ancient homes east of the Mississippi River and went to the country which they now occupy, and

the Government of the United States undertook to sell their lands east of the Mississippi and to hold a certain amount of the proceeds resulting therefrom in trust for the benefit of these nations. The following is the provisions of the treaty :

The funds thence resulting, after the necessary expenses of surveying and selling, and other advances which may be made, are repaid to the United States, shall, from time to time, be invested in some secure stocks, redeemable within a period of not more than twenty years, and the United States will cause the interest arising therefrom annually to be paid to the Chickasaws. (7 Stat., 382, 385, 454.)

That was the first contract in regard to the trust funds. The contract which I have just read was to remain in force twenty years, and at the expiration of that period a new treaty was made between the United States and the Chickasaws. Article 5 of the treaty of 1852 is as follows :

ART. 5. The Chickasaw Nation desires that the whole amount of their national funds shall remain with the United States in trust for the benefit of this people, and that the same shall on no account be diminished. It is therefore agreed that the United States shall continue to hold the said fund in trust as aforesaid, and shall constantly keep the same invested in safe and profitable stock, the interest upon which shall be annually paid to the Chickasaw Nation: *Provided*, That so much of said fund as the Chickasaws may require for the purpose of enabling them to effect the permanent settlement of the tribe, as contemplated by the treaty of 1834, shall be subject to the control of their general council. (10 Stat., 975.)

You will notice by the language of this treaty creating this trust that the United States, as trustee, undertook to invest the funds and to pay the interest annually to this nation. So far as the Chickasaws are concerned, that is all there was of it.

By the treaty entered into April 28, 1866, between the United States and the Choctaw and Chickasaw Nations, it is provided as follows :

ART. 10. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations; entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th of June in the year 1866.

ART. 40. All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty. (14 Stat., 774, 779.)

So that, as far as the Chickasaw Nation is concerned, it is clear that there was no condition imposed in these treaties which gave the United States any right to inquire how this fund was expended. The contract was that they were to pay this money to the Chickasaw Nation; that is what they were to do; and the Chickasaws, as a nation, have the right to dispose of it in any manner they see fit, according to the laws, privileges, and customs of the nation; and in that they are responsible to no earthly tribunal.

Now, as to the Choctaws, the treaty made between the United States and the Choctaw Nation of January 20, 1825 (art. 2, 7 Stats. at Large, 235), is as follows:

In consideration of the cession aforesaid the United States do hereby agree to pay the said Choctaw Nation the sum of six thousand dollars annually forever; it being agreed that the said sum of six thousand dollars shall be annually applied for the term of twenty years, under the direction of the President of the United States, to the support of schools in said nation, and extending to it the benefits of instruction in the mechanic and ordinary arts of life; when at the expiration of twenty years it is agreed that said annuity may be invested in stocks or otherwise disposed of or continued at the option of the Choctaw Nation.

That was the first treaty creating a school-fund for this nation. The treaty with the Choctaws and Chickasaws in relation to other trust funds will be found in articles 10 and 13 of the treaty of June 22, 1855. Article 10 is as follows:

ARTICLE 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct. (11 U. S. Stats., p. 613.)

Article 13, after reciting certain conditions as to certain funds to be held for the benefit of the "light horsemen," &c., proceeds as follows:

And the funds now held in trust by the United States for the benefit of the Choctaws under former treaties or otherwise shall continue to be so held, together with the sum of five hundred thousand dollars out of the amount payable to them under articles eighth and tenth of this agreement, and also whatever balance shall remain, if any, of the amount that shall be allowed the Choctaws by the Senate under the twelfth article hereof, after satisfying the just liabilities of the tribe. The sums so to be held in trust shall constitute a general Choctaw fund yielding an annual interest of not less than five per centum, no part of which shall be paid out as annuity, but shall be regularly and judiciously applied, under the direction of the general council of the Choctaws, to the support of their government for purposes of education and such other objects as may be best calculated to promote and advance the improvement, welfare, and happiness of the Choctaw people and their descendants.

I believe the amount allowed was about two millions of dollars, which the United States has never paid. It goes on to name the sums, &c., to be held in trust by this treaty, and among other things that are enumerated, it is stated that it shall be held and the interest arising therefrom shall be paid annually to be disbursed by the Choctaw council for the benefit of education and such other things as shall conduce to the happiness of that people.

The treaty of 1866, which is the latest treaty upon that subject, contains the only shadow of authority for this investigation. Article 9 of the treaty of April 28, 1866, is as follows:

Such sums of money as have by virtue of treaties existing in the year eighteen hundred and sixty-one been invested for the purposes of education shall remain so invested, and the interest thereof, including any arrears which may have accrued, shall be applied for the same purposes in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw Nations respectively. (14 U. S. Stats., pp. 773, 774.)

I desire to explain to the committee that up to the time of the creating of the fund for the benefit of the Chickasaw tribe, treaties had been made with the Chickasaws alone—the Choctaws were not parties to them. They were treaties between the United States and the Chickasaw Indians.

Now, here is a joint treaty between the United States and the Choctaws and Chickasaws, and this article provides that the funds shall remain invested for the same purpose.

The CHAIRMAN *pro tempore*. Who is to decide what constitutes the happiness and prosperity of that country?

Mr. GRAFTON. If they are a nation, if they are a separate community, the funds are to be disbursed by them in such manner as they see fit, and they are not responsible to any earthly tribunal; they are to decide. As to the Chickasaws, there is no limitation upon their power at all. As to the Choctaws, the only condition is as to the manner in which the money is to be paid to the nation; it is to be disbursed by the council. The money is to be paid to them and disbursed for the purposes of education and such other things as will conduce to the happiness of the nation.

Mr. GARLAND. Suppose that they do not appropriate any money for educational purposes, but for other purposes. Do you claim that that gives them plenary power to appropriate money for other purposes if they see proper?

Mr. GRAFTON. Yes, sir; as against separate action by the Senate.

Mr. GARLAND. Suppose there is a diversion of the school-fund; you claim that is a matter that may be determined in their own courts; Congress cannot control it.

Mr. GRAFTON. I do not say that, but I am prepared to say that the Senate of the United States, as one branch of the Congress of the United States, has no power to make this investigation. That is my point. In order to make a proper investigation, I claim that two things are necessary: 1, there must be the act of the legislative body authorizing it; 2, the act of the executive approving it, so that the whole Government of the United States will be represented in the matter of this investigation. The treaty is between the United States and a nation of people. Now, is it competent for any one branch of the government to make such an inquiry?

Mr. GARLAND. Then you think it should have been a joint committee?

Mr. GRAFTON. I do not. A joint committee, constituted by separate action of the houses, would not have answered. There should have been a joint resolution, approved by the President, appointing commissioners to make this investigation. That is the proper way to do it.

Mr. HUBBARD. How, then, do you understand this provision which says money appropriated for educational purposes shall not be expended or diverted from its legitimate purposes, &c.?

Mr. GRAFTON. I undertake to say the act of Congress which attempts to repeal a treaty is vain and ineffective.

Mr. BOUDINOT. What do you say as to the Cherokee tobacco case?

Mr. GRAFTON. If Judge Garland wishes to hear my views on that case I have no objection to stating them.

Mr. BOUDINOT. I wish to say you differ from the Supreme Court.

Mr. GRAFTON. No, sir; I beg your pardon. I acknowledge and bow in great reverence to the decisions of the Supreme Court.

Mr. GARLAND. Article 4, section 4, of the Constitution, provides "that the United States shall guarantee to every State in this Union a republican form of government," &c. The lower House sent a committee to inquire whether the State of Arkansas had a republican form of government. That was not by joint resolution or the joint action of the two houses, but in contemplation, if anything should be done, that it should be done by the two houses.

Mr. GRAFTON. I will say that during the troubled times of reconstruction there were many things done which would not meet the approval of this committee as to the questions of law involved, or as to the questions of right involved, yet they were in fact done. Nobody made objection to this, perhaps. But that does not meet the legal question at all, nor does it settle the question whether the House had the right to do it. But then that article does not apply to Indian nations.

Mr. GARLAND. No; I only stated it to show what Congress might do.

Mr. GRAFTON. What Congress might do with a State is not what Congress might do with an Indian nation. A very large proportion of sovereign powers is transferred by the Constitution from the States to the Federal Government. The Federal Government has, as to such matters, direct control of States and people. There is no such transfer in the case of the Indian nations.

Mr. GARLAND. Your objection does not go to the separate action of

the two Houses, but to the two Houses acting together. Then a joint committee could not act any further than a Senate committee.

Mr. GRAFTON. Yes, sir; it should require the action of all the branches of our government, except the judiciary, to make this investigation, if it could be made at all. Certainly the Senate alone is not competent to make it. The treaty-making power possibly might make this investigation. The Senate and the President might do it. I am not prepared to say they could not. Certainly nothing less than the treaty-making power can do it.

The CHAIRMAN *pro tempore*. Do I understand you that your main point is that the government has no right to investigate the domestic affairs of the Chickasaw Nation?

Mr. GRAFTON. That is one of my points. They have no right except as provided by treaty. Have the Indians by treaty conferred that power in any way? If they have made any treaties under which such investigations may be made you can, in pursuance of that treaty, make the investigation; but I undertake to say here that there is no treaty stipulation which provides that this investigation may be made. The gentleman has just read section 2097 of the Revised Statutes: "No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose unless expressly authorized by law."

Mr. HUBBARD. Only except by express provision of law.

Mr. GRAFTON. That is not a limitation upon the power of the Indians at all. That limitation is on our own officers here. It provides there that when the Congress make appropriations to carry out the treaty the money shall be applied to that and nothing else. So it comes down to the treaty stipulation at last. There is nothing in that section that prohibits the expenditure of this money by the Indian tribes in any way they may deem proper, unless it is found in the treaties.

Mr. HUBBARD. I do not read the section as you do, then.

Mr. GRAFTON. That is the clear and manifest language of the law, if you read it properly. The provision of section 2099 is that moneys appropriated for education of Indians shall not be expended outside of the Indian country to educate their children. But this does not refer to the treaty-funds at all. The last clause of the section expressly excludes treaty-funds from the operation of the first part of the section. Why, the expenditures of all the treaty-funds are authorized by treaty stipulations to be made by the tribes respectively. So this is a case by the very terms of which the appropriations are to be applied according to the treaty stipulations, and the section is authority in our favor so far as the legislature goes. There is no power in Congress to repeal an Indian treaty, or any other treaty that falls directly within the treaty-making power. The case decided and referred to by my learned friend, the Cherokee tobacco case (11 Wall., p. 616), was a case decided by six judges out of the nine. Two of the six judges, Justices Bradley and Davis, dissented. The Chief Justice and Justices Nelson and Field did not sit in the case. So that is to be accounted a decision by a minority of the court; by four members of the court. I admit that in the decision of that case the broad principle was laid down by four judges that an act of Congress can repeal a treaty, and that a treaty can repeal an act of Congress. Let us see whither that leads. Suppose it is true; suppose the United States have a treaty with Great Britain providing that British manufacturers may send their goods into our ports free of

duty, and suppose that there is an antecedent statute regulating the duties on imports in full operation. It is competent for the President and two-thirds of the Senate concurring to make such a treaty. Would that repeal that act of Congress? Certainly not. Why? Because it is trenching upon legislative ground. An act of the legislature—under our system of government—and these treaties stand upon an even plane; both are the supreme law of the land; both are supreme within their respective spheres. In this Boudinot tobacco case—I do not know what the facts were; it is not material to this discussion to inquire.

But it may be the article of the treaty relied on by Colonel Boudinot trenched upon legislative ground. It attempted to regulate taxation within exterior limits of the United States, and may have been therefore vain and inoperative. The decision of the Supreme Court may have been sound, but the correct ground for that decision I do not think was given. Now, put the case in the other way. Suppose we have a treaty with Great Britain that levies certain tonnage-tax upon vessels landing in their ports, and Congress passes an act providing that American shipping shall not be subject to that tonnage-tax; what is the result? It is vain. You are trenching upon the treaty-making power, and you have no authority to do this. There is nothing clearer to my mind than that the proposition laid down, that Congress may repeal a treaty and that the treaty-making power may repeal an act of Congress, must be qualified and limited in order to be true. But that question is not material here to the points in issue, for there is no law upon the statute-books which authorizes this investigation; and, in the absence of any law, and in the absence of any provisions or treaty stipulations providing for such an investigation, there is no authority in the Senate of the United States to make it. And, if it is insisted upon, it is a violation of all the treaty obligations; it is a violation of all the decisions of the Supreme Court; it is an invasion of all the rights of these nations; and it is disreputable, because they are too weak to defend themselves against the strength of the Government of the United States.

I thank the committee for the kind attention it has given me.

Mr. BOUDINOT. Mr. Chairman, I shall only ask two or three minutes to reply to Colonel Grafton, if it is the pleasure of the committee to hear me now.

Mr. Grafton has quoted several decisions of the Supreme Court of the United States. I wish, also, to call attention to the opinion of Chief Justice Marshall (5 Peters, p. 1), given in 1831, in *Cherokee Nation vs. Georgia*:

The Indian Territory is admitted to compose a part of the territory of the United States.

And, again, the court said:

They occupy a territory to which we assert a title, independent of their will, which must take effect, in point of possession, when their right of possession ceases. Meanwhile they are in a state of *pupilage*. Their relation to the United States resembles that of a *ward to his guardian*.

To show that Mr. Grafton is mistaken in his view, that these nations have always been recognized as treaty-making powers, I refer you to a proviso in the act of March 3, 1871, which reads as follows:

Provided, That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty.

If the condition of the Cherokee Nation, for which I speak more particularly now, is the relation of a "ward to his guardian," I do think

it is most proper and necessary that the guardian should see that the material interests of the ward are properly taken care of. And if it should turn out in this investigation that over \$100,000 of the school-fund has been diverted from its legitimate purpose in order to defeat legislation here, which a large class of the most intelligent Cherokees believe necessary, then I think it would be a proper subject of investigation and legislation by Congress. I ask attention to this article of the Choctaw and Chickasaw treaty, which was read by Mr. Grafton :

ART. 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of persons and property within the Indian Territory.

"The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of persons and property," &c.; not what the Choctaws and Chickasaws may deem necessary for the better administration of justice, &c.

Provided, however, Such legislation shall not in any wise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations, respectively. (14 Stat., p. 771.)

Now, if in the course of this investigation it shall be found that a territorial government would be a better government for them, and, if it can be organized by Congress without taking a single acre of land from them, and which will secure them in "the better administration of justice and the protection of the rights of persons and property," is it not competent for Congress to legislate? And if Congress has the right under the treaty to legislate, may not the Senate inquire? Certainly, it is not going to annul the tribal organizations to make inquiry into these matters. These Indians have agreed to that treaty, and it is the duty of Congress to inquire into all this subject, and inform itself whether it is necessary for the better protection of life and property that legislation should take place. This is all I desire to say.

MR. GRAFTON. In answer to Colonel Boudinot's remarks I wish to call attention to the fact that the extract cited by him from the decision of the Supreme Court, in the case of the Cherokee Nation *vs.* The State of Georgia, deals with the natural rights of the Indians to the soil they occupy. Since that time the United States has issued patents to the Cherokee Nation, in pursuance of an act of Congress, to their present lands. He was dealing with the wild Indians, a people who had made but little advance in civilization.

MR. BOUDINOT. Mr. Grafton is mistaken; the Cherokees had a written constitution at that time, and were publishing a newspaper. Allow me to read you the decision of Chief Justice Taney in the case of the United States *vs.* Rogers (4 How. 567), decided by the Supreme Court in 1846. In delivering the opinion, the court said :

The country in which the crime is charged to have been committed is a part of the territories of the United States and not within the limits of any particular State. It is true that it is occupied by the tribe of Cherokee Indians, but it has been assigned to them by the United States as a place of domicile for the tribe, and they hold and occupy it with the assent of the United States and under their authority. The native tribes, who were found on this continent at the time of its discovery, have never been acknowledged or treated as independent nations by the European governments, nor regarded as the owners of the territories they respectively occupied.

The country referred to by the court was the Cherokee Nation; just where the Cherokees live now; they had their patent to the lands then,

for the patent was executed, I believe, in 1838, and this decision was made in 1846.

In the case of *Johnson and Graham's Lessee v. William McIntosh* (8 Wheaton, p. 543), Chief Justice Marshall, in delivering the unanimous opinion of the court, said:

The power now possessed by the United States to grant lands resided while we were colonies in the Crown or its grantees. The validity of titles given by either has never been questioned in our courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with and control it. An absolute title to lands cannot exist at the same time in different persons or different governments. An absolute must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognize the absolute title of the Crown, subject only to the Indian right of occupancy, and recognize the absolute title of the Crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

Mr. GRAFTON. In the case of *The United States v. Rogers* (4 Howard, p. 567), just cited, it was decided that a white man who at a mature age is adopted into an Indian tribe does not thereby become an Indian, and was not intended to be embraced in the exception which provides that the act of Congress of 30th June, 1834, shall not extend to crimes committed by one Indian against the person and property of another Indian.

The extract cited from this decision is mere *obiter dictum*. The title to their present lands was not in issue.

They now have patents to their lands.

Mr. GARLAND. What is the terms of the patent?

Mr. GRAFTON. I will read it:

The United States of America, to all whom these presents shall come, greeting:

Whereas by the second article of the treaty begun and held at Dancing Rabbit Creek on the 15th day of September, in the year of our Lord 1830, as ratified by the Senate of the United States on the 24th of February, 1831, by the commission on the part of the United States, and Mingos, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that the United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee-simple, to them and their descendants, to inure to them as long as they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source:

Know ye, that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation, the aforesaid tract of country west of the Mississippi, to have and to hold the same, with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, as intended to be conveyed by the aforesaid article, *in fee-simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation, except to the United States, or with their consent.*

It is a patent in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it. It is something less than a fee; but the title of the United States in these lands is so remote and shadowy, that it has no value.

The qualification was not put in for the benefit of the railroad corporations, nor for the benefit of domestic and foreign bondholders, but for the benefit of the Indians themselves, so that they could not dispose of the lands.

It is certain that the United States cannot change this title in any manner without the consent of the Indians as nations.

The act of March 3, 1871, referred to, does not attempt to abrogate any treaties then existing. It simply declares that no Indian nation within the territory of the United States shall be acknowledged or re-

cognized as a treaty-making power. Since the passage of this act, the United States have made *compacts* with these tribes.

As to the 7th article of the treaty cited (14 Stat., p. 771), the Choctaw and Chickasaw Nations will abide by it. They oppose no objection to any treaty stipulation. They only ask a fair interpretation of their treaties, and the same good faith on the part of the United States.

If any member of these nations has a grievance, his proper forum is the council of his nation. If the Senate desires an expression from these nations as to their desire to change their present form of government, their councils are competent to give it.

All of these nations have a government, republican in form, modeled after our own. If their officers misapply their public funds, their laws provide a remedy.

When Congress ceases to entertain measures intended to strip these Indians of their lands, abolish their tribal relations, laws, privileges, and customs, these nations will gladly cease to send delegates to this city to defeat these schemes.

Mr. ADAIR. Mr. Chairman, the discussion has taken a very broad range, and if the question as to the establishment of a territorial form of government over the Cherokee Nation without its consent is to be considered, I desire to reserve the right to present, in writing, the objections of the nation to that project.

The decision of the Supreme Court, referred to by Mr. Boudinot, if taken at all, should be taken in full and not by extracts. These decisions were made some thirty or forty years ago, and they have been substantially superseded in the recent decision of the Cherokee Tobacco case (11 Wallace, p. 616), which placed the same sanctity on Indian treaties as that placed on those with foreign powers. The case of *Holden vs. Jay* (17 Wallace, p. 211), is still later. In that case the Supreme Court declared that the Cherokee Nation had the undoubted right of self-government, and actually owned the land it now occupies, and is a separate community from the United States Government.

In this connection—

Mr. Adair, on behalf of the Cherokee Nation, submitted the following protest:

To the honorable the Committee on Territories of the Senate of the United States:

GENTLEMEN: In response to the call of your honorable committee, in its investigation, under the Senate resolution of February 25, 1878, the undersigned would respectfully submit that, from the text of the resolution, it authorizes an investigation as to four subjects:

1st. As to the bonds, &c., referred to in it. To this we do not object.

2d. As to what amount of money has been expended by the several nations of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory, and whether any of such money has been taken from the school funds of any of such tribes; and if so, what legislation is necessary to prevent, in future, the diversion of such school funds from their legitimate purpose.

In regard to this inquiry, we object to such construction of said resolution as will enable your investigation to interfere with or molest our treaty and inherent rights of self-government, or with the disposition of our national funds after they are receipted for by our nation to the

government under our treaties, except as to the school and orphan funds, to which we may submit, as an act of courtesy, for information for the Senate as well as for the President.

3d. As to whether a civil form of government cannot be organized over the Indian Territory for the better protection of life and property, &c. If this proposition relates to the establishment of a territorial government of the United States over our nation, we protest that, in view of our treaties and the necessities of the case, this cannot be done without the full and free consent of our nation and people. (In support of this view, we will ask to submit our argument in writing.)

4th. As to whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations? Respecting the division of the Cherokee lands, the 20th article of the Cherokee treaty of 1866 (Revision Indian Treaties, page 94) provides for that, at the expense of the government, whenever the Cherokee council shall so request. We protest against such construction of the said resolution as will enable your honorable committee to ignore this treaty provision without the consent of our nation and people. On the other hand, for the protection of our nation and people under this treaty provision, we hold that it is the duty of your honorable committee to recommend to the Senate such legislation as will cancel the land-grants referred to, and as will also annul the said bonds alleged to have been issued on them by the railroad companies named in the resolution.

In regard to the propositions laid down above and our positions in relation to the same, we respectfully present the following brief statement which relates more directly to the freedom and liberty secured to our nation in the disposition of its own funds, reserving the right to present to the honorable committee, which we will do in due time, other views and facts in relation specially to the organization of a civil government or United States territorial government over our nation and people; all of which we will respectfully ask the committee to consider.

With the utmost deference to the honorable committee, we submit that the general fund of the Cherokee Nation and the manner in which it is dispensed by the council of said nation cannot be a proper subject of investigation and direction by Congress or any other branch of the United States Government; and that the orphan and school funds of our nation can possibly be a subject of inquiry and direction by the President only when he has satisfactory proof of misapplication of them, as provided by the 10th article of the Cherokee treaty of 1835 (Revision Indian Treaties, p. 72), but that even this authority to *inquire* and *direct* is doubtful, when viewed in the light of later treaties, notably the 23d article of that of 1866 (Revision Indian Treaties, p. 95), which we will hereafter quote.

If Congress or the departments may require a statement of expenditures of our own public funds, indiscriminately, regardless of the treaties, then, on the same principle, they may direct how, when, by whom, to whom, and for what purposes our funds shall be paid. Fortunately for the Cherokees these things are not left open to chance, but are regulated by law, by solemn treaty provisions, which, among civilized nations and upright men, are recognized to be the highest of all law, a law binding two or more parties, and requiring the assent of all to modify, change, or destroy it. These legal (treaty) provisions are very plain, and shall serve as our chief answer in denial of the right of your honorable committee to indiscriminately prosecute the investigation of the subject-matter of the resolution in question, and in denial of the right of Con-

gress to enter upon any legislation, in pursuance of any recommendation based upon said resolution, and in conflict with the inherent and recognized rights of the Cherokee people as a distinct political community, and a free and sovereign, though domestic nation.

When first discovered by European nations, centuries antedating the birth of your republic, the Cherokees were a free people and an independent nation, owning a large country, and owing allegiance to no other government or power. They were never subverted by conquest; so that when you met them, and sought and secured their friendship and alliance, at the close of the war of the Revolution, you negotiated with them as a nation capable of declaring war and concluding peace, and that before you negotiated with any other nation or power. In concluding with the infant republic the treaty of Hopewell, in 1785, they conceded not a single right or prerogative previously enjoyed and exercised as an independent nation; nor did they thus acquire any such rights, then or since, from the Government of the United States. Their right of self-government was inherent, not conferred. They have never surrendered it, but, through all the changing vicissitudes through which they have passed, they have maintained their distinctive character as a nation. As such they have conveyed to the United States large districts of country east of the Mississippi River, and acquired by purchase and exchange from the United States other lands west of said river, which are carefully described by metes and bounds, and upon which they have planted their government, and to which they have a "*bona fide*" title, by patent, in fee-simple. (See articles 2 and 3, treaty of 1828, pages 57, 58, Revised Indian Treaties; article 1, treaty of 1833, page 63, Revised Indian Treaties; articles 2, 3, 4, 5, treaty of 1835, pages 67, 68, 69, 70, Revised Indian Treaties.)

Article 5, treaty of 1835, just cited, after covenanting to protect the Cherokee Nation in their right of soil, goes on to renew previous pledges to protect the nation in the right of self-government. We earnestly invite your attention to these treaty provisions, for they are too plain to be misconstrued. The 5th article says: * * * "But they (the United States) shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they (the Cherokees) may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them."

Article 10, treaty of 1835 (pages 71, 72, Revised Indian Treaties), pledges the United States Government to an honest investment of certain Cherokee funds, and to the payment of interest thereon to the Cherokee authorities, in the following words, to wit:

The President of the United States shall invest, in some safe and most productive public stocks of the country, for the benefit of the whole Cherokee Nation who have removed, or shall remove, to the lands assigned by this treaty to the Cherokee Nation west of the Mississippi, the following sums as a permanent fund for the purposes hereinafter specified, and pay over the net income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee Nation to receive the same, and their receipt shall be a full discharge for the amount paid to them, viz: The sum of \$200,000, in addition to the present annuities of the nation, to constitute a general fund, the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of \$50,000 to constitute an orphans' fund, the annual income of which shall be expended toward the support and education of such orphan children as are destitute of the means of subsistence. The sum of \$150,000, in addition to the present school-fund of the nation, shall constitute a permanent school-fund, the interest of which shall be applied annually by the council of the nation for the support of common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial ap

plication of the orphans' and school fund, the council of the Cherokee Nation, when required by the President of the United States, shall make a report of the application of those funds, and he shall at all times have the right, if the funds have been misapplied, to correct any abuses of them, and direct the manner of their application for the purposes for which they were intended. The council of the nation may, by giving two years' notice of their intention, withdraw their funds, by and with the consent of the President and the Senate of the United States, and invest them in such manner as they may deem most proper for their interest.

Article 11, treaty of 1835 (page 72, Revised Indian Treaties), says:

The Cherokee Nation of Indians, believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition, hereby agree to commute their permanent annuity of ten thousand dollars (\$10,000) for the sum of two hundred and fourteen thousand dollars (\$214,000), the same to be invested by the President of the United States as a part of the general fund of the nation. Their present school-fund, amounting to about fifty thousand dollars (\$50,000), shall constitute a part of the permanent school-fund of the nation.

Article 1, treaty of 1846 (page 79, Revised Indian Treaties), renews former guarantees of right of soil and self-government.

Article 2, same treaty (page 80, Revised Indian Treaties), acknowledges the right of the Cherokee people to petition the United States Government for the redress of grievances, and to discuss their rights before said government.

Article 15, treaty of 1866 (page 92, Revised Indian Treaties), stipulates for the reception by the Cherokee Nation of other Indians upon their lands, east of the 96th meridian.

Article 16, same treaty (page 93, Revised Indian Treaties), makes provision for the settlement of other Indians upon Cherokee lands west of the 96th meridian.

Articles 17 and 18, same treaty (pages 93, 94, Revised Indian Treaties), authorize the sale of the "Cherokee neutral" and "strip" lands in Kansas, and of any other lands owned by the nation in any of the States; and

Article 23, same treaty (page 95, Revised Indian Treaties), in order to carry out in good faith the understanding of the parties, provides for the safe investing and payment of all Cherokee funds then belonging to the nation, and in the custody of the United States Government, or that should thereafter become due from whatever source. The article is in the following words: "All funds now due the nation, or that may thereafter accrue from the sale of their lands by the United States, as hereinbefore provided for, shall be invested in the United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee Nation, and shall be applied to the following purposes, to wit: Thirty-five per cent. shall be applied for the support of the common schools of the nation and educational purposes; fifteen per cent. for the orphan-fund; and fifty per cent. for general purposes." This is explicit, and annuls everything conflicting with it.

Article 31, same treaty (page 97 same book), expressly declares that "all provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force."

It will be seen by the treaty provisions referred to, that our funds, after they are receipted for to the government under the treaties, are to be disposed of as the national council of the nation may direct. Under article — of the constitution of the Cherokee Nation, herewith submitted, no funds can be drawn out of the treasury of said nation, except by act of appropriation of the national council. According to this constitutional provision, no moneys have ever been paid out, whether

school, orphan, or general funds, except by acts of appropriation. Such, gentlemen, are a few of the legal provisions upon which our nation bases her claim for protection in her right of receiving and applying her funds, the right of self-government and right of soil, and they are fully sustained by the oft-repeated opinion of your Supreme Court. (See case of *Holden vs. Joy*, 17 Wallace, 242; *Worcester vs. The State of Georgia*, 6 Peters, 556; *Doe vs. Braden*, 16 How., 635; *Fellows vs. Blacksmith*, 19 How., 372, &c., &c., &c.)

These treaty provisions, as interpreted by your Supreme Court, and by the uniform practice of the Executive Department in dealing with our nation, recognize said nation to be beyond the pale of Congressional or departmental jurisdiction in its rights of self-government as expressed above. It has uniformly been so, and there is no instance that we know of where the reverse has been true.

For the foregoing reasons, and as in duty bound, we respectfully but firmly enter this our protest against such construction and enforcement of the resolution referred to, of February 6, as will in your investigation interfere with the volition and freedom of our nation in the disposition of its national funds, as secured by the treaties quoted, except as to our school and orphan funds, about which the treaties say, the President may inquire and direct if there has been any misapplication of said school and orphan funds.

W. P. ADAIR,
D. H. ROSS,
Cherokee Delegation.

WASHINGTON, D. C., *March 28, 1878.*

Mr. Moore submitted the following protest on behalf of the Creeks:

WASHINGTON, D. C., *March 29, 1878.*

Hon. J. J. Patterson, chairman, and other honorable members of the Committee on Territories, United States Senate:

GENTLEMEN: On the 25th February last Senator D. W. Voorhees, of Indiana, introduced a resolution, which was passed and referred to the Committee on Territories, a part of which instructed said committee to investigate the manner in which Indian nations of the Indian Territory distributed their funds, whether any portion was used for the support of delegations at Washington, and what effect appropriations to Indians had on their civilization, &c.

Representing the Creeks, a nation resident in the Indian Territory, we desire to submit some considerations why the investigations should not be made so far as relates to the receiving and disbursement of our national funds.

In the first place such an investigation is unauthorized by treaty. The treaty between the Creek Nation and United States of August 7, 1856, article 15th, Revision of Indian Treaties, page 110, reads as follows: "So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government and full jurisdiction over person and property within their respective limits."

Again (same treaty), page 109:

"It being the desire of the Creeks to employ their own teachers, mechanics, and farmers, all the funds secured to the nation for educational, mechanical, and agricultural purposes shall, as the same becomes annually due, be paid over by the United States to the treasurer of the Creek Nation. And the annuities in money due the

nation, under former treaty stipulation, shall also be paid to the same officer, whenever the general council shall so direct."

Again, treaty June 14, 1866, article 12, Revision Indian Treaties, page 121:

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

It is clear from the above-cited provisions of treaties that the United States is barred from interference with the Creek Nation as regards the use the Creeks appropriate their moneys to.

It will be observed that the United States recognizes the Creeks as a nation having the right of self-government, jurisdiction over person and property; the right to use their funds (which is property) as they see proper. Their council to direct the receipt of the annuities, &c.

Now we submit that if the Creeks are a nation, with a government having jurisdiction over person and property (their own), the right of directing the use of their funds, and all this conceded, acknowledged, and guaranteed by the United States Government, then the United States Congress has no legal authority to make the investigation contemplated, as above stated.

It is, or should be a well known fact, that all the funds paid to the Creeks annually by the Government of the United States are secured them by the United States Government in treaty stipulations, as interest on funds held in trust, perpetual annuities, &c., derived from the sale of large and valuable tracts of territory for a mere pittance of its real value. It would be as legitimate for your committee to make an investigation of what any one, or all of us did with the money we derived annually from the sale of our cattle or hogs.

By reference to our treaties, it will be found that only \$11,000 per annum are set apart for school purposes; and the official records of the Creek Nation will show that the Creeks have expended annually, amounts to ranging from \$24,000 to \$27,000 per annum (and in one instance \$31,000) for the last ten years.

All surplus funds not used for other necessary governmental purposes are used for school purposes; and we might, in conclusion, state that the average expenditure for the support of delegations at Washington, will not reach over five thousand dollars annually, and if one-half the time spent by committees in considering Territorial bills, and other measures destructive to our very existence, were devoted to the consideration of just claims due our people against your government, settlements could be effected which would remove the necessity of our nation sending any delegations here, provided that just regards to the plighted faith of your government to our nation be respected.

We have the honor to be, very respectfully, your obedient servants,

JNO. R. MOORE,
PLEASANT PORTER,
D. M. HODGE,
YARTE KER HARJO,
Creek Delegation.

At 12.40 p. m. the committee adjourned until Friday, April 5, 1878.

FRIDAY, April 12, 1878.

Committee was called to order by the chairman, at 10.45 a. m.

Senators present: Mr. Patterson, Mr. Chaffee, Mr. Garland, Mr. Hereford, Mr. Grover, and Mr. Saunders.

Counsel and delegates all present.

The committee having had under consideration the protest of the Choctaw, Chickasaw, Cherokee, and Creek Nations, to the following paragraph of the original resolution:

"*Resolved further*, That the said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said territory, and whether any of such money has been taken from the school-funds of any such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purpose";

On motion by Mr. Chaffee it was decided as follows:

Resolved, That the committee take jurisdiction over the expenditure of the school and orphan funds of the Indian nations.

Mr. Grafton objected.

The CHAIRMAN. The objection will be noted.

Mr. GRAFTON. May I be permitted to ask Mr. Hubbard if he represents the United States in the matter of this investigation?

Mr. HUBBARD. Yes, sir.

Mr. GRAFTON. Has Mr. Hubbard been employed by this committee or by any executive officer of the government?

Mr. HUBBARD. No, sir.

Mr. GRAFTON. Has the gentleman been employed by the Choctaw nation?

Mr. HUBBARD. No, sir; I represent one of the people of the United States.

Mr. GRAFTON. I should be glad to have the decision of the committee whether Mr. Hubbard should appear here or not.

Mr. HUBBARD. I also appear as the attorney of the Missouri, Kansas and Texas Railroad Company, and as one of the people I have a right to appear.

Mr. CHAFFEE. I think Mr. Hubbard or anybody else would have a right to appear.

Mr. GRAFTON. The objection I make now is, you are inquiring into the domestic affairs of these nations, and it does not concern the school fund. Now, if the railroad company is to be permitted to appear and conduct this investigation, and it seems to have been conducted pretty largely by the company, I submit that it is a little broad.

Mr. HUBBARD. I will read the ninth article of the treaty of 1866 between the Creeks and the United States:

"ARTICLE 9. The Creeks agree to such legislation as Congress and the President may deem necessary for the better administration of justice, and the protection of the rights of persons and property within the Indian Territory: *Provided*, Said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs."

It is under this article of the treaty we think this examination should go on.

The examination of D. M. Haley resumed.

By Mr. GARLAND:

Question. In your examination on the 22d ultimo you had a bundle of papers which you desired to put in evidence. Have you those papers now?—Answer. I have.

(Witness produces the papers and hands them to Mr. Garland.)

Mr. GARLAND. Doctor, I hand you a paper which purports to be "An act entitled an act prescribing the duties of the national agent, and for other purposes." Will you please read it to the committee?

The witness read:

[Bill No. 24.]

AN ACT entitled an act prescribing the duties of national agent, and for other purposes.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That the principal chief is hereby authorized and directed to appoint one competent person, citizen of said nation, with the advice and consent of the senate, a national agent to act as agent for the sale of timber, stone, and stone-coal to any railroad company for the construction and repair of said road within the limits of said nation.

SEC. 2. *Be it further enacted*, That said national agent shall, before he enters upon the duties of his office, take the oath of office prescribed in the constitution before any judge of a court of record, which oath thus taken, shall be written and subscribed on his commission, and shall enter into bond, with good and sufficient securities, to be approved by the principal chief, in the penal sum of twenty thousand dollars, payable to the Choctaw Nation, conditioned as hereinafter directed, that he shall well and truly pay over to the treasury of the Choctaw Nation all moneys received by him and due the nation for the sale of timber, stone, and stone-coal, and will make a true and correct report quarterly to the principal chief of the amounts of all moneys received, together with all moneys he may receive from the railroad company, or any other company, for timber and stone have been taken and left unsettled for and paid into the national treasury; which bond shall be filed in the national secretary's office, and may be put in suit in the same manner and on the same condition as the national treasurer's bond.

SEC. 3. *Be it further enacted*, That the national agent shall demand and receive the sum of ten cents for each tie, and square timber three cents per foot running measure; stone at the usual rates in the States, taken from the public domain of the Choctaw Nation.

SEC. 4. *Be it further enacted*, That the national agent shall demand and receive directly from any coal and mining company one-half cent per bushel mined and exported from any mine in this nation to be used and appropriated specially for school purposes.

SEC. 5. *Be it further enacted*, That the national agent shall hold his office for the term of two years from the date of his commission, unless sooner revoked for mal-conduct in office or other disqualifying cause, and shall receive for his services ten per cent. on all moneys collected by virtue of this act and belonging to and due the Choctaw Nation.

SEC. 6. *Be it further enacted*, That the national agent be and is hereby authorized to call upon the railroad company and make and have a speedy and just settlement for timber and stone that have been taken within the limits of the Choctaw Nation for construction of the railroad and other purposes, not settled for, and receive pay for the same, and pay over as directed in the second section of this act.

SEC. 7. *Be it further enacted*, That the national treasurer of the

Choctaw Nation is hereby authorized and required to pay over to the treasurer of the Chickasaw Nation or to any authorized person of the Chickasaw Nation, the sum of one-fourth of all moneys that may come into his hand under the provision of this act, and take his receipt for the same.

SEC. 8. *Be it further enacted*, That all acts or parts of acts coming in any manner in conflict with the provisions of this act be, and the same are hereby, repealed, and this act take effect and be in force from and after its passage.

Approved November 12, 1872.

COLEMAN COLE,
Principal Chief Choctaw Nation.

"I hereby certify that this act is a true and correct copy of the original act now on record in my office.

[SEAL.]

"A. R. DURANT,
"National Secretary."

Mr. GARLAND. I now hand you "bond of D. F. Harkins, filed November 12, 1875, A. R. Durant, National Secretary." Read that also.

The WITNESS:

"Know all men by these presents, that we, D. F. Harkins as principal and Albert Comey, J. S. Standley, J. D. Davis, and I. W. Folsom as securities, are held and firmly bound unto the Choctaw Nation in the penal sum of thousand dollars, good and lawful money, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, signed with our hands and sealed with our seals this the 12th day of November, 1872.

"The condition of the above obligation is such, that if the said D. F. Harkness, principal herein, shall well and truly pay over to the national treasury of the Choctaw Nation, all monies coming into his hands, and belonging to the Choctaw and Chickasaw Nations, then the above obligation to be void, else to remain in full force and virtue.

[S. S.]
[S. S.]
[S. S.]
[S. S.]
[S. S.]

"D. F. HARKNESS.
"J. S. STANDLEY.
"ALBERT COMEY.
"JAMES D. DAVIS.
"I. W. FOLSOM.

"The two latter names signed by written authority.

D. F. HARKNESS."

"EXECUTIVE OFFICE, *Chahta Jamoho.*

"The said bonds and securities are hereby approved by me this the 12th November, A. D. 1875.

"COLEMAN COLE,
"Principal Chief, Choctaw Nation.

"I hereby certify that the above bond is a true and correct copy of the original bond on file in my office.

"A. R. DURANT,
"National Secretary.

"OCTOBER 25, 1876."

By Mr. HEREFORD:

Q. What was it given for?

The WITNESS. To cover those laws I have read.

By Mr. GARLAND:

Q. Explain the whole of this coal-mining business.

The WITNESS. The coal company operated in the Choctaw Nation. In the first instance, the mines were leased from citizens of the nation who owned the mines by virtue of the constitutional law of the nation and by legislative law of the Chickasaw Nation. Those parties had the first lease—operated the mines under that lease, and held it for a year or two. I do not remember the exact dates. After operating it for a certain length of time, the council enacted a law appointing a national agent to collect a tax of a half cent on every bushel of coal mined from this company. We were operating the mines. This tax was levied upon the company. We were getting a cent per bushel as a royalty.

By Mr. GRAFTON:

Q. Who were the parties?—A. I am one of them. When this law was enacted the national agent made a demand for the half-cent tax, and in consequence of that law the company notified us to reduce our tax to a half cent; we did so under protest and the agent proceeded to collect the tax which came from us. After this was done we employed attorneys to get out a writ of injunction restraining this national agent from making this collection as being in violation of law. The circuit court rendered a decision in favor of the plaintiffs. The defendants took an appeal to the supreme court and the supreme court sustained the decision of the lower court. After this decision the council re-enacted another law; that is, they re-enacted the same law and appointed the same person the agent.

Q. Who is he?—A. His name is D. T. Harkins. He was the first agent under the law which the court set aside, and he is now acting in that same capacity. There had been in 1873, I believe, just such a law enacted; at that time the case was brought before the supreme court and was set aside. At that time there was no coal-mines being operated. That had reference to ties and timber, &c. There are two decisions of the supreme court, one in 1872 and the other in 1875.

By Mr. CHAFFEE:

Q. How is that supreme court constituted?—A. It is elected by the council and is composed of three judges.

By the CHAIRMAN:

Q. From all the nations?—A. I do not know about the other nations. I am speaking of the Choctaw Nation.

Q. Does each nation have its own separate judiciary?—A. Yes, sir.

Mr. GARLAND. I hand you the "Decision of supreme court, April term 1872, G. W. Harkins et al. *versus* Campell Leflore, nat. agt." Is this the decision of which you spoke?

The WITNESS. Yes, sir.

Mr. GARLAND. Please read that decision.

The WITNESS;

"In supreme court, April term, 1872.

"A question was submitted to the court by G. W. Harkins, in regard to an act passed at the general council of the Choctaw Nation.

"The court proceeded to give their opinion, in the following words:

"The court after duly examining the petition of G. W. Harkins et al., submitting the constitutionality of an act entitled 'An act providing protection for timber and stone in the Choctaw Nation, and for other

purposes,' passed and approved November 1st, 1871, have the same under consideration; and it is the opinion of the court the act is not in accordance with the constitution of the Choctaw Nation, and treaty of 1866 between Choctaw and Chickasaw tribe of Indians and the United States.

"It is the opinion and decision of this court that the act entitled 'An act providing protection for timber and stone in the Choctaw Nation, and for other purposes,' is unconstitutional.

"J. L. GARVIN,

"Chief Justice.

"J. W. EVERIDGE,

"Associate Justice.

"Attest:

GREEN W. GARDINER,

"Clerk."

"I do hereby certify the above copy to be a true and correct copy of the original on file in my office.

"T. E. OAKES,

"Clerk Supreme Court Choctaw Nation.

"I do hereby certify that this is a true copy as on file in my office the 14th day October, 1875.

"D. M. HARLEY,

"Tobucksy County, Choctaw Nation."

Mr. GARLAND. I now hand you the second decision of the supreme court, October term, 1875, D. T. Harkins, nat. agt., vs. Margret Pusley et al. Read that also.

The WITNESS:

"In supreme court, October term, 1875.

"D. F. HARKINS, NATIONAL AGENT, }

"vs.

"MARGARET PUSLEY ET AL. }

"This cause having been brought from the circuit court of Tobuckey County, Choctaw nation, by a writ of certiorari to this court for a final hearing and adjudication, and a question being raised as to a former decision rendered by the supreme court at the April term of said court, 1872, on an act of general council of the Choctaw nation approved November 1, 1871, creating a national agent, the court is of the opinion that this case being similar, the decision rendered April, 1872, covers the case.

"J. L. GARVIN,

"Chief Justice.

"J. W. EVERIDGE,

"Associate Justice.

"G. W. SCOTT,

"Associate, pro tem.

"Attest: T. E. OAKES,

"Clerk Supreme Court, Choctaw Nation.

"I do hereby certify that the above copy to be a true and correct copy of the original on file in my office this 8 Oct., 1875.

"T. E. OAKES,

"Clerk Sup. Court, C. N.

"I hereby certify that this is a true copy as on file in my office.

"D. M. HARLEY,

"Circuit Clerk, Tobuckey Co., C. N.

Q. Doctor, there seems to be another paper attested by you as clerk ; read that to the committee and explain what it is.

The WITNESS:

"Circuit court, December term, 1874.

"CHOCTAW NATION,

"County of Tobucksey:

"To the Osage Coal & Mining Company, of———:

"By virtue of a suit brought in the circuit court of the county and nation aforesaid, by Margaret Pusley *et al.*, for the recovery of moneys due them on account of coal taken out of their coal-banks near McAllister station, in county and nation aforesaid, by your company, under contract made with Joshua Pusley in his life-time, and continued at his death, by his wife, the said Margaret Pusley *et al.*; which money was being drawn by one D. F. Harkness, appointed national agent contrary to the provisions of said act, the moneys being so drawn being an infringement of contract made between your company and the said Margaret Pusley *et al.* long before the passage of the act creating said office of national agent, which is adjudged and decreed by the court to be in violation of the constitution and the act creating said national agent, you are ordered by this court to turn over to the agents and attorneys of Margaret Pusley *et al.*, J. F. Ford and Jackson Loving, all the moneys due the said Margaret Pusley *et al.*, on account of coal taken from their mines near McAlester station, Tobucksey County, Choctaw Nation, as specified by original contract with Joshua Pusley, the said mines being private property and not subject to interference by said agents. But this order is not to be so construed as to interfere with the collection by said agent of moneys due or that may become due to the national agent for any stone, timber, or ties used or that may be used by the M., K. & T. Railroad Company, and taken from the public domain.

"JEREMIAH WARD,

"Judge 1st Judicial Circuit, C. N.

"Attest:

"D. M. HARLEY,

"Circuit Clerk Tobucksey Co., C. N.

"I certify that this is a true copy of the original as filed in my office, this the 12th day of December, 1874.

"D. M. HARLEY,

"Circuit Clerk of Tobucksey Co., Choctaw Nation."

Mr. GARLAND. The signature of this is correct?

The WITNESS. Yes, sir.

Mr. GARLAND. Here is another paper purporting to be a "Lease to Osage Coal and Mining Company." Read that and explain all you know about it also.

The WITNESS:

"Lease.

"This agreement, made and entered into this 12th day of June, A. D. 1872, by and between Joshua Pusley, of the county of Tobocksey and of Choctaw Nation, as party of the first part, and the Osage Coal & Mining Co. of Missouri, as party of the second part, witnesseth, that the said party of the first part, for his heirs, executors, administrators, or assigns, for and in consideration of the sum of one dollar to me in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, and for other valuable considerations here-

inafter specified, has this day leased, set over, and assigned and by these presents do hereby lease, set over, and assign unto the said party of the second part, their heirs, executors, administrators, or assigns, for the full term of one year from the date hereof, the exclusive right of mining, boring, operating, and otherwise prospecting for coal, salt, iron, or other valuable substances, on the following described tracts or parcels of land, to wit: All the southwest side of the branch commencing where we commenced work; and of taking out and working the same, together with the right of way and surface use of such land as may be necessary for the economical and efficient working of the same, together with such timber as may be necessary for the use of mine.

"In witness whereof we have this day of 187 , hereto subscribed our names and affixed our seals.

"JOSHUA PUSLEY. [SEAL.]

her
"MARGARET + PUSLEY. [SEAL.]

mark.
"OSAGE COAL & MINING CO.

"By G. L. WILLIFORD. [SEAL.]

"Witness:

"J. E. REYNOLDS.

"CHOCTAW NATION, ss:

"Be it remembered that Joshua Pusley and Margaret Pusley, who are personally known to the undersigned, a United States Indian agent within and for said county, to be the person' whose names are subscribed to the foregoing lease as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained.

"Given under my hand at Boggey Depot this twentieth day of June, 1872.

"T. D. GRIFFITH,
"U. S. Indian Agent."

The WITNESS. If you have the Choctaw code, I will show you the authority under which that lease was made. On page 21, Laws of the Choctaw Nation, 1869, section 18 of the constitution, you will find the following:

"Any citizen of this nation who may find any mine or mines or mineral waters shall have exclusive right and privilege to work the same so long as he may choose within one mile in any direction from his works or improvements: *Provided, however,* he does not interfere with rights of the former settlement."

The Chickasaws have a legislative law to the same effect. It is an act relating to salt springs and other minerals. Section one provides as follows:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation,* That from and after the passage of this act, if any citizen of this nation finding, or having found, any salt springs or other valuable minerals, shall be entitled to the unrestricted right of one mile square: *Provided, however,* That this act shall not conflict with former locations; and the above act shall not be so construed as to debar citizens of this nation from the free use of the oil springs.

"C. HARRIS, Governor.

"Approved, November 18, 1857.

"Chickasaw Code, Laws of 1857, p. 63."

Q. Turn to pages twelve and thirteen of the testimony taken on the 22d. of March last, and see where you were speaking at that time about the arrest of some parties; did you ever see the writ issued for the arrest of those persons?—A. I will not be positive whether I did or did not. I think I did. You have a copy of the writ in your hand, which I got from one of the parties.

Q. Take this paper and tell the committee how you got it and all about it.—A. It is a copy of the writ which I got from Mr. Reams. He gave it to me, and said it was a copy of the writ.

Q. Read it then.

Witness read as follows:

[Copy.]

“EXECUTIVE OFFICE,
Atoka, C. N., July 25, 1877.

“To the National and County Light-horsemen, Greeting:

“You are hereby commanded to arrest the bodies of James McAllister, T. C. Walker, William Pusley, and Bob Ream, and bring their bodies before me to-morrow or next day.

“COLMAN COLE,
Principal Chief of the Choctaw Nation.”

Q. You did not see the original?—A. I am not positive about that. I think Mr McAlester showed me the original. He was arrested. He sent for me to ask my advice what course to pursue.

Q. Had you ever seen any writs of that character issued in other cases?—A. No, sir; I do not think that I have.

Q. Where are those parties now?—A. They are out home. Mr. McAlester and Mr. Reams are on the line of the railroad within twenty miles of each other. Mr. Pusley is here.

Cross-examined by Mr. GRAFTON:

Q. Where were you born?—A. I was born in the State of Louisiana.

Q. In what year were you born?—A. In the year of 1841.

Q. How long did you live in the State of Louisiana?—A. Until the year of 1861.

Q. Then where did you go?—A. I then went to the State of Virginia.

Q. How long did you stay there?—A. I remained there until the year of 1864.

Q. Then where did you go?—A. I then removed to the State of South Carolina.

Q. How long did you stay there?—A. About six or eight months.

Q. Where did you go to from there?—A. From there I went to Savannah, Ga.

Q. How long did you remain in Savannah?—A. A month or six weeks.

Q. Where did you go then?—A. I went to Fort Smith, in the State of Arkansas, on the line of the Choctaw Nation.

Q. How long did you remain at Fort Smith?—A. I remained there a day or two.

Q. Where did you go from there?—A. I went into the Nation, and have been there ever since that time. I think it was in the year of 1866.

Q. How old were you when you left the State of Louisiana?—A. I was about twenty years of age, I guess.

Q. Where were you educated?—A. Baton Rouge, in the State of Louisiana.

Q. What is the name of the institution?—A. It was the public school.

Q. What is your profession?—A. I am a physician.

Q. How long have you been practicing medicine?—A. Since the year 1863.

Q. What was your name before you went to the Choctaw Nation?—A. D. M. Hailey, sir.

Q. Have you any knowledge of any difficulty between Reams, Pusley, and certain other Indians last summer?—A. I do not know that I have.

Q. You have knowledge, then, of it?—A. I do not think I know of any personal difficulty then. There had been a personal difficulty between Mr. Pusley, Mr. Reams, and others, with a man by the name of Jones.

Q. Was he a Choctaw Indian?—A. Yes, sir; he was.

Q. What was the result of that difficulty?—A. He was killed.

Q. Who killed him?—A. That I do not know, sir.

Q. Have you any knowledge that Reams was the party who killed that Indian?—A. No, sir; he was arrested, tried, and acquitted.

Q. Do you know that Reams killed that Indian?—A. No, sir. There was a brother of this party who came there, who had been living in the State of Georgia, and who came on there last year some time before that. I have no remembrance of there having been any personal meeting. Of course there was personal feeling existing between them.

Q. You understood there was a feud existing between the parties?—A. I do not know about that. I did not know that he had any friends so far as that is concerned. I do not remember any personal meeting between those parties. I was living some seven or eight miles away from McAlister.

Q. In what year did it occur?—A. In the year 1876, I think.

Q. There has been an open rupture between these people ever since, has there not?—A. There has been no personal meeting.

Q. It had been apprehended that somebody would be killed when they did meet?—A. Yes, sir; I think so.

Q. In what business have you been engaged in since you have been living in the Indian country?—A. I have been engaged in practicing medicine, selling goods, raising cattle and stock, and a variety of business at different points.

Q. How long have you been living at McAlister?—A. I have lived at McAlister, and within ten miles of that place, for eleven years.

Q. What have you been doing for the past two years?—A. I have been in the coal business at Savanna, and in mercantile business since I have lived there. I am now in the drug business.

Q. Have you ever sold any whisky?—A. I have sold whisky; yes, sir.

Q. By what authority?—A. By authority of General Sheridan.

Q. In what year?—A. In this year, in the month of January, I made application to the Secretary of War and he referred it to General Sheridan.

Q. Have you a copy of the application with you?—A. I have a copy of the license with me or at my room.

By the CHAIRMAN:

Q. You will produce it, will you?—A. Yes, sir; I will.

“HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,

Chicago, Illinois, January 14th, 1878.

“SIR: I have the honor to inform you that pursuant to authority of the honorable the Secretary of War, dated November 28, 1871, Lieutenant General Sheridan, commanding the military division of the Missouri, hereby grants you permission to sell liquor at McAlister, Choctaw

Nation, in the Indian Territory, on the prescription of a reputable physician.

"Very respectfully, your obedient servant,

"R. C. DRUM,

"Colonel and Assistant Adjutant General.

"Dr. D. M. HAILEY,

"McAlister, Choctaw Nation, Indian Territory."

By Mr. GRAFTON:

Q. You had no authority from the council of the nation to sell whisky, had you?—A. No, sir; I did not.

Q. Are you aware of any code or local law of the Choctaws which prohibits the sale of whisky?—A. There is such a law, I believe.

Q. Did you ever see it?—A. Yes, sir; I have.

Q. Are you acquainted with its provisions?—A. Yes, sir; I am.

Q. When was that law passed?—A. It is an old law. I will now submit in evidence that law. It is—

"AN ACT entitled an act to prevent the introduction and use of intoxicating liquors in th Choctaw Nation.

"SEC. 1. Be it enacted by the general council of the Choctaw Nation assembled, That it shall not be lawful for any person or persons to introduce, or cause to be introduced, for their own use, or to sell, give, or barter any vinous, spirituous, or intoxicating liquors to any person or persons within the limits of the nation in any quantity whatever (except wines, which may be introduced by a member of any church for sacramental uses), and such offense shall be subject to prosecution by indictment and punishment upon conviction according to the following provisions:

"SEC. 2. Be it further enacted, That such person or persons so offending or violating the provisions of this act, upon conviction thereof before the circuit court, having jurisdiction of the same, shall forfeit and pay a sum of not less than ten dollars, nor more than one hundred dollars, for each and every offense; and in default of payment of any such fine, he, she, or they shall be imprisoned for a term of not less than one month, nor more than three months, at the discretion of the court.

"SEC. 3. Be it further enacted, That any person or persons within the limits of this nation found with any liquors specified by this act in their possession shall be deemed guilty, upon full proof of such possession, in like manner as if they had introduced the same, and shall be punished according to the provisions of the preceding section of this act, unless his or her innocence of such charge be satisfactorily proven to the court.

"SEC. 4. Be it further enacted, That it shall be the duty of the circuit judges of this nation to give this act in charge to the grand jury of each county thereof, who shall make diligent inquiry concerning any and all violations of this act; and it shall be their duty, when they have reasons to suspect or believe that a violation of this act has taken place, to have a subpoena issued for such person or persons as they believe can give information upon the subject, and such witnesses, when summoned and appear, shall give evidence of every offense against the provisions of this act that may have come to his or her knowledge, without any special inquiry directed thereto.

"SEC. 5. Be it further enacted, The circuit judges shall direct the clerks, upon application of the district attorneys or the grand juries, to issue subpoenas for each and every justice of the peace and constable

within each county, to testify before the grand juries as to violations of this act, which subpoena the sheriff shall execute and return, or have the same executed and returned by a deputy or deputies; and in case any witness so summoned shall fail or refuse to appear and testify, such witness shall suffer a penalty of ten dollars for each offense, to be collected by execution, unless by a *scire facias* such witness shall be able to give sufficient excuse for such non-appearance, or such refusal to testify.

"SEC. 6. Be it further enacted, For every conviction under this act, the district attorney shall be entitled to a fee of five dollars, to be paid by the person convicted, and on failure to pay said sum, execution shall issue therefor, with the costs of prosecution.

"SEC. 7. Be it further enacted, The sheriff, light-horsemen and constables of each and every county of this nation are hereby authorized, upon suspicion, without warrant for the purpose, forcibly to enter all places, search for and seize, break and destroy all bottles, barrels, jugs, or any and every vessel of any description whatever containing any liquors specified by this act, and shall arrest and convey before the nearest justice of the peace, the person or persons in whose possession such liquors may be found, which justice of the peace shall bind such person or persons, after proper and satisfactory showing, to appear at the next term of the circuit court of his county, when he shall report the same to the court and grand jury; and for the hearing of each one of such cases the justice of the peace shall be entitled to receive one dollar, and the sheriff, light-horsemen, or constable two dollars, to be recovered upon condition from the offender, and upon his failure to pay the same it shall be recovered by execution with the costs of prosecution.

"SEC. 8. Be it further enacted, That should any person or persons refuse to have his or her whisky or other intoxicating liquors destroyed by taking up arms, and should any one of the sheriffs, light-horsemen, or constables, or deputies, in self-defense, kill or destroy the life of the person or persons having whisky or any intoxicating liquors, he shall be protected by the laws of this nation. But should any offender kill or destroy the life of any person or persons authorized by this act to destroy all whisky or other intoxicating liquors, such person shall suffer death. But should the offender only destroy or injure the property or limbs of any of the above-mentioned officers, he or she shall be liable to a fine or punishment, to be determined by the circuit court of the county wherein such offense may be committed.

"SEC. 9. Be it further enacted, That if any person or persons shall give or barter any vinous, spirituous, or intoxicating liquors to any person or persons within the limits of this nation, and any person thereby be maimed or injured, such person who sold, gave, or bartered the same shall be liable to an action in court, and, on conviction, shall be made to pay a fine of not less than five nor exceeding one hundred dollars, to the person so maimed or injured, and upon failure to pay the said sum, execution shall issue therefor, with the costs of prosecution.

"SEC. 10. Be it further enacted, All fines collected from convictions had under the preceding sections of this act shall be paid into the treasury of the county wherein the offense was committed, to be expended for such purposes as the board of police thereof may direct.

"SEC. 11. Be it further enacted, That all laws heretofore passed prohibiting the introduction, sale, &c., of whisky or other intoxicating liquors shall remain in full force until sixty days after the passage of this act, and no longer, and that this act take effect and be in force from and after its passage.

"Approved October 26, 1857."

"But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of or under authority from the War Department or any officer duly authorized thereunto by the War Department." (Sec. 2139, Intercourse Law.)

Q. Were you authorized to sell liquor to everybody?—A. No, sir; I was not.

Q. What limitation was placed upon that authority?—A. The only limitation on that authority was to sell upon prescription of some reputable physician.

Q. Did you always comply with that limitation?—A. I did in every case, and have got the prescriptions in a book to show for it.

Q. Where did you purchase your whisky?—A. In Denison, Tex.

Q. What did you pay for it?—A. I paid different prices for it; I paid from two and a half to four dollars per gallon. I will say in this connection that other physicians have had the same privileges.

Q. How much did you get for it?—A. I sold it for a dollar a pint.

Q. Were you subpoenaed by this committee?—A. I was subpoenaed after I got here. I came here on other business.

Q. Will you please state what that other business was. Was it not because your license to sell whisky had been revoked?—A. Yes, sir.

Q. And you came here to obtain your license again?—A. I came here to obtain it and to show that my license was revoked not by abuse of it. There are a number of men there selling whisky to-day in violation of that same law.

Q. What were you charged with in regard to selling whisky?—A. I do not know that I was charged with anything at all.

By Mr. GARLAND:

Q. Why was the license revoked?—A. I have no knowledge why it was revoked. No charges have been brought against me. The first knowledge that I had was that the license was revoked.

By Mr. GRAFTON:

Q. You have no knowledge that the authorities complained that you were selling whisky to the miners?—A. I do not know that there had been any charges made. I came here in order to show the fact that the license had not been abused; that is my business here, sir.

Q. Had you been written to by anybody before you left home, in regard to the local government, &c., or in reference to your testimony here?—A. No, sir; I had not.

Q. You had not?—A. I received notice of this resolution and published it in my paper.

Q. From whom did you receive the notice you have just spoken of?—A. I do not remember; I think, possibly, it was from Colonel Boudinot. It was sent as a matter of news to the paper.

By the CHAIRMAN:

Q. What paper is that?—A. The Star Vindicator, published at McAlester, Choctaw Nation, Indian Territory.

By Mr. GRAFTON:

Q. Then you went to work to prepare these papers with a view of testifying before the committee?—A. I brought them to be used as evidence in case I was summoned, so that I might be ready to testify.

Q. Have you ever been spoken to about this matter by anybody connected with the railroad company?—A. I had been spoken to by Mr. Hubbard. I did not know that he was connected with the railroad

company; I thought he was a member of Congress. I met him at Muscogee. I had no knowledge that he was the attorney of the railroad company until afterward.

Q. Is it not true that you went to the Choctaw Nation in aid of the railroad company?—A. No, sir; I did not.

Q. Have you written in the aid of the railroad company?—A. I have never received a dollar. I went to the council to have the laws published for the benefit of the people, and as a matter of information for our people.

Q. Did you carefully compare these laws, &c.?—A. I took them from the records.

Q. You have testified what action the council took in regard to sending delegates here?—A. I have, taken from the records.

Q. I believe you testified that the Choctaw council refused to send delegates here?—A. That is the action of the joint council, the house and senate. At least, the house was opposed to it, and there was no bill passed.

Q. On what ground?—A. I presume the grounds were various.

Q. Was any agent of the railroads there?—A. No, sir; not to my knowledge.

Q. No attorney of the railroad company at the council at that time?—A. Colonel Brooks was there, probably to get the seal from the national secretary to Choctaw code.

Q. Do you pretend to testify that that was all the business he had there?—A. I only mentioned that fact. I do not know of anything else. He gave me the paper and I showed him where he could get it done. It was a book.

Q. That is all you know about it?—A. Yes, sir.

Q. What office, if any, does he hold in the Missouri, Kansas and Texas Railroad Company?—A. He is one of the attorneys.

Q. He is a kind of a "cow-coroner"?—A. I do not know what kind of a coroner he is. I do not know what his duties are.

Q. Does he not attend to their matters generally in the Indian nation?—A. I do not know what his duties are.

Q. You have submitted in your printed testimony, page nine of the evidence, what purports to be "An act entitled an act making appropriations for the fiscal year ending July 31, 1878."—A. Yes, sir; I took it from the records of the council, and printed it in the Star Vindicator.

Q. You compared it with the original, and it is correct?—A. Yes, sir; I compared it with the original act.

Q. Do you know how much the whole fund amounts to which the Choctaw Nation receives from the United States yearly as interest upon their trust?—A. About \$51,000.

Q. According to this paper here the salary of the principal chief seems to be \$1,000?—A. Yes, sir.

Q. That is what you pay the principal chief?—A. Yes, sir.

Q. Salary of the national secretary, treasurer, and auditor, \$1,800?—A. Yes, sir; \$600 each.

Q. The national attorney?—A. I think his salary is \$400.

Q. How much do the judges of the supreme court receive?—A. \$400 each.

Q. How many are there?—A. Three.

Q. The salary of the circuit judges is \$400; how many are there?—A. Three.

Q. Salaries of the district chiefs \$750?—A. I think there are three of these, and they receive \$750 between them.

Q. How many districts have you?—A. Three; a chief to each one.

Q. Salary of district attorneys is \$550; how many are there?—A. One for each district.

Q. Contingent funds, subject to the order of the principal chief, \$400. What is that for?—A. Turn to the law; you will see what it is for. It is used as a contingent fund.

(NOTE.—Laws Choctaw Nation, 1869, p. 356.)

Q. Salary of county and probate judges \$16,000. How many have you?—A. Sixteen, I think, sir.

Q. The county judge is also the probate judge, is he not?—A. Yes, sir.

Q. Salary of county and probate clerks \$800. How many are there?—A. There are the same number of clerks as there are judges.

Q. They only get \$50 a year according to this statement?—A. Yes, sir.

Q. You have held that office yourself?—A. Yes, sir; I have.

Q. Do you know what the salary is?—A. Yes, sir.

Q. Salary of sheriffs \$1,200. How many are there?—A. There is a sheriff for each county.

Q. How many counties have you?—A. I think, sixteen.

By Mr. GROVER:

Q. These officers get fees in addition to a public allowance?—A. Yes, sir; some of them do.

By Mr. GRAFTON:

Q. What fee does the clerk get?—A. He gets a fee for filling up writs, &c.

Q. What additional compensation does the sheriff get?—A. He gets a fee for making arrests, &c.

Q. How is that paid; by the parties litigant?—A. In civil cases it is; in criminal cases by the nation.

Q. So, in criminal cases the additional fee is paid by the nation?—A. Yes, sir.

Q. Salary of county light-horsemen \$2,400. How many do you have for each county?—A. I think we have one for each county.

Q. You have fifteen counties?—A. Yes, sir.

Q. Salary of national light-horsemen \$950. How many of those?—A. I do not remember exactly. There is the code; it will give you the information. I do not remember the number.

Q. I see \$220 to pay judges of election. How many places of holding election do you have?—A. It is different in the different counties. Some have one, while others have four. We have two precincts in our county.

Q. How often do you have elections?—A. Once each year.

Q. Does the salary embrace the entire amount the election judges get; do they get any extra pay?

Mr. CHAFFEE. Is not that all in the law?

Mr. GRAFTON. I merely wish to show whether it is exorbitant or not.

The WITNESS. It is something I have not given special attention to.

By Mr. GRAFTON:

Q. In this appropriation act I see three bills for the relief of three several persons—one for the relief of Josiah Bryant, sheriff of Blue County, \$500; one for the relief of Albert Pike, \$261.75; one for the relief of Ben. Welsey, formerly sheriff of Atoka County, \$22.43; what was that appropriated for?—A. The amount for the relief of Josiah Bryant, sheriff of Blue County, was appropriated because he was ar-

rested by the United States marshal and taken to Fort Smith for killing two prisoners. He had arrested two men by the name of Stead-hams, and they attempted to escape and were killed. The United States marshal arrested these parties, claiming jurisdiction over them. This five hundred dollars was appropriated by the council out of the funds derived from the royalty on timber.

Q. How do you know that?—A. The law says so.

Q. Did you examine that law?—A. Yes, sir.

Q. You can swear that that was the exact fund?—A. The \$500 appropriation was. There was another fund.

By the CHAIRMAN:

Q. Which fund?—A. The national fund.

Q. Not the public-school fund derived from the United States?—A. No; from the royalty on timber, &c.

By Mr. GRAFTON:

Q. Were the other two reliefs paid out of the other funds?—A. Albert Pike, I think, was paid out of the same fund; as to the sheriff I do not recollect. The relief for Albert Pike was for abstract of papers from the Court of Claims at Washington, D. C.

Q. In all those three acts you think no money was appropriated out of the school fund from the United States?—A. I do not know that it was.

Q. Do you know how much the appropriation embraced within that act amounts to; have you ever added it up to see?—A. I have not.

Q. The entire appropriation, I believe, amounts to \$64,000. Now, the salary of trustees and superintendent of public schools is \$800. That is an expenditure for school purposes, is it?—A. Yes, sir.

Q. How is that expended?—A. I cannot tell you. I presume it is expended for school purposes.

Q. For school purposes out of the national royalty, \$7,000. Do you regard that as excessive?—A. No; I do not.

Q. Is there any complaint throughout the nation?—A. Yes, sir; a good many of the officers complain.

Q. I mean, do the people?—A. I have not heard of any complaints by the people.

Q. You stated in your testimony (page 12) that you had boarded some Chickasaw children who lived in the Choctaw Nation?—A. I did.

Q. Upon what occasion did you board them?—A. I boarded them upon that occasion; they were living some distance in the country, and they desired to come to school in our place. They were unable to get board anywhere else, and as some of them were children of friends of mine, I boarded them, and they went to school.

Q. How was the tuition paid?—A. I think it was paid by the Chickasaw Nation.

Q. Do you know how much it was per scholar?—A. Two dollars a month for each scholar.

Q. For how long a time?—A. As long as the schools run.

Q. Who sent these children to school?—A. Their parents. I had no special direction over them; they were there boarding, and the Chickasaw Nation was paying their board.

Q. Who paid the teachers?—A. I do not know who paid the teacher. He received a letter from the Chickasaws that the amount would be paid.

Q. That the amount would be paid to him?—A. Yes, sir.

Q. Has it not been the habit of the Choctaw Nation to pay two dollars a month for each scholar; and the habit of the Chickasaw Nation to pay more than that?—A. I do not know what the Chickasaw Nation pays; that is the amount paid in our nation.

Q. Did you ever pay the tuition of these children?—A. No, sir.

Q. It is not the custom for the Choctaw government to pay this tuition?—A. For the Chickasaws, I do not know that it is.

Q. You do not know anything about it, do you?—A. I do not know whether the Choctaws pay for the Chickasaw children or not.

Q. You do not know whether they do or not?—A. No, sir.

Q. I see on page 13 of the testimony you have submitted a letter from S. W. Marston, United States agent. Where did you get that letter?—

A. From Mr. McAllister.

Q. Is it in evidence?—A. I submitted it.

Q. How did he happen to give you that letter. Did he give it to you as ammunition to be used in this investigation?—A. I presume so.

Q. Was not that the object of it?—A. He knew I was coming here, and he gave it to me to be used in evidence in case I should be summoned as a witness.

Q. On page 9 of the testimony you submitted in evidence the following paper: "Figures won't lie. Report of an important finance committee, &c.," All you know about that is that it was taken from the "Star Vindicator"?—A. I know I took it from the records.

Q. You know you took it from the records?—A. Yes, sir.

Q. Did you compare it carefully?—A. Yes, sir; I had the records before me, and I copied it.

Q. Letter for letter and word for word?—A. Yes, sir.

Q. You stated you apprehended some fear of bodily harm, or something to that effect?—A. Yes, sir; I do.

Q. On account of testifying here?—A. Yes, sir.

Q. From whom?—A. Not from the people, but from the administration, and those connected with it. I have received letters from there within the last two days informing me that it would be dangerous for me to return home. Those parties are giving out the impression that I had forged the names of some fifty citizens to a petition and presented it to the committee as a petition in favor of a territorial government.

Q. The parties in power are elected by the people, are they not?—A. Yes, sir.

Q. Then you do not pretend to reflect the sentiment of the people, do you?—A. I pretend to reflect the sentiment of a good portion of the people, but the action of the chief in arresting those parties last summer without authority causes me to fear he may do the same thing now.

Q. Do you pretend to say that any person named in that writ had not been accused of crime, or was not the friend of some one accused of crime—the crime of murder; and between whom and the friends of the murdered man there was not a feud existing?—A. I claim there was no charges preferred through the proper authorities; that the writ was without authority of law. Those parties had no notice that any charges had been preferred against them. I do not know what the reasons were; the writ was issued by the chief, and there was no reasons given that I ever heard of.

Q. You are not prepared to say Governor Cole did not issue that writ

to prevent somebody being killed?—A. I do not know anything about that. There was no charges filed in our courts against those parties.

Q. How much stock do you own in the Osage Coal and Mining Company?—A. Three-sixteenth interest in the claim.

Q. What is the capital stock?—A. I am not interested in the company. I am interested in the claim as an owner of the mine. I do not know anything about the stock. There are four parties who own the claim.

Q. How much royalty do you get?—A. I get a half a cent royalty.

Q. How much does the nation?—A. The nation gets half a cent.

Q. You divided it equally?—A. Yes, sir; but we are entitled to that half cent under the law.

Q. What is the title to the lands of the Choctaws and Chickasaws?—

A. The Choctaws and Chickasaws hold lands in common.

Q. Are you prepared to say that the decision of the Supreme Court was not based upon the ground that the Choctaws had not joined in the act that land be held in common, but that every individual should have undivided interest in the whole?—A. The decision does not say so.

Q. Are you prepared to say that the decision does not say so?—A. The decision does not say so.

Q. Did you ever have any difficulty while clerk of the court about preparing the decisions of the court?—A. I did.

Q. Was any charge made that you did not write down the decision as the court had delivered it?—A. I do not remember about that. There was some difficulty about an appeal from the circuit court to the Supreme Court. The decision was rendered by the circuit court, and the parties neglected to ask for an appeal.

Q. Never mind about that. I want to know if this opinion of the circuit court was delivered in writing or was it verbally?—A. It was delivered first verbally and afterwards in writing.

Q. Who wrote it down?—A. That is a matter with which I had nothing to do. I never asked who wrote it. It was handed to me to be attested, filed, and issued upon.

Q. How much coal are they mining now?—A. I do not know exactly what the amount is they are mining. Less now than a month ago.

Q. How far are they from the railroad?—A. About three miles.

Q. Who gave authority for the construction of the railroad from McAlester out to the mines?—A. I do not know anything about it.

Q. The mines are more than a mile away from the railroad proper?—A. Yes, sir.

Q. Did you ever sell any whisky to Governor Overton?—A. No, sir.

Q. Did you ever sell any whisky to Colonel Harkins?—A. No, sir.

Q. Did you ever sell any to Reynolds?—A. No, sir.

By Mr. GARLAND:

Q. You spoke in reference to the law about selling whisky. You could not sell it except on the prescription of a physician. Is that law rigidly enforced by the authorities of the nation?—A. That law does give the physician the right to sell. The law says it shall not be lawful for any person or persons to introduce for their own use, or to sell, give, or barter any vinous, spirituous, or intoxicating liquors to any person or persons within the limits of the nation in any quantity whatever; and farther provides that the sheriff, light-horsemen, and constables of each county of the nation shall have the right to seize and destroy all barrels, &c., containing any liquors specified by this act. Some have had the right for twelve years, but the penalty has never been enforced.

There is a man by the name of Dr. Folsom who has had a license for several years. He is a Choctaw.

By Mr. HEREFORD:

Q. Where did General Sheridan get his authority?—A. Through the Secretary of War.

Q. Where did the Secretary of War get his authority?—A. Through the intercourse law, which provides that the Secretary can issue a license under certain provisions.

By Mr. GARLAND:

Q. Do you know of any other cases in which the authorities have failed to enforce the rule or law?—A. Dr. Jones and Dr. Moore sold it; the former selling at the present time.

Q. How long did you have a license?—A. I received a license in the latter part of January, and it was revoked on the 15th of March.

Q. On page 9 of the testimony the statement shows \$27,534 for school purposes out of the interest of the invested funds.—A. I think that is a standing appropriation.

Q. If you are sure about that state it; if not, state your recollection about it. Do you mean that that amount is a standing appropriation or must that certain amount be appropriated?—A. I think \$27,534 must be appropriated.

By Mr. GRAFTON:

Q. Must be appropriated?—A. Yes, sir.

By Mr. GARLAND:

Q. Mr. Grafton asked you a question in reference to the arrest of those parties. Please state to the committee, if you have any information, whether there was any intimation of a contemplated disturbance there at the time of the arrest between these parties.—A. I do not know that there was.

Q. Was there any impression that there would be a breach of the peace if they were not arrested?—A. I do not think there was.

Q. And the first you knew of it was the arrest that was made?—A. Yes, sir.

By Mr. GRAFTON:

Q. Will you please state the name of the person who was killed at McAlister station some years ago?—A. I believe his name was Jones.

Q. Were you living at McAlister station last July?—A. Yes, sir.

Q. You were there?—A. Yes, sir.

Q. Do you not know his brother came there on last July and put on this murdered man's clothes, and put a feather in his hat, and rode up and down there, and swore he was going to kill Reams?—A. I know he came back and got drunk, and said he was going to kill somebody. In the mean time, when sober, he came to me and said he did not want to kill any one.

Q. Was not Jones an intimate friend of Reams?—A. Yes, sir; and also of the others. He said he had nothing against them. He never made any threats against Pusley nor any against McAlister only when drunk.

Q. In whose store was it that the man was murdered?—A. There were two murdered.

Q. I mean the one in which Jones was killed?—A. I do not know who killed B. F. Jones. That was previous to my coming there. I heard he was killed in McAlister's store. That was in September, 1876,

and this other man, C. Jones, was killed last summer. Reams was not killed.

Q. Who killed him?—A. I do not know.

Q. Who was charged with the killing?—A. A man by the name of Davis or Ansley.

Q. Did they ever tell you the cause of the difficulty, or why Ream was brought into the difficulty in regard to that man?—A. They never did.

Q. On page 16 of the testimony you testify about the "land interest." What do you mean securing land in "severalty," and "homesteads so they can hold it?" Do I understand you to mean to say a majority of the people want that?—A. I believe they do.

Q. Do you not know that there is a provision in the treaty which provides lands can be secured to them through their council, and do they not know that?—A. I do not know that they do.

Q. It has been talked over in the nation, has it not?—A. Yes, sir.

Q. Do you not know that they know they can secure that whenever they want to by a request of their council?—A. I do not know whether they know it or not.

Q. You know it, do you not; you know, do you not, that under the treaty of 1866 it could be done?—A. I presume so.

Q. Did you come here on a railroad pass?—A. No, sir; I came on a railroad pass from home to Sedalia over the Missouri, Kansas and Topeka. That pass, however, was given on account of the paper for value received.

By the CHAIRMAN:

Q. Are you a newspaper man?—A. Yes, sir. I have never had a private pass from the railroad, as some of the others have had.

By Mr. ADAIR:

Q. Was not the revocation of your license to sell whisky due to the fact that you sold whisky to the railroad employes and some others of their friends, and they got drunk and got up a disturbance? Was it not revoked because the railroad employes and some citizens got drunk from drinking your whisky, and got up a fuss?—A. No, sir; there was not a man drunk there during the time I had it.

Q. Are you an adopted citizen of the Choctaw Nation?—A. I am a citizen by marriage.

Q. How long have you been a citizen?—A. About twelve years.

Q. Do you not find it easier to live there than you did to live in the States?—A. I do not know that it is.

Q. Don't you do better, live with less labor, have more money, and have less taxes to pay than you did in the States?—A. I do not know that I do.

Q. Don't you do better in the territory?—A. I do not know that I do.

Q. How many States have you lived in?—A. I have lived in four.

Q. Do not all have free access to the schools who are large enough to go?—A. No, sir.

Q. This warrant that was issued by the chief, do you not know that it was issued to protect Bob Ream?—A. I do not know what it was issued for.

Q. What has been the result of the affair; is it not all ended?—A. The result of it was that these parties made their escape and were away from home for two or three weeks, unable to come back, being apprehensive of their lives.

Q. Didn't they come back home?—A. Yes, sir; finally, by the intervention of some citizens.

Q. Was it not all settled?—A. It was all settled.

Q. Mr. Ream is there now, is he not, following his daily avocation? What does he do?—A. I do not know that he does much of anything. He is farming, I think, sir.

Q. Living in peace, is he not?—A. Yes, sir.

Q. The white people generally hold office there with the Indians, do they not?—A. Yes, sir; that is, the white citizens of the nation.

Q. Have you held office?—A. Yes, sir; I have.

By Mr. GRAFTON:

Q. Do you regard the class of white people who settle there as an average class of frontier settlers?—A. We have some very good men there and some very inferior ones.

Q. Is it not true the majority who go there in the employ of the railroad are not of the better class of people as a rule?—A. We have some very good classes of people there.

Q. Are there some very bad ones?—A. Yes, sir.

Q. Some who flee from the States and go into that country, and the Indians cannot get them out?—A. Well, I suppose they can get them out if they pursue the proper course.

Q. Are not the white people as a class in favor of dividing the lands?—A. Yes, sir.

GUS IVEY sworn by the chairman.

Examined by Mr. Garland:

Question. Where do you live?—Answer. Talequah, Cherokee Nation.

Q. What is your occupation?—A. I am publishing the Cherokee national paper.

Q. What is the name of the paper you are publishing?—A. The Cherokee Advocate.

Q. How long have you been there, and been engaged in that business?—A. I have been in the business four or five months probably.

Q. What is the extent of the circulation of your paper?—A. At present its circulation is nearly 2,500.

Q. In what sections of the country does it circulate besides the Nation in which it is published?—A. It circulates in every State and Territory in the United States.

By Mr. ADAIR:

Q. Mr. Ivey, you are pretty well acquainted with the people of that country, are you not?—A. Yes, sir.

Q. What is the general sentiment of the country, so far as you know, in reference to the change of government. Is there any considerable number who want a change?—A. I do not think there are twenty-five men in the Nation—if there are, they have never expressed themselves to me.

Q. How are the schools getting along?—A. I think they are getting along exceedingly well.

By Mr. HEREFORD:

Q. What proportion of the Cherokees can read and write?—A. The English language or their own?

Q. First the English language, and then their own.—A. I think one-half, at least, can read and write the English language.

Q. What proportion of their own?—A. Well, I think very near all the other half, that do not read and write the English language, can read and write their own.

Q. So that, taking them all together, you think nearly all can read and write?—A. Yes, sir; I think so.

By Mr. SAUNDERS:

Q. What proportion of the children, between the ages of five and twenty-one years, are attending school?—A. I cannot tell.

Q. You have some idea whether half, or less than half, have you not?—A. I think between one-half and two-thirds.

Q. What language is taught in these schools?—A. The English language altogether.

By Mr. HUBBARD:

Q. Are you a member of the tribe?—A. Yes, sir; I am.

Q. How long have you lived there?—A. About four or five months. I was there in 1868 and 1869.

Q. How many schools have you been in within that time?—A. I have been in several.

Q. How many?—A. In several.

Q. Where are they?—A. In different localities.

Q. What places?—A. Vinita, Talequah, and other places. There are three schools in Talequah.

Q. What schools in Talequah?—A. The male and female public schools, and the Talequah Seminary.

Q. Are there any other schools?—A. Yes, sir.

Q. What others?—A. Two or three on Cabin Creek, and there is one at Vinita.

Q. About how many attend these schools there?—A. Some have twelve, some have forty, some have one hundred and twenty-five or one hundred and thirty.

Q. How many were full-blood Indians?—A. Well, some were nearly full-blood Indians; those from the mountains, on the other side of the river, are full-bloods.

Q. In the schools at Talequah, how many are full-blood Indians?—A. I do not remember.

Q. Do you think there were any?—A. Yes, sir; I do.

Q. How many do you think?—A. I have no idea.

Q. You say one-half of the Indian children speak the Cherokee language in the Cherokee Nation?—A. I did not say that there was half exactly.

Q. What proportion?—A. I do not know exactly.

Q. What is your occupation there?—A. I am a printer.

Q. Editor also of the paper?—A. I write for the paper, sometimes.

Q. What salary do you receive?—A. I get about twenty-two dollars and fifty cents per week.

Q. Did you leave there for the purpose of testifying?—A. No, sir; I did not.

Q. Did you expect to testify when you came?—A. No, sir; I did not.

Q. How thoroughly have you traveled over the Cherokee country?—A. I have traveled all over it.

Q. All over it within the last four months?—A. No; before that.

Q. How much within the last four months?—A. Well, I have been two-thirds over it within the last four months.

Q. Have you seen two-thirds of the people?—No, sir; I am not positive about that.

Q. How many have you seen ?—A. I have seen all the representative men.

Q. You say there are not twenty-five people there who want a change of government ?—A. I do not think there are.

Q. Why do you think so ?—A. They do not express themselves as being in favor of any change.

Q. Have you any other reason ?—A. Yes, sir ; because they express themselves otherwise.

Q. Who, the chiefs and members of the council, &c. ?—A. I do not know the chiefs ; I am not so intimate with them. I am speaking of the representative men.

By Mr. SAUNDERS :

Q. What are the arguments they use against dividing the lands or holding them in severalty ? Is it because they are afraid it would pass off into the hands of other parties, or because they prefer to remain as a nation ?—A. I do not think they are prepared now for the change ; that is the main reason ; they all know the treaties by heart, and they depend upon the treaties ; they think a change will take place some time, and that is what they are preparing for.

Q. The Americans want to hold their property themselves, and I had supposed that the same thing would probably apply to the Indians in case they wanted to accumulate wealth ?—A. I think the Indians in the course of time, when they have been educated up to that standard, will desire to hold their property in the same way.

Q. Is it not as much from prejudice as from fear ?—A. No, sir ; they give very good reasons for their arguments ; they all reason very well on that subject.

By Mr. BOUDINOT :

Q. How old are you ?—A. I am about twenty-two years of age.

Q. Where were you born ?—A. In the State of Texas.

Q. In what part of Texas ?—A. In the eastern part of Texas, and was raised in Northern Texas.

Q. You say you spent 18 months in the Indian country in the year 1869. How old were you then ?—A. I do not know exactly ; I guess about eleven or twelve years of age.

Q. After that you went to Texas ?—A. Yes, sir ; I did.

Q. Where did you live ?—A. Whitman, Wood County.

Q. What was your occupation ?—A. I was a printer.

Q. How long did you live there ?—A. About two years, I think.

Q. Where did you go after that ?—A. I went to Bonam, in the State of Texas.

Q. How long did you live there ?—A. I lived there until I came to the Cherokee Nation.

Q. Then you came back about four months ago ?—A. I came back about five or six months ago.

Q. You think you are pretty well acquainted with the views of the nation ?—A. Yes ; for I have talked with the representative men of the people.

Q. Is Colonel Adair a relative of yours ?—A. Yes, sir ; he is a cousin of mine.

Q. Do you know whether he was a candidate for the council last summer ?—A. Yes, sir ; Colonel Adair and Mr. Leip were opponents.

Q. Who was elected ?—A. I cannot tell who was elected. Mr. G. W. Leip took the seat. There were two candidates. Mr. Chambers and Mr. Leip took their seats. Colonel Adair and Mr. Bell were defeated.

Q. They did not take their seats?—A. No, sir.

Q. Now, tell the committee if you do not know your uncle (Mr. Bell) is not in favor of holding the lands in severalty, in favor of a delegate to Congress, and in favor of establishing a United States court in the Territory?—A. He is in favor of the United States court. I have heard him express himself that way in reference to a delegate.

Q. Have you ever heard him express himself about dividing the lands in severalty and sending a delegate to Congress?—A. He did not so express himself when running for office.

Q. Did he not express himself openly in favor of dividing the lands in severalty; in favor of the establishment of a United States court, and in favor of sending a delegate to Congress?—A. No, sir; he left places to get out.

Q. Do you not know he advocated it on the stump, in speeches; and do you not know he was in favor of dividing the lands in severalty, and was opposed to holding the lands in common?—A. He might have advocated it.

Q. Do you not know he took entirely different ground from that taken by Colonel Adair?—A. I do not know that they were opposed upon those questions. I do not know that they made that the issue at all.

Q. You say both Colonel Adair and Mr. Bell were beaten. Do you know the difference between the votes?—A. The difference between the vote was some eight or ten or fifteen; somewhere along there. I do not know exactly.

Q. Do you say to this committee that there are not twenty-five people in the nation in favor of the establishment of the United States court, dividing the lands in severalty, and electing a delegate to Congress?—A. I mean *bona-fide* citizens—full-blood Indians. There are some sore-heads there who do.

Q. I am speaking of your uncle (Mr. Bell); he wants a court there, don't he?—A. Yes, sir.

Q. He came within ten votes of getting as many votes as Colonel Adair?—A. Yes, sir.

Q. You say there are a few sore-heads there. How is it he came within seven or ten votes of being elected?—A. I do not think he made this issue at all.

Q. You were not there?—A. Yes, sir; I was there.

Q. Did you hear any speeches he made?—A. No, sir; I read the substance of all his remarks in the papers. I do not think he made those issues at all; at least he so told me when I met him in Talequah.

Q. Can you tell the committee, or do you know from your own information, that the Cherokee council has repeatedly instructed the delegates to advocate the establishment of the United States court in that country?—A. Well, I do not know, but I think they have given those instructions.

Q. Do you not know that from time to time, and from year to year, heretofore, the delegates have been specially instructed, by act of their council, to advocate the establishment of the United States court?—A. I believe I have read instructions to that effect.

Q. Do you consider the council as sore-heads?—A. O, no.

Q. There is one class there in favor of the United States courts?—A. Yes, sir; in favor of the United States court, but the question was whether any were in favor of a radical change of government there.

Q. You think there is only a few in favor of dividing the lands in severalty, &c.?—A. I think so.

Q. Then you are unable to say positively that your uncle (Mr. Bell)

is opposed to the establishment of the United States court and division of the lands in severalty, and a modified form of territorial government?—A. Yes, sir.

Q. You are the publisher of the Cherokee Advocate?—A. Yes, sir.

Q. State to the committee how that paper is sustained.—A. It is sustained by the general fund of the Cherokee Nation.

Q. You are paid by the Cherokee Nation?—A. Yes, sir; we are paid by the Cherokee Nation.

Q. All the editors of the paper are paid out of the fund of the nation, and not from the income of the paper?—A. Yes, sir.

Q. The editors, then, and the printers and the compositors are all paid by the nation?—A. Yes, sir; it is a national concern.

Q. State whether any charges are made for the subscription to this paper by those who read the Cherokee language, or whether it is distributed free to those who read the Cherokee language.—A. Yes, sir; it is distributed free to those who read the Cherokee language.

Q. State to the committee if its columns are open to the free discussion of these questions.—A. I have never denied any one that privilege.

Q. Do you think you would publish my news and put them in the Cherokee language so that the people could read them?—A. I do not know, but I expect you are pretty near right about that. The paper is open to all the people—it is open to those in favor of their interests, and not contrary to their interests.

Q. Who decides that question?—A. The people decide that.

Q. Do you appeal to the people?—A. They differ in their local questions.

Q. Who is the editor of the paper?—A. George W. Johnston.

Q. Who was his predecessor?—A. W. P. Boudinot.

Q. My brother?—A. Yes, sir.

Q. Do you not know that he advocated a division of the lands in severalty and the modified form of government?—A. Yes, sir.

Q. Well, then, if the people decided that, how is it that there are only a few sore-heads opposed to that?—A. I think we had a practical demonstration of that fact, that he did not suit them by not being elected.

By Mr. CHAFFEE:

Q. You said a little while ago that you did not know whether this man who ran against your uncle took his seat or not. Is it not usual for the men who are elected to take their seats in the council?—A. Yes, sir.

By Mr. BOUDINOT:

Q. You say my brother, W. P. Boudinot, in advocating the division of lands in severalty, the establishment of United States court, &c., did not suit the people?—A. I say it was demonstrated in the last election. George W. Johnson beat him in the election.

Q. What was the vote?—A. It was a pretty close vote, the difference being only seven or eight.

Q. What was the number of the Cherokee council?—A. Thirty-two, I believe.

Q. How many in the upper house?—A. Eighteen, I believe it is.

Q. Then, upon that issue of dividing the lands in severalty, establishing a United States court and territorializing the country, the difference between the votes for each was only seven or eight?—A. He did not make that the issue exactly; but, then, at the same time, he was

beaten between five and seven votes. I think that is all; that is my recollection.

By Mr. GARLAND:

Q. I want to understand the plan of public printing. This newspaper Mr. Boudinot asked you about; how is this printing given to the paper? Is it by a board of public printers or by vote of the council?—A. It is given out by the auditor, who is elected by a vote of the council.

Q. Going back of that a little, just state what is the relation of the printing to the government there.—A. The first idea was that the government could do its own printing cheaper. After a while it was found to be a good thing, and they thought it would be a good medium through which to communicate with the people of all classes in the nation. They thought it would be a good idea on that account for the government to do the printing.

Q. Is the editor and all the operators connected with the paper elected by the council?—A. The printers are appointed by the editor, subject to the approval of the principal chief.

Q. Does the code give us this information?—A. Yes, sir.

Q. What were the issues between these various candidates for the council? Was there any issue made at all?—A. No, sir; not that I heard of.

Q. They ran as two gentlemen from different places?—A. Yes, sir; the issues were local.

By Mr. BOUDINOT:

Q. Didn't Boudinot run on the Ross ticket and Johnson on the Downing ticket?—A. Yes, sir.

Q. What was the difference in the parties and the votes for the candidates?—A. I do not know. I understood it was just a little local politics there.

By Mr. ADAIR:

Q. Don't you know your uncle, Jim Bell, is opposed to a territorial form of government?—A. I have heard him say so.

Q. Don't you know that the treaty of 1866 provides for sectionalizing or dividing our land whenever the council shall call for it?—A. I think it does. That has been my idea about it.

Mr. HUBBARD. What section?

Mr. ADAIR. The twenty-third section.

Mr. HUBBARD. What is its substance?

Mr. ADAIR. The treaty will show for itself.

By Mr. ADAIR:

Q. Don't the treaty of 1866 provide for the United States court in that country?—A. I think it does.

Q. Is it not your understanding that our delegation has tried to have this court opened there?—A. Yes, sir.

Q. Have we not reported that the territorial bills have interfered with our opportunities to pass the court bill?—A. That is my understanding.

Q. You spoke about the election in the Coowiscoowee district. Don't you know your uncle ran as a candidate opposed to territorializing the country?—A. I do not think he made any issue upon that at all. Perhaps he was opposed to it.

Q. Mr. Leip and Mr. Chambers were declared elected, and as far as you had any opportunity to learn their political tenets, were they not both opposed to territorializing the government?—A. Yes, sir; I have

heard Mr. Chambers express himself very decidedly on that point as being against it.

Q. He was against it?—A. Yes, sir.

Q. Were you acquainted with the members of the senate and house?

—A. Yes, sir.

Q. Did you ever hear any expression from them?—A. Yes, sir.

Q. Up in Talequah, have you not had conversations with the representative men of that country?—A. Yes, sir; I have talked to all, from the chief down.

Q. Speaking of the schools, you saw the school board every few days?

—A. Yes, sir.

Q. You conversed with them as to the condition of the schools?—A. Yes, sir.

Q. From your information you are satisfied the schools are in good condition?—A. Yes, sir; they are in excellent condition.

Q. Was it not generally understood if I had had my rights in the last senatorial election I would have been declared elected?—A. I have heard that stated.

Q. In running there was it not understood that all these parties were opposing me; the Ross party, the independents, and a portion of the Downing party?—A. Yes, sir.

Q. Was it not generally understood I ran upon my own strength as a people's man—as belonging to the people?—A. Yes, sir.

Q. Did I not make speeches to that effect?—A. Yes, sir; that is what I understood.

Q. Was it not understood that I beat Bell by 175 votes on a fair count?—A. I do not recollect about that. I understood that you beat him.

Q. Was it not generally understood I was swindled out of my certificate after I had beaten all those parties?—A. That is what I heard.

Q. Under our election law does not the law provide for three election-lists—one for general voters; one for those whose votes are contested, but who vote; one for those whose votes are contested and who do not vote at all?—A. I think it does.

Q. Was it not understood when they counted the votes in the Coomiscoowee district that Liep counted the votes? He was the clerk of the district, and it is the law that the clerk shall count the votes?—A. Yes, sir; that is the law.

Q. Leip was my opponent?—A. Yes, sir.

Q. Have you not heard that he counted the votes on the contested list that did not vote all?—A. Yes, sir; I have heard that.

Q. Was it not a fact of general notoriety that he did count as voting the names on that contested list when the votes were not voted?—A. Yes, sir; it was talked about right smart.

By Mr. GARLAND:

Q. State to the committee, from your knowledge and from mingling with the people, whether life and property is protected, and how the laws and peace regulations are enforced as compared with the States of which you have any knowledge.—A. In that respect I think the Cherokees are ahead of Kansas, Arkansas, and Missouri. I think a man has more safety there than in any of those States. There is less murdering, stealing, &c.

Q. You have no fears, then, but that the peace of society can be preserved there under their present rules and laws?—A. Not the least in the world.

Q. You have traveled from Tahlequah to different points in the nation from time to time?—A. Yes, sir.

By Mr. GRAFTON:

Q. Have you ever traveled over the Choctaw and Chickasaw countries?—A. Yes, sir.

Q. How long ago?—A. I was at Atoka four or five months ago.

Q. What was your observation as to the protection of life and property, and the general enforcement of the laws there?—A. I talked with several men there and they all seemed well pleased with it.

Q. Do you know of any disturbances there?—A. No, sir; I have not heard of any disturbance except that some white fellows killed Jones.

Q. That was by a white man, who moved in there and married?—A. That has been my impression.

Q. There is security for property in those nations?—A. I do not know particularly about the Choctaws. I only came through the nation.

Q. You do not know anything about the sentiment of those nations in respect to dividing the lands in severalty, &c.?—A. Nothing; only we get letters from there opposing it.

Q. What is their sentiment on that subject?—A. They look upon it just as we do. They seem to be enjoying life, and have good laws down there. They seem to be well pleased.

Q. They do not want any change in their local government?—A. None do who have written to me on the subject.

Q. What is the circulation of your paper in the Choctaw Nation?—A. I do not know exactly.

Q. Do you know what it is in the Chickasaw Nation?—A. We have quite a good list in the Chickasaw Nation.

By the CHAIRMAN:

Q. What do you call a good list?—A. Twenty-five or thirty subscribers in each town having a post-office.

By M^r BOUDINOT:

Q. You say you have been there four or five months?—A. Yes, sir.

Q. How much have you been absent from the nation? In what month did you arrive there?—A. I believe in October.

Q. You said that protection for life and property was as ample as in the border States?—A. Yes, sir; that is my impression.

Q. I presume you have heard of the assassination of Return Foreman?—A. Yes, sir; I have heard something about it.

Q. Do you know who killed him or that one of the parties was a member of the Cherokee council?—A. I never heard of that.

Q. Did you ever hear of one of the editors of the nation being shot one night?—A. I knew him.

Q. What was his name?—A. Richard Field.

Q. Who shot him?—A. I do not know who shot him.

Q. Was anything ever done or any proceeding taken in the matter?—A. I think they tried to find out who did it. They could not exactly fix the blame on any one, and no one was ever arrested.

Q. They never arrested anybody?—A. No, sir; not that I know of.

Q. Do you not know that several persons had to leave Tahlequah because they advocated a territorial form of government and the division of the lands in severalty?—A. No, sir; their own consciences made them leave; they imagined they had to leave. They just imagined somebody had something against them. They never have been hurt. They stay there now. One or two hold prominent positions there now.

Q. Do you believe a person could advocate the division of the lands in severalty, the sending a delegate to Congress, the modified form of government, and other reforms with perfect safety, or with as much safety as he could here in Washington City? Do you believe he could make a speech advocating these measures without endangering his life?—A. I believe you could go anywhere in the nation with perfect safety and do it.

Q. Do you not know your paper has referred to me as a traitor?—A. In a certain way it has.

Q. Do you not know your paper has closed its columns against me and that opinions have gone out to those people who do not read the English language?—A. I do not know; they believe you have been working against the interest of the people.

Q. Your paper has referred to me as a traitor—has used the term traitor?—A. We did not refer to you alone as a traitor. We referred to all who were trying to do us injury down there.

Q. Will you state to the committee what impression the people have in regard to my views?—A. Some give you credit of being honest in your views, and have a very great respect and high opinion of you.

Q. I am speaking of the impression created by your paper. What is their impression about my position in regard to these matters?—A. They do not agree with you, but at the same time I have not heard any one say he would hurt a hair of your head.

Q. But what is the impression of the people?—A. They think you want to divide the lands in severalty; and to get a territorial form of government.

Q. Then they think I am in favor of dividing the lands in severalty. Do they think that is sufficient to found a charge of that kind upon?—A. I do not know that they do.

Q. What else do I advocate that they object to?—A. Your territorial government.

Q. Do they object to a delegate?—A. Yes, sir; they object to that delegate to Congress. They think it would be a trespass upon their treaty stipulations.

Q. Don't you know the treaty provides they may have one?—A. Whenever they ask for it.

Q. The treaty provides Congress may give it to us whenever it sees fit. I am in favor of dividing the lands in severalty and of a United States court.—A. The people want a court.

By Mr. CHAFFEE:

Q. What is the understanding of the Indian people in reference to this court and the jurisdiction of the United States over these nations—A. Our understanding is that the treaty provides for that.

By Mr. HUBBARD:

Q. What do you mean by a United States court?—A. I mean where they try citizens.

By Mr. CHAFFEE:

Q. Do the Indians consider that the United States has jurisdiction over the nation?—A. Yes, sir.

By the CHAIRMAN:

Q. Without their consent?—A. No, sir.

Q. They are willing to consent to it?—A. I think they have instructed their delegates in that way.

By Mr. BOUDINOT :

Q. You say the people are in favor of anything the treaty provides for?—A. I do not know that they would object so strongly to anything that the treaty provides for.

Q. You say they favor a United States court because the treaty provides for the establishing of a court?—A. There might be some who would oppose it, but I think the people would acquiesce.

Q. The treaty has made a provision for a delegate to Congress. Don't you think the people would acquiesce in that also?—A. If they were to ask for it through their counsel.

Q. But if Congress should pass a law giving us a delegate without that consent?—A. I do not think they would acquiesce.

Q. Then you think they are opposed to that?—A. I do not think they consider Congress has that right.

Q. Do you think the people would object to that?—A. I think they would object to it now.

Q. Then they are opposed to carrying out the treaties?—A. No, sir.

By Mr. ADAIR :

Q. Do they differ as to the construction of the treaty?—A. Yes, sir.

Q. Don't they consider they are entitled to a delegate when they ask for it?—A. Yes, sir.

By Mr. BOUDINOT :

Q. Is that your construction of the treaty?—A. Yes, sir; that is the way I have construed it all the time.

Committee adjourned at 2 p. m.

WASHINGTON, D. C., April 19, 1878.

Committee met at 10.45 a. m., and was called to order by the chairman.

Senators Garland, Chaffee, Hereford, Grover, and Saunders present; delegates and counsel all present.

Dr. D. M. HAILEY recalled.

Examined by Mr. GARLAND :

Question. In your previous examination you stated you published a newspaper at McAlister, Choctaw Nation. Tell the committee if that is a copy of your paper. [Mr. Garland hands the paper to the witness.]—

Answer. Yes, sir; that is a copy of the paper.

Q. What is the name of the paper?—A. The Star Vindicator.

Q. How long have you been connected with that paper?—A. Since last fall.

Q. How long has it been published?—A. That is the fifth volume.

Q. Will you tell the committee what position your paper has taken upon these questions of the division of the lands in severalty, electing a Delegate to Congress, and of forming a territorial government proper over the Indian Territory?—A. We have advocated that policy in the paper.

Q. Those views have been advocated in the paper?—A. Yes, sir.

Q. How many subscribers have you to the paper?—A. I do not remember exactly. I think, however, between 700 and 800.

Q. Has your subscription-list been increasing since you have advocated these measures?—A. Yes, sir; increased 100 a day.

Q. One hundred a day; where were they from?—A. The Chickasaw Nation.

Q. All of them?—A. Yes, sir.

Q. Tell the committee whether that paper is supported in any other way; whether it receives any support except from its advertising and subscription?—A. No, sir; none.

Q. How many subscribers are there?—A. Between 700 and 800.

Q. How many subscribers are living in the Indian Territory?—A. I presume two-thirds.

Q. How many of those two-thirds, according to your best estimate, are properly Indians by blood?—A. I do not know exactly. That would be a hard matter to get at.

Q. Well, give the committee your best estimate.—A. Probably one-half.

Q. One-half of that two-thirds of the 700 or 800 who are Indians?—A. Yes, sir; I presume so.

Q. Do any Indians take your paper who cannot read the English language?—A. Yes, sir; we have to print one column every week in Choctaw.

Q. That is, you publish a portion of the paper in the Choctaw language?—A. Yes, sir; but a good many Choctaws speak the English language.

Q. Do you publish the same views in the Choctaw language in regard to these measures that you publish in the English language?—A. Yes, sir; we publish in both Choctaw and English what we advocate in regard to the division of lands in severalty, the establishment of a court, the sending of a Delegate to Congress, &c.

Q. You advocate the division of the lands in severalty, the establishment of a court, &c., do you?—A. Yes, sir.

Q. In what county do you live?—A. I live in Tobucksy County, Choctaw Nation.

Q. How many citizens of the United States are there in that county, where you publish your paper, who are not members of either the Choctaw or Chickasaw Nation?—A. I suppose some 500 or 600.

By the CHAIRMAN *pro tempore* :

Q. Can a citizen live there legally unless he marries an Indian woman?—A. Yes, sir.

Q. Under what provisions of the treaty are persons permitted to remain there?—A. Under the forty-third article?

Q. The forty-third article of what treaty?—A. The treaty of 1866.

Q. That provides what?—A. That provides that whites can remain there without being intruders.

Mr. GRAFTON. Had you not better submit that article of the treaty?

Mr. BOUDINOT. Yes, sir.

Mr. GRAFTON. What are its provisions?

The WITNESS. Its provisions are that:

(Art. 43.) "The United States promise and agree that no white person, except officers, agents, and employés of the government, and of any internal-improvement company, or persons traveling through or temporarily sojourning in the said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the nations of Choctaws and Chickasaws, according to their

laws, customs, or usages, but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations."

By Mr. BOUDINOT :

Q. Then you say there are about 600 there ?—A. I presume so ; probably more, probably less.

Q. Does that include men, women, and children ?—A. It is a large county, and there are a great many white men in that county that I know nothing about.

Q. Do you speak of men, women, and children ?—A. Including men, women, and children, probably there are more.

Q. How many more would you think ?—A. About 200 more.

Q. That would make how many ?—A. Eight hundred.

Q. Six hundred white men who are citizens of the United States, legal residents ; how many negroes are there ?—A. I suppose about 100 to 150. There are not a great many negroes in the county.

Q. Were they formerly slaves ?—A. Yes, sir ; some were and some were not.

Q. Tell the committee whether these negroes who live there have the right to vote.—A. No, sir.

Q. Sit on juries ?—A. No, sir.

Q. Send their children to public school ?—A. No, sir.

By the CHAIRMAN *pro tempore* :

Q. Do these white men send their children to the public schools ?—A. Sometimes they do.

Q. I refer to the 600 of whom you spoke.—A. In some instances they do. There are some schools which they support themselves. There is a school at the mines which the miners support themselves. There are probably 200 miners, and they have their own schools. In a few cases there are some who attend our schools.

By Mr. BOUDINOT :

Q. Is the testimony of the negroes used in the courts ?—A. No, sir.

Q. Of the whites, not citizens ?—A. No, sir.

Q. Can you give the committee an approximate idea of now many negroes there are who were emancipated by the treaty of 1866 in the Choctaw Nation ?—A. I do not remember what the number is.

By the CHAIRMAN *pro tempore* :

Q. Do I understand you correctly that these 600 white men, who are not citizens of the nation, are permitted to reside there under the forty-third article of the treaty, in some cases sit on the juries ?—A. No, sir ; they do not.

Q. They do not ?—A. No, sir.

By Mr. BOUDINOT :

Q. How many Choctaw Indians are there in your county ? You say about 800 citizens of the United States there—now, how many Choctaws ?—A. There are a great many Chickasaws in our county. The Choctaws and Chickasaws together make between 1,000 and 1,200. I

suppose probably about that number. This includes women and children.

Q. About how many whites live in your county who are members of the nation by marriage?—A. I should judge probably 150 white citizens.

Q. Do these white citizens of the United States who live in your county own property?—A. Yes, sir; more or less.

Q. Now, are there any local laws there by which to enforce contracts between those citizens of the United States and citizens of the nation?—A. No, sir; there is none.

Q. If a white man commits a trespass upon another white man in your county, where is the remedy in law? I will put it in another way: Suppose one white man kills another white man, is there any law in the Choctaw nation to punish him or bring him to trial?—A. No, sir.

Q. Is there any officer in the Choctaw nation who is authorized to issue a warrant for the arrest of a man in such a case?—A. No, sir.

Q. Where is a warrant obtained?—A. At Fort Smith.

Q. What is the distance from your town to Fort Smith?—A. Between 90 and 100 miles.

Q. Then in all criminal cases you have to go to Fort Smith, 90 or 100 miles, for any redress?—A. Yes, sir.

Q. In civil cases, such as disputes about property, there is neither local law nor United States law to regulate that, is there?—A. In such cases as that I think they are referred to the United States agent for a decision.

Q. What is his authority, anything except to remove a man from the Territory?—A. That is all. I do not know but that he has the right to settle up the estates of deceased persons, but in civil cases I do not know what power the law gives him.

Q. You asked in your former testimony whether you could be assured of protection in case you should make a full statement about all you knew of that country; will you tell the committee now whether you have received any information which you consider reliable that your personal safety is endangered because of the testimony you have given here?—A. I have received several letters from home to that effect from my friends there.

Q. That threats have been made against you on account of your testimony?—A. Yes, sir.

Q. Will you tell the committee, taking the white men not citizens and the white men who are citizens of the nation, and the negroes, what proportion these cases bear to the Indians proper; that is, take all the whites, negroes, women, and children, and tell this committee what proportion they bear to the Choctaw Indians by blood?—A. Well, I do not know exactly; there is a large difference. We have had no census for twelve years, and it is a difficult matter to get at those things.

Mr. BOUDINOT. In connection with this, if it is proper to do so, I would like to submit as part of the evidence in this case, an official estimate of these classes in the Indian Territory, made by the Commissioner of Indian Affairs. It will save a good deal of questioning.

Mr. GRAFTON. Does it state what volume of his report it is taken from?

Mr. BOUDINOT. It is in answer to a resolution of the House of Representatives calling for that information.

Mr. GRAFTON. Is it published in the House report?

Mr. BOUDINOT. Yes, sir. It is as follows:

[Report No. 95, Forty-fifth Congress, second session.]

"ELECTION OF DELEGATE FROM INDIAN TERRITORY.

"Mr. Throckmorton, from the Committee on Indian Affairs, submitted the following report (to accompany bill H. R. 2687):

"The Committee on Indian Affairs to whom was referred the bill (H. R. 979) to authorize the election of a Delegate to Congress from the Indian Territory, respectfully beg leave to submit the following report :

"The bill proposes to allow representation in Congress to the inhabitants of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations of Indians. These nations are located in the Indian Territory, and occupy reservations adjoining the States of Kansas, Missouri, Arkansas, and Texas. The aggregate area of these reservations is about eighteen millions of acres, comprising a territory somewhat larger than the State of Alabama.

"On the 13th day of November, we addressed a note to the honorable Secretary of the Interior, requesting such statistical information respecting the character of the population of these tribes as he might be able to furnish. We submit the letters of the Secretary and Commissioner of Indian Affairs, with the table of statistics, as a part of his report:

"DEPARTMENT OF THE INTERIOR,

"Washington, D. C., November 15, 1877.

"GENTLEMEN: I have the honor to acknowledge the receipt of your letter of the 13th instant, inclosing copy of H. R. 979, and requesting to be informed relative to the number, character, and wealth of the Indian tribes which the bill proposes shall be represented on the floor of Congress, together with such information respecting the schools of said tribes as will assist you in an examination of the merits of the bill.

"In reply, I transmit herewith a copy of a report, dated this day, from the Commissioner of Indian Affairs, and accompanying papers, which contain the latest and most reliable information upon the subject in the possession of the Indian Office. H. R. 979 is herewith returned.

"Very respectfully, your obedient servant,

"C. SCHURZ, *Secretary.*

"Hon. J. W. THROCKMORTON,

"Hon. MARTIN I. TOWNSEND,

"Subcommittee Indian Affairs, House of Representatives.

"DEPARTMENT OF THE INTERIOR,

"OFFICE OF INDIAN AFFAIRS,

"Washington, November 15, 1877.

"SIR: I have the honor to acknowledge the receipt, by reference for report, of a communication, dated the 13th instant, from Hons. J. W. Throckmorton and Martin I. Townsend, of the Committee on Indian Affairs of the House of Representatives, inclosing a copy of House bill 979, "to authorize the election of a Delegate to Congress from the Indian Territory," and requesting information relative to the numbers, character, wealth, and schools of the inhabitants of said Territory.

"In response thereto, I have the honor to submit herewith copy of a special report, inclosing statistical tables, made November 8, 1877, by Agent Marston, of the Union Agency, which embodies the latest and most reliable information upon the subject now in the possession of this office.

"I respectfully return the letter and copy of resolution submitted by Messrs. Throckmorton and Townsend.

"Very respectfully, your obedient servant,

"E. A. HAYT,

"Commissioner.

"The honorable the SECRETARY OF THE INTERIOR."

"OFFICE OF INDIAN AFFAIRS,

"UNITED STATES INDIAN AGENCY,

"Muskogee, Indian Territory, Nov. 8, 1877.

"SIR: In compliance with department instructions in letter of May 19, 1877, I herewith transmit the statistics of the five tribes in Union agency. I have used my best efforts to make as full a report as possible, and at the same time reliable. In doing this it may be proper to state that immediately upon the receipt of the above instructions I addressed a written circular to several of the most enterprising and well-informed men of each tribe, but only a comparatively few of them paid any attention to my request. But from what returns I did secure, and from other sources of information, I have been able to furnish, at this late date, the inclosed compilation of statistics, which I think are in the main correct.

"It is very difficult to obtain correct statistics of population and farming interests among these tribes, and the only way possible to do it would be to employ suitable persons in each tribe for the purpose; and even then the effort would be attended with many hinderances, specially the suspicion that it had reference to the opening up of the Territory.

"Very respectfully,

"S. W. MARSTON,

"United States Agent.

"Hon. E. A. HAYT,

"Commissioner of Indian Affairs, Washington, D. C."

"Statistics of Indian tribes in Union agency, Indian Territory, as near as can be estimated from census and papers in office of said agency.

Cherokees.	
Indians by blood	14,800
White Indians by marriage.....	700
Black Indians by treaty.....	3,500
	19,000
Creeks.	
Indians by blood.....	11,700
White Indians by marriage.....	60
Black Indians by treaty.....	2,500
	14,260
Choctaws.	
Indians by blood.....	14,700
White Indians by marriage.....	1,300
	16,000

<i>Chickasaws.</i>	
Indians by blood	5,600
White Indians by marriage	200
	5,800
<i>Seminoles.</i>	
Indians by blood (census 1877)	1,936
White Indian by adoption (census 1877)	1
Black Indians by treaty (census 1877)	506
	2,443
<i>Recapitulation.</i>	
Cherokees	19,000
Creeks	14,260
Choctaws	16,000
Chickasaws	5,800
Seminoles	2,443
Citizens, total number	57,503
<i>Cherokees.</i>	
Number of schools	78
Number of scholars—Indians, whites, blacks—aggregate number	3,000
Number of negroes who cannot speak English	None.
Number of Indians who can read in English or Cherokee	14,500
Number of negroes who can read	800
Cost of government :	
Education	\$79,000
Executive, judicial, and legislative	80,000
	159,000
Number in tribe	19,000
Number of mixed-bloods who talk English	6,000
Number of full-bloods who talk English	4,000
Number of white citizens	700
Number of negro citizens	3,500
Number of Indians who do not speak English	4,800
Number of negroes emancipated by treaty of 1866	3,300
Number of whites resident by permits United States	38
Number of whites resident by permits Cherokee authority, have no knowledge.	
<i>Creeks.</i>	
Number of schools	28
Number of scholars—Indians, whites, blacks—aggregate number	3,000
Number of negroes who cannot speak English	None.
Number of Indians who can read in English or Creek	3,000
Number of negroes who can read	500
Cost of government :	
Twenty-eight day-schools	\$12,000
* Two mission-schools	11,000
Pay members council	18,750
Pay judicial and executive officers and expenses of judiciary	13,000
Pay delegates to Government of the United States	6,000
Sending eighteen boys to school in States	3,500
	64,250
Number in tribe	14,260
Number of mixed-bloods who talk English	1,200
Number of full-bloods who talk English	5,000
Number of white citizens	60
Number of negro citizens	2,500
Number of Indians who do not speak English	5,500
Number of whites resident by permits of United States authority	76
Number of negroes emancipated by treaty of 1866	2,500
Number of whites resident by permits Creek authority, have no knowledge.	

* Discontinued the only female school (exclusively) in nation.

Choctaws.

Number of schools.....	56
Number of scholars—Indians, whites, blacks (none)—aggregate number.....	1,200
Number of negroes who cannot speak English.....	None.
Number of Indians who can read English, 5,000; in Choctaw, 5,000.....	10,000
Number of Indians who can read both English and Choctaw.....	7,000

Cost of government:

Members of council.....	\$7,000
Executive and judicial officers and expenses of judiciary.....	27,000
Education.....	29,000
	63,000

Number in tribe.....	16,000
Number of mixed-bloods who talk English.....	6,000
Number of full-bloods who talk English.....	2,000
Number of white citizens.....	1,300
Number of Indians who do not speak English.....	6,700
Number of negroes emancipated by treaty of 1866.....	4,000
Number of whites resident by permit of Choctaw authority, have no knowledge.	
Number of whites resident by permit of United States authority.....	42

Chickasaws.

Number of schools.....	13
Number of scholars—Indians, 400; whites, none; blacks, none—aggregate number.....	400
Number of negroes who cannot speak English.....	None.
Number of Indians who can read in English.....	2,500

Cost of government:

Executive and judicial officers.....	\$20,000
Legislative department.....	1,500
Education.....	21,000
	42,500

Number in tribe.....	5,800
Number of mixed-bloods who talk English.....	2,500
Number of full-bloods who talk English.....	500
Number of white citizens.....	200
Number of negro citizens.....	None.
Number of Indians who do not speak English.....	2,600
Number of negroes emancipated by treaty of 1866.....	2,300
Number of whites resident by permits United States.....	165
Number of whites resident by permits of Chickasaw authority, have no knowledge.	

Seminoles.

Number of schools.....	5
Number of scholars—Indians, 100; whites, none; blacks, 80; aggregate number.....	180
Number of negroes who cannot speak English.....	None.
Number of Indians who can read in English or Seminole.....	450

Cost of government:

Executive, judicial, and legislative.....	\$11,200
Education.....	2,800
	14,000

Number in tribe per census of 1877.....	2,443
Number of mixed-bloods who talk English.....	33
Number of full-bloods who talk English.....	6
Number of white citizens.....	1
Number of whites resident by permits of Seminole authority.....	35
Number of whites resident by permits of United States authority.....	6

Statistics of Seguoyah District, Cherokee Nation.

Indians who talk Cherokee only.....	500
Indians who talk both Cherokee and English.....	500
Indians who talk English only.....	200
Indians of mixed blood.....	700
Indians of full blood.....	500

White Indian citizens—42 male, 20 female.....	62
Negro citizens.....	100
Whites, intruders, 42; women and children 150, not reported.....	192
Negro intruders, 26; women and children 80, not reported.....	106
Citizens of the United States, resident by permit of Cherokee authority: Men 50; their families, women and children, 200.....	250
The Watts family, who have made proof of being Cherokees, but not yet admitted to rights, number.....	12

"They raise and have 50 bales cotton, 500 pounds each, making \$2,500; 4,000 bushels oats, \$1,200; 200 gallons sorghum, \$100; 100 head cattle, \$1,000; 30 head horses and mules, \$2,250; 400 head sheep, \$800; 150 head goats, \$150; 8 wagons, \$480; 200 hogs over one year old, 300 hogs under one year old, \$2,000; making a total of \$10,480, with 500 acres of land in cultivation.

" FULL-BLOODED CHEROKEES.

"One hundred farms in cultivation, 1,500 acres; in corn, 800 acres, average 30 bushels per acre; in cotton, 300 acres, average 300 pounds per acre ginned; in wheat 300 acres, average 15 bushels per acre; in oats, 100 acres, average 20 bushels per acre; 500 head cattle; 300 head horses and mules; 300 head sheep; 200 head goats; 800 head hogs over one year old; 1,200 head hogs under one year old; 1-horse grist-mill; 4,000 bushels potatoes, both Irish and sweet; 3,000 pounds of tobacco; 1,000 bushels fruit; 1,000 bushels turnips; \$1,000 worth of fur skins sold annually; \$2,000 worth of peltries and dry hides; 500 bushels pecans; 50 bushels berries, all kinds.

" MIXED-BLOOD CHEROKEES.

"One hundred and fifty farms, containing 3,000 acres; 2,000 acres in corn, average yield 30 bushels per acre; 500 acres in wheat, average yield 15 bushels per acre; 200 acres in oats, average yield 20 bushels per acre; 300 acres in cotton, average yield 300 pounds (ginned) per acre; 1,500 head cattle; 500 horses and mules; 800 sheep; 300 goats; 1,000 hogs over one year old; 1,500 hogs under one year old; 1 steam saw-mill; 7,000 bushels potatoes; 4,500 pounds tobacco; 3,000 bushels fruit; 750 bushels turnips; \$1,500 worth of peltries; \$2,000 worth of small furs; \$1,000 worth of dry hides; 500 bushels pecans; 25 bushels berries, of all kinds.

" WHITE CHEROKEE CITIZENS.

"Forty farms, 12,000 acres cultivated; 600 acres corn, average yield 30 bushels per acre; 300 acres wheat, average yield 15 bushels per acre; 100 acres oats, average yield 20 bushels per acre; 200 acres cotton, average yield 300 pounds (ginned) per acre; 2,000 bushels fruit; 2,000 bushels potatoes; 400 bushels turnips; 400 head cattle; 300 head horses and mules; 500 head sheep; 150 head goats; 400 head hogs over one year old; 800 head hogs under one year old; 1,500 pounds tobacco; 1 steam grist-mill.

"There are nine districts in the Cherokee Nation. This district is probably over an average in some things, and under it in others. Had there been funds in this office to have paid persons a fair compensation for services, statistics might have been obtained from every district; but, as there were none, statistics could not be obtained.

"It will be observed that these statistics do not include the number of white men with their families employed on the railroads in this Ter-

ritory, nor the number employed by the Indians of the tribes upon their farms, by the permission of the local Indian authorities, with the exception of one district. Neither is there any estimate of the amount of property owned by the railroads, their employes, and their laborers employed by the Indians.

"The Missouri, Kansas and Texas Railroad crosses the Kansas line into the Indian Territory and passes through the reservations of the Cherokee, Creek, Choctaw, and Chickasaw Nations into Texas, a distance of about two hundred and fifty miles.

"The Saint Louis and San Francisco Railroad enters the Territory from Southwest Missouri, and is completed to Vinita, in the Cherokee Nation, a distance of about forty miles.

"Altogether there are about two hundred and seventy-five miles of railroad completed within the limits of the five civilized nations, which employ in the aggregate several hundred men, who with their families must increase the population in these five tribes about twelve hundred. It is known that under the law and customs of these nations, white men are allowed to work upon the farms of the Indians under certain regulations made by the tribal authorities; the number of such white laborers must amount to several thousands, so that the total resident population of the five tribes may safely be reckoned at more than sixty thousand, divided as near as our imperfect statistics will justify, as follows:

Indians by blood:

Cherokees	14,800
Creeks	11,700
Choctaws	14,700
Chickasaws	5,600
Seminoles	1,936

Total number of Indians by blood..... 48,736

"There are white citizens of the United States who are members of the several nations by reason of marriage or adoption.

Among the Cherokees.....	700
Among the Creeks.....	60
Among the Choctaws	1,300
Among the Chickasaws	200
Among the Seminole.....	1

Total number of white citizens of the tribes..... 2,261

"In the treaties with the Cherokees, Creeks, and Seminole, made in 1866, the negroes who had before that date been slaves of those Indians were made citizens of the several tribes. There appear to be among these three tribes 6,506 negroes, who are members and citizens of the nation, and at the same time citizens of the United States. They are distributed as follows:

Negroes among the Cherokee	3,500
Negroes among the Creeks	2,500
Negroes among the Seminole	506

Negro Indians, total number.....	6,506
White Indians, total number	2,261

Total number of whites and negroes who are members of the three tribes.... 8,767

"The Choctaws and Chickasaws owned quite as many slaves as the Cherokees and Creeks; but though these Indians agreed in their treaty of 1866 that slavery should no longer exist among them, they did not adopt their former slaves as members and citizens of their tribes. We

should estimate the number of negroes in the Choctaw and Chickasaw nations, who are allowed by the treaty of 1866 to reside in those nations, but who are not members of the same, about 5,000, which is 1,000 less than is officially reported to be members of the Cherokee and Creek nations.

"To recapitulate the number and classes of the residents in the five civilized tribes, we find there are:

Indians by blood.....	48,736
White and negro members of the tribes.....	8,767
Negroes not members of the Chickasaw and Choctaw nations.....	5,000
Railroad employes.....	1,200
Other white residents of the five civilized nations.....	5,000
	68,703

"We observe from the statistics referred to that there are 21,962 Indians among the five nations who do not speak English, while the rest of the population speak and most of them read the English language. These latter number 46,741. This is a much larger English-speaking population than resided in any of the organized Territories in 1870, with the exception of the Territory of Utah, 86,786, and New Mexico, 91,874.

The other Territories, according to the census report of 1870, numbered as follows:

The Territory of Washington.....	23,955
The Territory of Montana.....	20,595
The Territory of Idaho.....	14,999
The Territory of Dakota.....	14,181
The Territory of Arizona.....	9,658
The Territory of Wyoming.....	9,118

"Allowing for an increase of population in all these Territories, it is not probable that any of them exceed in numbers or wealth at this date the five civilized tribes who will be granted representation in Congress under this bill. Each of these five nations, with possibly the Seminoles, have a regularly organized form of government, with written constitutions and codes of laws; they have their legislatures, called by some 'councils,' composed of an upper and lower house, the members of which are elected every two years from the various districts or counties into which the nations are divided. These governments are supported in great part from the interest on their funds, which are held in trust for them by the United States.

"The United States hold in trust for the Cherokees about \$2,500,000. Of the interest on this amount they expend for purposes of education the sum of \$79,000; and for executive, judicial, and legislative purposes, \$80,000; total, \$159,000. They have 78 schools and 3,000 pupils. The pay of the Cherokee delegates we suppose is included in the executive and legislative account.

"The Creeks have 28 public schools and two mission schools, costing \$23,000, with 1,200 pupils. They pay the members of their council per annum the sum of \$18,750; to their judiciary, \$13,000; delegates to Washington, \$6,000; sending 18 boys to schools in the States, \$3,500; mission schools, \$23,000; total expenses of the Creek Nation, \$64,250.

"The Chickasaws have 13 public schools with 400 pupils, costing the sum of \$21,000; they pay their executive and judiciary \$20,000; and their legislative department, \$1,500; total, \$42,500.

"The Choctaws have 56 schools with 1,200 pupils, costing \$29,000; they pay their council \$7,000, and their executive and judiciary \$29,000; total, \$65,000.

"The Seminoles have 5 schools with an attendance of 180, for which they pay the sum of \$2,800; the cost of their government is \$11,200; total, \$14,000.

"On the 3d day of March, 1877, a written report was made to the House by the Hon. Mr. Seelye, a member of the Committee on Indian Affairs, in relation to the formation of a territorial government for said tribes. Among other valuable information to be found in that report, the following extract is selected to show something of the cost the Indians are constrained to incur in order to have their affairs properly understood at the seat of government. The extract says:

"It also appears that an expenditure which sometimes reaches \$25,000 a year is made by this (the Cherokee) nation in the support of delegates at Washington. This large amount is expended by the Cherokee Nation alone, and does not include the money expended by the other four nations which maintain delegates at Washington every year."

"It must be plain to every one that a single Delegate, chosen from the members of these tribes, upon the floor of Congress, would have a great deal more official influence than the combined delegations they are in the habit of sending, and that many thousand dollars would be saved to the tribes every year.

"We are reliably informed that the Chickasaws have at the present time a delegation of three persons. A delegation of four has been appointed by the Creek council, while the Cherokees, Choctaws, and Seminoles will each send as large a delegation, making a delegation of nineteen to represent 58,000 people at Washington.

"We think we have demonstrated that, as far as population, wealth, and intelligence go, these five civilized tribes of Indians should be allowed a Delegate in Congress; but, in addition to all this, there are special treaty stipulations with some of these tribes looking to the very legislation which this bill provides.

"Article 9 of the treaty made with the Cherokees in 1785 reads as follows:

"That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress."

"Article 7 of the Cherokee treaty of 1835 reads as follows:

"The Cherokee Nation having already made great progress in civilization, and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition, as well as to guard and secure in the most effectual manner the rights guaranteed to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the Government of the United States toward the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same."

"Article 8 of the Choctaw and Chickasaw treaty of 1866 provides for the assembling of a legislature in the Indian Territory, which has been known as 'the grand council.' Congress for several years appropriated money to pay the members of this legislature or council; but as Congress neglected to provide for the other branches of a government, which seemed to be necessary to make the legislature of utility, no appropriation has been made for a year or two, and in consequence the council has not convened. It is provided in the ninth section of said eighth article that 'Whenever Congress shall authorize the appointment of a Delegate from said Territory, it shall be the province of said

council to elect one from among the nations represented in said council.

"We do not find any special stipulation of treaty providing for a Delegate to Congress from the Creek or Seminole nations, but, situated as they are, between the Choctaws and Cherokees, it seems eminently proper that they should be allowed a voice in the selection of the Delegate which has been solemnly promised by treaty to the Choctaws, Chickasaws, and Cherokees.

"We think that it is time that the promise made to the Cherokees forty-two years ago, and to the Choctaws and Chickasaws eleven years ago, should be carried out by Congress.

"We believe that the advancement made by these tribes in civilization, the progress in all that tends to elevate a people, and the good that will result to them in the future, justify and require this action on the part of the government.

"Your committee, therefore, report a substitute for the bill, which contains the main features of the bill referred, but which goes more into detail as to future elections of the delegate, and recommend its passage.

"DEPARTMENT OF THE INTERIOR,

"OFFICE OF THE SECRETARY,

"Washington, D. C., January 15, 1878.

"SIR: I have the honor to acknowledge the receipt of your letter of the 31st ultimo, making certain inquiries, with a request for information upon the following points, viz:

"First. "How many, or about how many, citizens, black and white, of the United States, are members of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw tribes of Indians, by marriage and adoption, and the provisions of the treaties of 1866?"

"Second. "How many Indian tribes or bands are at present living on reservations in the Indian Territory, who have been declared by treaty or statute to be citizens of the United States?"

"Third. "How many reservations were taken by Choctaws under the provisions of the 4th article of the treaty with the Choctaws of 1830?"

"Fourth. "How many reservations were taken by Cherokees under the provisions of their treaties; article 8 of treaty of 1817, and article 12 of treaty of 1835?"

"In reply I have respectfully to invite your attention to the enclosed copy of a report dated the 14th instant, from the Commissioner of Indian Affairs, to whom your letter was referred, which contains, it is believed, all the information upon the points presented, in the possession of this department.

"Very respectfully,

"C. SCHURZ,

"Secretary.

"Hon. D. W. VOORHEES, *United States Senate.*

"DEPARTMENT OF THE INTERIOR,

"OFFICE OF INDIAN AFFAIRS,

"Washington, January 14, 1878.

"The honorable Secretary of the Interior:

"SIR: I have the honor to submit herewith the following report upon the letter of the 31st ultimo, referred by you to this office, from the

Hon. D. W. Voorhees, relative to United States citizens who have become members of Indian tribes in the Indian Territory :

“In reply to the first inquiry in said letter, I have to state that it appears from a report made by Agent S. W. Marston, under date of November 8, 1877, which is the latest and most reliable information this office has upon the subject, that the following numbers of citizens of the United States have become members of the Indian tribes hereinafter named, to wit :

White citizens of the United States who have become citizens of the Cherokee Nation by marriage	700
Freedmen who were made citizens of said nation by article 9 of the Cherokee treaty of July 19, 1866 (vol. 14, p. 799, Stats. at Large).....	3, 500
White citizens of the United States who became Creeks by marriage.....	60
Freedmen who were made citizens of said nation by the 2d article of the Creek treaty of June 14, 1866 (vol. 14, p. 785)	2, 500
Citizens of the United States who became citizens of the Choctaw and Chickasaw Nation by marriage under the provisions of article 38 of the Choctaw and Chickasaw treaty of April 28, 1866 (vol. 14, p. 769)	1, 500
Citizens of the United States who have been adopted into the Seminole tribe of Indians	1
Freedmen who became citizens of the Seminole tribe under article 2d of the Seminole treaty of March 21, 1866 (vol. 14, p. 755)	506
Total	8, 767

“In reply to the second inquiry in Senator Voorhees’s letter, you are informed that by the 1st article of the Ottawa treaty of June 24, 1862, (vol. 12, p. 1237), it was provided that ‘The Ottawa Indians of the United bands of Blanchard’s Fork and Roche de Bœuf having become sufficiently advanced in civilization, and being desirous of becoming citizens of the United States, it is hereby agreed and stipulated that their organization and their relations with the United States as an Indian tribe shall be dissolved and terminated at the expiration of five years from the ratification of this treaty ; and from and after that time, the said Ottawas, and each and every one of them, shall be deemed and declared to be citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall in all respects be subject to the laws of the United States, or State thereof in which they may reside.’

“Before the time had elapsed for the Ottawas to become citizens under this article, the treaty of February 23, 1867, was concluded between the United States and the Senecas, Shawnees, and other bands of Indians (vol. 15, p. 513), in which a certain tract of land in the Indian Territory was ceded by the Shawnee Indians to the United States, and sold by the United States to the Ottawa Indians.

“It was also stipulated in the 17th article of said treaty that “the provisions of the Ottawa treaty of 1862 under which all the tribe were to become citizens upon the 16th of July, 1867, are hereby extended for two years, or until July 16, 1869,” allowing, however, those members of the tribe who desired their proportion of the tribal funds to become naturalized citizens of the United States at any time prior to that date.

“There are now residing on the land thus acquired in the Indian Territory one hundred and forty of these Indians who became citizens of the United States on the 16th of July, 1869. (See decision of the department of March 9, 1872.)

“The third article of the Pottawatomie treaty of November 18, 1861 (vol. 12, p. 1191), authorized the President upon becoming satisfied that the adults, who were heads of families and allottees under the 2d article of said treaty, were sufficiently intelligent and prudent to control their

affairs, to cause the lands severally held by such persons to be conveyed to them by patents in fee-simple, and at the same time to cause to be paid to them their *pro rata* share of all moneys, &c., held by said tribe or in trust for them. It also provides that when said patents were issued and said payments ordered to be made, each competent person should cease to be members of said tribe, and should become citizens of the United States.

“The first article of the treaty of March 29, 1866 (vol. 14, p. 763), extended the above provisions to all adult persons of said tribe, without distinction of sex and regardless of their being heads of families.

“Provision was made in the first article of the treaty of February 27, 1867 (vol. 15, p. 531), for the selection of a home for said tribe in the Indian Territory.

“Article 6 of said treaty declared that the provisions of the treaty of 1861, relative to the Pottawatomies becoming citizens of the United States, should continue in force with the additional provision:

“That before patents shall issue, and full payments be made to such persons, a certificate shall be necessary from the agent and business committee, that the applicant is competent to manage his own affairs.”

“Those of the Pottawatomies who were parties to this treaty, became citizens of the United States, and removed to the home selected for them in the Indian Territory; but upon application being made for a patent for said land, the Secretary, on the 16th of March, 1872, declined to order the same, upon the ground that the treaty required the land to be patented to the nation, and as the Pottawatomies had all been naturalized citizens of the United States, there was no longer a tribal organization in existence to which the land could be patented.

“The act of Congress, however, approved on the 23d of May, 1872 (vol. 17, p. 159), authorized the Secretary of the Interior to issue certificates of allotment to the members of the band in severalty, with the condition that “said Pottawatomie Indians shall neither acquire nor exercise under the laws of the United States any rights or privileges in said Indian Territory other than those enjoyed by the members of the Indian tribes lawfully residing therein.”

“There are now 1,600 Pottawatomies, who have become citizens of the United States, residing on said land in the Indian Territory.

“The first article of the Wyandotte treaty of January 31st, 1855 (vol. 10, p. 1159), after stating that the members of said tribe had become sufficiently civilized and desired to become citizens of the United States, stipulated that their organization as an Indian tribe should be dissolved, and that they should at the date of the ratification of said treaty become citizens of the United States to all intents and purposes. “But such of the said Indians as may so desire and make application accordingly, to the commissioners hereinafter provided for, shall be exempt from the immediate operation of the preceding provisions, extending citizenship to the Wyandotte Indians, and shall have continued to them the assistance and protection of the United States, and an Indian agent in their vicinity for such a limited period or periods of time, according to the circumstances of the case, as shall be determined by the Commissioner of Indian Affairs; and on the expiration of such period or periods, the said exemption, protection, and assistance shall cease; and said persons shall then also become citizens of the United States, with all the rights and privileges and subject to all the obligations above stated and defined.”

“Those Wyandottes who were embraced in the list of those who desired to be exempt from the operation of the provisions of the above

treaty in regard to members of the tribe becoming citizens of the United States and their descendants; those families the heads of which were not competent and proper persons to be intrusted with their share of the moneys, &c., of the tribe and their descendants, and those who were orphans at the date of the treaty of 1855 and their descendants, acquired a home in the Indian Territory under article 13 of the treaty of February, 1867 (vol. 15, p. 513), and were reorganized into a tribe in accordance with the provisions of said article on the 30th of May, 1871. At the time of the reorganization, there were twenty-four of those who desired to be exempt from the operation of the treaty of 1855 and their descendants, fifteen of incompetents and their descendants, and forty-one of those who were orphans at the date of the treaty of 1855 and their descendants.

"During the year 1872 there were adopted into the tribe one hundred and forty-five Wyandottes, who had become citizens of the United States, under the treaty of 1855, and they now reside with their brethren in the Indian Territory.

"I have to state in answer to the third inquiry that there were about thirteen hundred and forty-nine reservations taken under the fourteenth article of the Choctaw treaty of September, 1830 (vol. 7, p. 335), but the Indians were forced to abandon the large portion of these reservations and take land scrip in lieu thereof, under the provisions of the act of Congress approved August 23, 1842 (vol. 5, p. 513).

"This information is obtained from very old files and records of this office, and their genuineness cannot be ascertained with absolute certainty without a research involving much time and labor. It is believed, however, they are reliable.

"Referring to the fourth inquiry in Senator Voorhees's letter, you are advised that it appears from a copy of the register of Cherokees who desired to remain east of the Mississippi, made by their agent, Return J. Meigs, the original of which is too much worn and torn to be intelligible, that about three hundred and six Cherokees elected to take reservations under the treaty of July 8, 1817 (vol. 7, p. 156), nearly all of whom, however, were deprived of the same by State laws, as was the case in Georgia, or by the general government.

"As to the reservations taken under article 12 of the Cherokee treaty of December 29, 1835 (vol. 7, p. 478), you are respectfully referred to the first article of the supplementary treaty concluded March 1, 1836 (vol. 7, p. 488), in which all rights to the same were relinquished and declared void.

"The letter of Senator Voorhees is herewith returned.

"Very respectfully, your obedient servant,

"C. W. HOLCOMB,
"Acting Commissioner."

By Mr. GRAFTON:

Q. How many subscribers have you to your paper residing in Tobacco County?—A. I think about 125.

Q. Are all your subscribers members of the Choctaw and Chickasaw Nations?—A. No, sir.

Q. How many of them are?—A. Well, I suppose my answer before was two-thirds.

Q. Never mind your answer before. If you know how many there are in those nations, answer?—A. I do not want my answers to conflict.

Q. What is your answer now?—A. Two-thirds; that includes the whole Territory.

Q. Do you say two-thirds ; is that your answer ?—A. No ; I wish to make a correction. I intended to say there is two-thirds in the Territory, and that a majority of that two-thirds is in the Choctaw and Chickasaw Nations.

Q. How many of those two-thirds are members of either of those nations ?—A. Of the Choctaw and Chickasaw tribes, well, I presume at least two-thirds of that number.

Q. What are your means of information ?—A. My only means of information is our books. This is a rough estimate based upon my habit of making up the mail, &c., for the paper.

Q. State how the books will show that.—A. I kept the number of papers sent to each post-office, and the names.

Q. Suppose you receive an order for your paper from Atoka to-morrow ; have you any means, by reason of that fact, unless you know the man, of knowing that he is a member of the Choctaw and Chickasaw Nations ?—A. We have means of knowing whether he is a Choctaw or a white man, because we know most of the people.

Q. Unless you knew the man you would not know otherwise ?—A. No, sir.

Q. Are you personally acquainted with two-thirds of that 700 or 800 people ?—A. No, sir ; I know many of them by reputation.

Q. How many do you know by reputation ?—A. I do not know exactly how many.

Q. Give an estimate ?—A. I do not think I can give any estimate.

Q. Can you give any estimate at all ?—A. No, sir.

Q. The fact is, you do not know much about it ?—A. I know what I have stated about it, by giving a rough estimate of what I supposed to be the number.

Q. You have no means of knowing whether that is correct ?—A. Yes, sir ; I have.

Q. Will you please state it ?—A. I have means by the books. I can make an estimate by reference to the books which show the names of the parties, and then tell exactly.

Q. Have you made such reference ?—A. No, sir ; I was making a rough estimate of it, forming my judgment from making up the mail-matter.

Q. You form your judgment, then, just from the number of papers you send to the different post-offices ?—A. Not only from that, but also from the papers sent out.

Q. When did you last examine the list ?—A. Just before I left home. I assist in making up the mail every week.

Q. Did you examine the list with a view of ascertaining how many were members of the Choctaw and Chickasaw Nations ?—A. No, sir ; I did not. I did not know such a question would be asked me.

Q. What proportion of your subscribers live along the line of the railway through the country ?—A. I suppose outside of our place 250.

Q. How many have you in your place ?—A. From Vinita to Colbert Station there are some eight or ten post-offices ; that is, outside of our post-office.

Q. How many subscribers to your paper are white people ?

The WITNESS. White people, not citizens ?

Mr. GRAFTON. White people who are citizens ?

The WITNESS. White people who are citizens ? Well, I do not know. Do you mean the nation or the Territory ?

Mr. GRAFTON. I am asking generally. I do not care where they are. You know all about this list. I want to see how much you know.

The WITNESS. I did not say I knew all about it. I was only giving a rough estimate of it.

Q. Well, then, how many are white people who are citizens?—A. I do not know how many exactly.

Q. You do not know?—A. I do not know how many.

Q. How many white people not citizens?—A. I think possibly about one-third.

Q. But all this is only your impression?—A. Just my impression; our books will show that.

Q. Then it is a mere matter of impression. You do not pretend to testify to any accurate number at all?—A. No, sir.

Q. Have you ever advocated in your paper, either in Choctaw, Chickasaw, or English, a form of government for those nations which will abolish their present tribal organizations, regulations, laws, privileges, and customs as they are at present?—A. I do not think that I have.

Q. State whether you have or not.—A. I have no personal knowledge of it.

Q. Are you the editor of the paper?—A. I am one of them.

Q. How long have you been connected with the paper?—A. Since last fall some time.

Q. What proportion do you own?—A. I own a half interest.

Q. One-half interest?—A. Yes, sir.

Q. Who own the other half?—A. Mr. McPherson.

Q. Who is he, a citizen of the nation?—A. A white man; a citizen of the nation, he having married a Chickasaw.

Q. What is the probable worth of the press, types, and materials there?—A. I suppose about \$1,200 or \$1,500.

Q. That is amount of capital invested?—A. Yes, sir.

Q. What are the terms of subscription per year?—A. One dollar and a half.

Q. Payable in advance?—A. That is the rule.

Mr. CHAFFEE. Mr. Grafton, I think you had better go on with matters that are relevant to the investigation.

By Mr. GRAFTON:

Q. What is the population of the other fifteen counties as compared with Tobucksy County?—A. Some are smaller.

Q. You do not know about it?—A. I will say in reference to its population I think we have gained more in our county than in the other counties; but we are a small county outside of that, and our county has increased within the last twelve years where the others have not.

Q. Is there any special reason for that?—A. Yes, sir; in the development of the mines and agricultural pursuits of the county the white population has been brought in.

Q. To work the mines?—A. Yes, sir; and a great many came in for agricultural purposes; and I think we have a larger average of white population than the other counties.

Q. You have said that about 1,000 or 1,200 Choctaws and Chickasaws live in that county. Does that include men, women, and children?—A. Yes, sir.

Q. What are your means of knowing?—A. By traveling through the county.

Q. When was a census taken?—A. Not for ten or twelve years.

Q. There has been submitted here in evidence a statement of number of citizens of the various counties of the Choctaw Nation; an official statement. When was that gathered?—A. I think last summer. The

agent sent around notices to get up a census. We have had no official officer of our nation to take any census for the last ten years.

Q. So that information is based upon reports from those with whom you have corresponded?—A. From the letters.

Q. Did you furnish any information to him?—A. No, sir; because I was occupied with something else.

Q. You have testified in reference to the laws. Are you a lawyer by profession?—A. No, sir; I have a license to practice law. I did it for my own protection.

Q. You do not pretend to be familiar with the laws?—A. No, sir; not as a lawyer.

Q. From whom did you receive those letters threatening you?—A. I do not care to answer that question from the fact that it might place the writers in some position that would jeopardize their safety.

Q. I think if there is anything of that kind these people ought to be dealt with for it. Did you receive any letters from Tandy Walker?—A. No, sir.

Q. From any of the Pusleys?—A. No, sir. But I must decline to answer further any question of this kind.

Mr. SAUNDERS. What is the object of finding out by whom those letters are written?

Mr. GRAFTON. The object is that there is a small association of persons there who are in favor of dividing the lands in severalty, territorializing the government, &c., and these letters are written by those parties in this arrangement, and I undertake to say he has no such letters except from those parties.

The WITNESS. I will submit the letters to the committee privately, but I desire them not to be made public.

Mr. SAUNDERS. If a man has had his life threatened, I can see why it might not be proper to have him publish that to the world without some object in the matter.

Mr. GRAFTON. He has been publishing a newspaper in which he has advocated these views, &c.

By the CHAIRMAN *pro tempore* :

Q. Do these letters come from parties in favor of a territorial government?—A. They come from some of the parties who are in favor of dividing the lands in severalty; they favor a court and a delegate, but I do not know whether they favor a territorial government or not.

By Mr. GRAFTON :

Q. They all represent Colonel Boudinot's views?—A. I do not know what his views are.

Q. They represent the view you have been advocating in your paper?—A. Yes, sir.

Q. Do you say Tandy Walker has not written you a letter?—A. No, sir.

Q. Have you seen any letter?—A. I have.

Q. Was there any warning in that letter?—A. I do not care to state it.

Mr. GRAFTON. I should like the committee to decide whether he shall answer the question and give the names.

Mr. GARLAND. I suppose the witness might give the letters to Mr. Grafton, and let him see them and see if that answers his purpose or not.

The CHAIRMAN *pro tempore*. The witness states he has received letters

from certain parties; that it would be unsafe for him to testify before this committee upon the views he entertains upon the question of dividing the lands in severalty, &c., and that the letters are from those parties favoring the division of the lands, as I understand it; that answers all the purposes Mr. Grafton wants.

Mr. GRAFTON. No, sir; that does not answer the purpose.

Mr. CHAFFEE. You want to show that they coincide with his views in reference to the division of the lands in severalty, &c.

Mr. GRAFTON. It goes a little further than that. There is an effort being made to form a territorial government down there. Gentlemen of the committee will recollect there is a coal-mine there, in the hands of certain individuals, as shown in the testimony, and that the nation claims a royalty of a half cent a bushel for coal from that mine; and these individuals think they ought to have that half cent, and for that reason they have a grievance against the nation, and that is what animates and directs them, in all these things, in their efforts to have a territorial government. I undertake to say that if the names are disclosed, there is not one of them who is not interested in that thing.

The CHAIRMAN *pro tempore*. If he had received no letter at all it would make no difference.

By Mr. GRAFTON :

Q. Is it not a fact you think you ought to have a half a cent royalty ?

—A. That is what the royalty says.

Q. Who is interested with you in those matters ?—A. Pusley, McAlister, Walker, and others.

Q. You stated in your evidence that you had a one-eighth interest ?—A. I own three-sixteenths.

Q. How much does Mr. Pusley hold ?—A. Mr. Pusley, as administrator for his sister, holds one-half. Mr. Walker owns one-eighth.

Q. I believe you had your license here to sell whisky. I would like to see it.

[Clerk hands the license to Mr. Grafton.] Will you say you have never violated this in the sale of whisky ?—A. Yes, sir; I have never violated that license.

Q. You never have ?—A. No, sir; never.

Q. Who is the physician upon whose prescription you sold whisky ?—A. Several: Dr. Smith, Dr. Harris, and others.

Q. You received prescriptions from all ?—A. Yes, sir.

Q. There was no particular physician to issue these prescriptions ?—A. No, sir; none.

Q. I think you stated, in your evidence, there were a good many United States marshals over that county who were arresting people without warrants, &c. ?—A. There was; but there are not so many now as a few years ago.

Q. Was it not their habit to make an arrest on the spot, without going to Fort Smith for a warrant ?—A. Two years ago they did; but now they have no right to do it. During the building of the railroad they carried writs with them in blank that they filled up. They require, now, a writ from Fort Smith.

Q. Do you know of any Choctaw who is opposed to a United States court ?—A. I do not know that I do.

Q. The treaty of 1866 provides for it, and the whole nation consents to it, does it not ?—A. I have heard no objection to it. I will state to the committee, so far as the establishing of a United States court is con-

cerned, the treaty of 1866 provides for that, and the nation does not object to anything that the treaty provides.

Mr. BOUDINOT. I should like to introduce in evidence the 8th article of the treaty.

Mr. GRAFTON. I object to your putting it in during my cross-examination.

Mr. BOUDINOT. If they are in favor of the treaty, they are in favor of a territorial government.

WASHINGTON, D. C., April 19, 1878.

WILLIAM PUSLEY sworn by the chairman *pro tempore*, and examined :

By Mr. BOUDINOT :

Question. What is your name ?—Answer. William Pusley.

Q. Where do you live ?—A. Within seven miles of McAlister.

Q. In the Choctaw Nation ?—A. Yes, sir.

Q. What is your age ?—A. I believe I will be twenty-six this coming June.

Q. Where were you born ?—A. Buck's County, Choctaw Nation.

Q. Have you lived there all your life ?—A. Yes, sir ; in that county and in Gaines County together.

Q. Are you a Choctaw Indian by blood ?—A. Yes, sir.

Q. How much Choctaw blood have you ?—A. I do not really know ; my father was a half-breed, and my mother was a full-blood.

Q. Have you ever run for office in your county ?—A. Yes, sir ; I did once or twice.

Q. For what office ?—A. For representative to the Choctaw council.

Q. State whether you were elected or not.—A. I was not elected.

Q. How near did you come to being elected ?—A. The first time I got beaten by two votes.

Q. The second time by how many ?—A. By one vote.

Q. Tell the committee how many votes were polled.—A. About 110 the first time.

Q. How many the second time ?—A. About 135.

Q. Is that about the voting population of the county ?—A. Yes, sir ; because they all do not seem to get around to the election.

Q. Tell the committee, when you were making that canvass for the Choctaw council, whether you advocated the division of the lands in severalty ?—A. Yes, sir ; that is what I advocated ; they all knew it ; I talk Choctaw better than I do English.

Q. You made your speeches in their own language and advocated the division of the lands in severalty ?—A. Yes, sir.

Q. Do you know Ellis Fulsom ?—A. Yes, sir.

Q. Tell the committee what his standing is in the nation.—A. His reputation is good ; he stands well.

Q. He holds office there ?—A. Yes, sir.

Q. What office does he hold ?—A. He is supreme judge of the court.

Q. Has he ever been a member of the council ?—A. Yes, sir.

Q. Does he advocate the same views you do in regard to these questions ?—A. Yes, sir.

Q. Is Mr. Fulsom an Indian by blood ?—A. Yes, sir ; more than I am.

Q. Does Mr. Fulsom ever write articles in his paper in the Choctaw language advocating these views ?—A. Yes, sir ; he does.

Q. He is known as being an advocate of these views you have mentioned?—A. Yes, sir.

Q. Has he any interest in the mines there?—A. No, sir; none.

Q. Do you know Allen Wright?—A. Yes, sir; I know him.

Q. Is he a Choctaw?—A. Yes, sir.

Q. What proportion Choctaw blood is he?—A. He is very nearly full-blood.

Q. He talks the language also?—A. O, yes.

Q. What are his views?—A. His views are the same as those of Ellis Fulsom.

Q. Is he a man of education?—A. Yes, sir.

Q. He has a good education?—A. Yes, sir.

Q. Tell the committee if Allen Wright has held office in the Choctaw Nation.—A. Yes, sir; I believe he was once principal chief.

By Mr. HUBBARD:

Q. Did he hold these views at the time he was elected?—A. Yes, sir.

Q. Did he announce them publicly?—A. I do not know exactly about that, because I live in one corner of the nation and do not really know exactly.

Cross-examined by Mr. GRAFTON:

Q. You do not know whether Mr. Wright advocated them or not? You do not know whether he advocated the division of lands in severalty or not?—A. No, sir; not exactly.

Q. Do you know whether Judge Fulsom did or not, when he made his canvass?

WITNESS. Of whom are you speaking, Ezekiel Fulsom?

Mr. GRAFTON. No, sir; Ellis Fulsome. Do you know whether he advocated it or not?—A. No, sir; I do not know. I know he is supreme judge now. That was several years ago.

Q. When was he elected?—A. Some six or seven years ago.

Q. Do you know how the chief justice is elected—whether by the people or by the council? Are they elected by the people?—A. Yes, sir.

Q. They are?—A. Yes, sir.

Q. How long ago was Mr. Fulsom elected?—A. I do not know exactly how long.

Q. Since the war?—A. Yes, sir.

Q. About 1866, was it not?—A. No, sir; since then, I believe. I do not recollect exactly.

Q. But you do not know whether that was in issue or not. Who ran against him?—A. I do not know that.

Q. Did you ever advocate the division of the lands in severalty, &c., outside of your county?—A. No, sir; not outside of my county.

Q. What proportion of the vote you received were white members of the nation when you were a candidate?—A. About one-half.

Q. About one-half the votes you received were white men?—A. Yes, sir.

Q. How many voted against you?—A. About one-half.

Q. What are your means of knowing?—A. Well, I know how many votes I got. I do not know from my personal knowledge. I know from the reports of the men who managed the election. That is all the means I have of knowing.

Q. You received a letter from Tandy Walker?—A. Yes, sir.

Q. Did he not say in that letter it would be unwise for Dr. Hailey to

come home?—A. I do not recollect; probably he said that; I do not know.

Q. What did he say on that point?—A. Shall I tell you every word in my private letter?

Q. No; just upon that point—whether Dr. Hailey would be in personal danger?—A. He said they were cutting up like they usually do, just because the doctor and I had come on to Washington; they say you have gone to advocate the passage of the Territorial bill, &c. That is about the amount of it.

Q. So Tandy thinks the people are opposed to it?—A. Of course.

Q. Do you apprehend you will be in any personal danger when you return?—A. From a few I think I may be. I am not afraid of the general mass of the people.

Q. Have you ever known anybody to be killed there by reason of advocating the view you do?—A. I do not know that anybody has been killed.

Q. You cannot recall a single case to mind where anybody has been killed?—A. No.

Q. Do you know of anybody who has been imprisoned for advocating those views?—A. No, sir.

Q. Do you know of anybody who has lost their property by reason of having advocated those views in any of the nations?—A. Well, I do not know about the whole nation; of course, the Territory is very wide.

Q. Well, within your own neighborhood; that is all you are speaking about?—A. I do not think there has been any in my nation.

Q. Have their children been denied admission to the public schools by reason of their having advocated these views?—A. No, sir; not that I know of.

By Mr. BOUDINOT:

Q. Will you tell the committee if you know T. J. Bond?—A. Yes, sir; I know him very well.

Q. Was he a Choctaw Indian by blood?—A. Yes, sir.

Q. How much?—A. About one-half.

Q. What position did he hold in the Choctaw Nation?—A. I believe he was superintendent of the public schools.

Q. Were you at Caddo some two years ago when I was invited to make a speech there on this subject?—A. No, sir; I was not there.

Q. Were you at Atoka when I was invited to make a speech there?—A. No, sir; I was not in Atoka.

Q. Tell the committee if Dr. T. J. Bond does not entertain the same views that I do.—A. Yes, sir.

Q. Do you know G. W. Harkins?—A. Yes, sir.

Q. Is he a Choctaw or Chickasaw?—A. He is a Choctaw.

Q. Does he entertain the same views that I do?—A. That is what I have understood through other parties.

By Mr. GRAFTON:

Q. Do you know what views Colonel Boudinot entertains in regard to these questions?—A. No, sir; I do not really know exactly.

By Mr. BOUDINOT:

Q. Do you not know that I am in favor of establishing a United States court?—A. Yes, sir.

Q. Of a Delegate to Congress?—A. Yes, sir.

Q. You know I am in favor of dividing lands in severalty?—A. Yes, sir.

By Mr. GRAFTON:

Q. What lands?—A. I do not know.

Q. How do you know Dr. Bond entertains these views?—A. I have heard him talk.

By the CHAIRMAN *pro tempore*:

Q. Do you know of any considerable portion of the Choctaws and Chickasaws who entertain these same views; if so, what proportion in your judgment?—A. About—well I could not state exactly. I do not really know exactly what proportion entertain these views.

Q. Are there half?—A. There are a good many. I do not know whether half or over half.

By Mr. ADAIR:

Q. Does the Choctaw and Chickasaw treaty provide for the survey of their lands?—A. I suppose it does.

Q. Is not that a question that is settled by the treaties?—A. Yes, sir.

Q. Are you in favor of a Territorial government being established over that country by the United States?—A. Well, not exactly at once.

Q. Well, just state to the committee whether you are in favor of a Territorial government being established over that country. Do you want a United States Territorial government?—A. No, sir; not exactly a Territorial government. Not at once, I do not.

Q. Do you want it at all?—A. Not exactly.

Q. The treaties provide for a court; that is a separate provision. The treaties are opposed to a Territorial government. Now, are you in favor of a Territorial government being established over the Territory?—A. Well, in some ways I am. I do not know whether I do want a Territorial government of the United States established there.

Q. Are you in favor of all these bills that are here?—A. I do not know exactly whether I am or not.

Q. Are you in favor of changing your government and having a government of the United States established over us there?—A. Yes, sir; I would like a change.

Q. Do you want a Territorial government?—A. No, sir; I do not think I do.

Q. How do you know Dr. Bond wants a Territorial government?—A. never heard him say that.

Q. Does Tandy Walker want a Territorial government over that country?—A. No, sir; I do not think he does.

Q. If you know of anybody in that country who wants a Territorial government established over that country, please tell the committee who they are.—A. Well, I do not know any.

Q. You do not know of any?—A. I do not know of any; no, sir.

By the CHAIRMAN *pro tempore*.

Q. Do you know of any parties who want any change in the present situation of affairs there?—A. Yes, sir; there are some—a good many, so far as I can learn—would like to have a change of some kind.

Q. For the purpose of having a better government?—A. Yes, sir; a better government for the security of life and property.

By Mr. ADAIR:

Q. A good many want courts established?—A. Yes, sir; they want courts established.

Q. A good many people want the lands sectionalized according to the treaties, don't they?—A. Yes; I suppose they do.

Q. The Chickasaw lands have been surveyed, have they not?—A. I have understood so.

Q. Under the treaty of 1866?—A. Yes, sir; I guess they won't object to that.

Q. You have never been in favor of setting the treaties aside, have you?—A. No, sir.

Q. You know of nobody in that country who wants to set the treaties aside, do you?—A. No, sir.

By Mr. HEREFORD:

Q. Are you in favor of having the nation admitted and governor appointed by the President, and of electing a Delegate to Congress, as is done in the other Territories of the United States?—A. Yes, sir.

Q. What proportion of your people are in favor of that?—A. I do not know exactly how many; I could not say.

Q. Half of them?—A. I do not know but that there may be half if it were left to a vote of the people.

By Mr. GRAFTON:

Q. You want to abandon the habit of electing your own officers to govern you, do you?—A. Well, I do not know whether I want to abandon that exactly. But of course it would be the same as in the States, would it not?

Q. No; it would not be the same as in the States. In the States the people elect their governor. In the Territories the public officers are appointed by the President, and the people have nothing to do with it. Now, what I want to know is whether you want to allow the President here to appoint anybody he sees fit as your governor, secretary of state, &c., and as your judges?

Mr. BOUDINOT. You are misleading the witness.

Mr. GRAFTON. I beg your pardon; I am not misleading him.

Q. What I want to know is, in the Territories the judges who administer the laws, the governor, &c., are appointed by the President; do you want to abandon the habit of electing your chief, and allow him to be appointed by the President?—A. I do not know that I do.

Mr. SAUNDERS. I do not think that is a fair way to put it, whether he wants to abandon the election of his chief. He might like to have it the same as in the other Territories, the same as the whites.

Mr. HEREFORD [to the witness.] In the Territories, where they are inhabited by the whites, the President appoints the governor, the judges, the United States marshal, the United States district attorney, and the general officers of that kind. The people elect their members of the legislature, their county judges, their sheriffs, constables, justices of the peace, and officers of that class. Are you in favor of that kind of government being extended over your nation, leaving to you the election of your Delegate to Congress, the election of your members of the legislature, your sheriffs, constables, county judges, the justices of the peace, and these general officers, such as the governor, secretary of state, and United States marshals, to be appointed by the President? Are you in favor of that kind of government?—A. Yes, sir.

By Mr. GRAFTON:

Q. How many Choctaws do you think are in favor of allowing the President to appoint a governor instead of electing one?—A. I cannot say exactly how many.

Q. Do you know of any except yourself?—A. No, sir; not put to them in that way. I have talked with a great many who want a change.

Q. You do not pretend to say you know of anybody except yourself?

—A. Of course, I cannot swear to it.

By the CHAIRMAN *pro tempore* :

Q. Is Colonel Boudinot in favor of that kind of government?—A. I think he is.

By Mr. GARLAND :

Q. Colonel Adair asked you about the Oklahoma bills; have you read those bills?—A. No, sir.

By Mr. GRAFTON :

Q. Will you please state your reasons for desiring this change of government?—A. Well, we have got less security there; our laws are run over by our high authorities; they arrest parties and run them away from home. Of course we have no recourse to punish them for it. That is one reason why I desire a change.

Q. Is that the only reason?—A. That is one of them.

Q. Please state the others.—A. Well the others is about the timber and coal there. We are entitled to so much royalty on timber under the laws, but the national agent collects half of that.

Q. Does the same objection apply to the stone-coal?—A. Yes, sir.

Q. Those are your principal reasons for desiring a change?—A. Yes, sir.

Q. In regard to persons being illegally arrested and being run away from home, &c.?—A. I was arrested last summer myself.

Q. What do you know of any others being arrested?—A. Well, there was a man arrested at Atoka; I do not know what for.

Q. Your principal reason is, you think your rights are violated under your present system of government; your right to sell timber, coal, &c.?—A. Yes, sir; we have that right under our laws.

Q. You think your rights in this respect are violated, and this is the gravamen of your objection, is it not?—A. Yes, sir.

Q. You think a majority of the people are against you, and therefore you would like Congress to interfere and establish some other kind of a government?—A. Yes, sir.

By Mr. ADAIR :

Q. Have you a corporation to work the coal-mines in that country—coal companies?—A. Indians?

Q. Yes, sir. I mean do you have companies organized under your own laws to work the coal-mines in that country?—A. We have a law creating a national agent; the companies have a right to make a contract with the Indians, and then the national agent approves it. Then the company works the mines.

Q. Do you belong to one of those companies?—A. No, sir.

Q. Are you in any wise connected with the timber business there?—A. No, sir.

Q. Do you have corporations there organized for the purpose of selling coal and timber to the public?—A. No, sir; we have no regularly organized company.

Q. How are those coal-mines worked?—A. They are leased by the individuals under the constitution; it is approved by the national agent.

Q. Is there a certain royalty paid to the Choctaw government?—A. Yes, sir.

Q. Are those companies making any profit from working the mines?

—A. I do not know whether they are or not.

Q. You would suppose they are or they would stop?—A. Yes, sir.

Q. Are they molested in any way?—A. Not that I know of.

Q. They are going along in perfect harmony?—A. Yes, sir.

Q. You stated the people were safe in their persons and property. If the people are safe in life and property, why is it you want a change of government?—A. I did not say I was safe.

Q. Why do you want a change of government?—A. Because my governor had me arrested and run me off into the mountains.

Q. Were you hurt when he had you in custody?—A. No, sir.

Q. You were liberated?—A. I dodged, and got away.

Q. You staid there afterwards?—A. I staid away awhile and then came back. I sent some of my friends to see the governor, and he sent word if I came back into my county he would not arrest me.

Q. What were you charged with?—A. I do not know; it was not stated.

Q. You had been engaged in no scrape or fuss, had you?—A. Not that I know of; no, sir.

Q. No charges were brought against you?—A. There were charges brought against me, but I got clear of them.

Q. Before or after that?—A. Before.

Q. You do not know whether the governor had charges against you?—A. No, sir; he might have had.

Q. Was there not a good deal of excitement, swearing, some difficulty, some one cut?—A. There was a little difficulty in our town.

Q. Do you not know that the governor sent for you in order to keep you from being mobbed?—A. No, sir; I do not know that.

Q. You do not know that he wanted to take charge of you and keep you from being hurt?—A. No, sir.

Q. Didn't he tell you he was sorry you ran off, that he wanted to protect you?—A. No, sir; I never heard that.

Q. Your schools are getting along pretty well, are they not?—A. Yes, sir; I believe so.

Q. You do not hear of any big rows down there now?—A. No, sir.

Q. No putting down of the law, &c.?—A. No, sir; not now.

Q. Everything is getting along smoothly?—A. I believe so.

Q. The people are farming on their farms?—A. Yes, sir.

Q. Raising stock, cattle, and living peacefully?—A. Yes, sir.

Q. Prospering in their pursuits?—A. Yes, sir; prospering some.

By Mr. GRAFTON :

Q. Were you sent for from home to come here and testify?—A. No, sir; I was subpoenaed here in Washington.

Q. Did you come here on other business?—A. On private business; yes, sir.

Q. What was it?—A. Just to see the people and the advantages of civilization.

Q. Had you been written to by anybody to come here with a view of testifying?—A. No, sir.

Q. Your friends suggested you should come here and testify?—A. No, sir; I did not come to testify. My friends did not know that I came. I came with Dr. Haily.

Q. You do not know anything about the postal funds?—A. No, sir.

WASHINGTON, D. C., April 19, 1878.

SAMUEL DOWNING sworn by the chairman *pro tempore*.

Examined by Mr. ADAIR.

Question. Please state to the committee where you were born, in what year you were born, and how old you are.—Answer. I was born in the year 1848. I was raised in the Cherokee Nation.

Q. Are you a son of the late Chief Lewis Downing?—A. Yes, sir; I am.

Q. Are you well acquainted with the people of the Cherokee country?—A. Yes, sir; I am.

Q. You speak both the Cherokee and English languages, do you?—A. Yes, sir; I do.

Q. Are you acquainted with the leading Cherokee men?—A. Yes, sir; I know nearly all of them.

Q. Are you very well acquainted with the people of the Cherokee country?—A. Yes, sir; I am.

Q. Do you know any of the people in that country that are in favor of a change of government—in favor of the Territorial form of government being established over the Cherokees by the United States?—A. I do not think I do. I am not positive about that.

Q. Are not the laws generally well administered?—A. Yes, sir; they are.

Q. When people violate the laws are they punished for it, tried and punished by regular court proceedings?—A. Yes, sir; they are.

Q. How are our schools conducted; are they getting along well?—A. They are getting along very well.

Q. You have not heard of any complaints?—A. None at all.

Q. Last year we had 75 schools and the council provided for 10 more. We have about 85 schools, have we not?—A. I do not know exactly how many there are. There were several added last fall.

Q. Do the half-breed Indians have the same access to our schools that the others do?—A. Yes, sir; all are placed on an equal footing—half-breeds and all.

Q. Are not most of our pupils attending the common schools full-blood Cherokees?—A. Yes, sir.

Q. Are the high schools—the male and female seminaries—getting along very well?—A. They are.

Q. You have been to Tahlequah and have visited them?—A. Yes, sir; occasionally.

Q. The orphan school; how is that getting along?—A. Very well.

Q. We have a home for the deaf, dumb, blind, and lame; tell the committee where that is situated.—A. About seven miles from Tahlequah.

Q. How is that getting along?—A. Very well. I was there a few days just before I left.

Q. These schools, that is, the seminaries, are they not free to the people of our country?—A. Yes, sir; except in the highest branches; there is a higher department of the school, where they pay for their board; tuition, &c., free; and everything else is free.

Q. Have we a jail in which we put our convicts?—A. Yes, sir.

Q. Tell the committee whether we have punished anybody by putting them in there or not.—A. Yes, sir; there were 23 in jail when I left; that has been nearly four weeks ago; some full-bloods and some half-breeds.

Q. Anybody else in there?—A. Some white men.

Q. What had they been doing—stealing?—A. Yes, sir; stealing horses, and one white man was put in for knocking a woman in the head with a chair.

Q. From all the information you have in reference to the sentiment of that people in that country, are you not satisfied that the people as a mass are decidedly opposed to the Territorial form of government being extended over them by the United States?—A. Yes, sir.

Cross-examined by Mr. BOUDINOT:

Q. What is your present occupation?—A. I am a translator for the Cherokee Advocate newspaper.

Q. Tell the committee how many subscribers you have to that paper?—A. I cannot tell exactly, because I have not examined the books.

Q. About how many?—A. Well, of course I can make a guess.

Q. Of course, tell as near as you feel justified in doing; give your best impression.—A. There are between 1,200 and 1,500 subscribers.

Q. How many of those are distributed free without charge—about how many?—A. About 600; but I am not positive about that.

Q. The paper is sent free to the Cherokees who do not read the English language?—A. Yes, sir.

Q. Were you in Tahlequah when Return Foreman was killed?—A. Yes, sir; I was.

By the CHAIRMAN *pro tempore*:

Q. Is that paper supported in chief or in part by the Cherokee Nation?—A. Yes, sir; the government supports it.

By Mr. BOUDINOT:

Q. Tell the committee if the term "Territorial government" is not in this newspaper constantly represented to the people to mean the destruction of their homes—the taking away of their lands and giving them to the railroads, &c.?—A. I believe so; that is the impression they get.

Q. That is the impression they have?—A. I believe that is the way they understand it.

Q. You say you were present at Tahlequah when Return Foreman was killed?—A. Yes, sir; I was there.

Q. Who killed him?—A. Alex. Colston and another man, Sam Osage, a member of the council.

Q. Was the council in session at the time?—A. Yes, sir.

Q. Tell the committee if Osage was arrested?—A. I do not know; I do not know whether Return Foreman shot him; some one else shot a little way from them.

Q. Was any arrest made for that murder?—A. No, sir; I think not.

By the CHAIRMAN *pro tempore*:

Q. What was alleged as being the reason for the shooting?—A. Some private personal difficulty.

By Mr. BOUDINOT:

Q. Do you remember the occasion when the Board of Indian Commissioners visited Muscogee to organize a council there?—A. Yes, sir; I do.

Q. What is the distance from Muscogee to Tahlequah?—A. About 25 miles.

Q. Did you ever see me there?—A. Yes, sir.

Q. You were present there?—A. Yes, sir.

Q. Tell the committee if I had not prepared a statement of my views upon the question of dividing the lands in severalty, establishing a United States court, and sending a Delegate to Congress, which was presented to the counsel at that time?—A. I was not present before the commission at all. I believe I do not remember seeing the statement.

Q. From your knowledge of the Cherokees, tell the committee if you do not know a great many prominent men who are in favor of dividing the lands in severalty, in favor of sending a Delegate to Congress, and in favor of the United States courts?—A. I heard a few so express themselves.

Q. You do not know of your own knowledge, then, that a majority are opposed to it?—A. No, sir; I know but a few.

Q. They are all in favor of the court?—A. No, not all; but then they won't object to the court.

Q. Tell the committee if you know Dr. Harris?—A. Yes, sir, I know him.

Q. He is a relative of yours by marriage, is he not?—A. Yes, sir; a brother-in-law.

Q. Spencer Stevens; did you know him?—A. Yes, sir.

Q. Is he a Cherokee?—A. Part Cherokee.

Q. What position does he hold in the nation?—A. He used to be superintendent of the public schools; he has been teaching school for the last year or two.

Q. Tell the committee if he did not feel it unsafe to remain after the adjournment of that council at Muscogee, and did he not go to Kansas on that account?—A. Yes, sir.

Q. Tell the committee whether there were any charges against them except the presentation of these views at that time; that is, the sending a Delegate to Congress, establishing the United States courts, &c.?—A. I believe that was all—that was one part of it; there was personal feeling against them right in their neighborhood.

Q. Do you know Richard Fields?—A. Yes, sir; I am well acquainted with him.

Q. Do you know whether he was shot?—A. I was told he was. I was not present.

Q. Do you know of anybody being arrested or tried for that?—A. No, sir; I do not.

By Mr. GARLAND:

Q. Have you examined the bills that have been introduced in Congress, the bill to organize the Territory of Oklahoma, &c.?—A. No, sir I have looked over them, but have not read them closely.

Q. What is the sentiment in the country as to the theory of an elective government of that character?—A. I do not believe the people would agree to it.

Q. Has it been a matter of discussion in that shape—in the shape of the Oklahoma bill?—A. The people discussed it among themselves; yes, sir.

Q. There is freedom of discussion allowed, is there? There is no one in that country that is not favorable to those bills who would not tolerate a full and free discussion of them?—A. I do not think they would hurt any man for discussing the subject.

By Mr. ADAIR:

Q. Was not this difficulty between Return Foreman and Sam Osage a personal difficulty? Was it not understood that it grew out of a personal feud?—A. Yes, sir.

Q. Was not Sam Osage killed afterward ?—A. Yes, sir ; he was.

Q. Was he not supposed to have been killed by Joe Lynch, a brother-in-law of Return Foreman ?—A. Yes, sir.

Q. Was Joe Lynch not tried and acquitted ?—A. Yes, sir.

Q. You alluded to Alexander Colston ; has he not been killed too ?—A. Yes, sir.

Q. Have the parties been tried who were charged with killing him ?—

A. Yes, sir ; they were tried.

Q. So these things are all settled up according to law ?—A. Yes, sir.

Q. There was not much made by either party in the row ?—A. No, sir ; they kept pretty even.

Q. This happened about five or six years ago, did it not ?—A. Yes, sir ; about 4 or 5 years ago, I think.

Q. Have you ever heard of any trains being robbed in Missouri and stock taken away ?—A. Yes, sir.

Q. Have you ever read in the newspapers about rapes being committed in the District of Columbia ?—A. Yes, sir ; I have, almost every morning.

Q. Do you think the Oklahoma bill should be established over this District on that account ?—A. I do not think so.

Q. Are you acquainted with W. P. Boudinot ?—A. Yes, sir ; I am intimately acquainted with him.

Q. Do you understand his views about this Oklahoma question ? Does he not belong to the Ross party of the Cherokees ?—A. Yes, sir.

Q. Has he not been the editor of the Cherokee Advocate ?—A. Yes, sir ; he was the editor.

Q. Have not the Cherokee people two or three times met in mass meetings all over the country and expressed their views about this matter ?—A. Yes, sir.

Q. Did not Mr. Boudinot act as chairman of these conventions ?—A. Yes, sir.

Q. Has he not been decidedly against this Oklahoma bill, &c. ?—A. Yes, sir ; that is the way I have always heard him talk.

Q. Did he not write that way in the Advocate ?—A. Yes, sir.

Q. He was not in favor of dividing the lands in severalty and the establishment of the United States courts ?—A. Yes, sir ; I think so.

Q. Do you know Cornelius Boudinot ?—A. Yes, sir.

Q. Did not W. Boudinot run for the council as belonging to the Ross party ?—A. Yes, sir.

Q. He has always been in that party ?—A. Yes, sir.

Q. Do you know of W. P. Boudinot running upon the Ross ticket ?—A. I heard of it.

Q. This Ross party generally has always been opposed to the United States territorial government proper ?—A. Yes, sir.

Q. The Downing party has been that way ?—A. Yes, sir.

Q. There has been no difference of sentiment on this question ; all are opposed to it generally ?—A. Yes, sir.

Q. If you can swear that you know one man in that country in favor of a Territorial government, tell the committee who that man is.—A. I do not know of any.

Q. Not one ?—A. No, sir.

Q. Under our treaty of 1866 is it not provided that our lands may be sectionized and divided among our people whenever our council so request ?—A. Yes, sir ; I so understand it.

Q. Are not our people in favor of carrying out that treaty ?—A. Yes, sir ; I think so.

Q. They wish to have that country from under the jurisdiction of the western district of Arkansas, and organized into a judicial district of their own, do they not?—A. Yes, sir.

Q. The people generally are safe in their lives, persons, and property, &c., are they not?—A. Yes, sir.

Q. You spoke of Spencer Stevens leaving; was that not on account of a personal difficulty?—A. It was a political affair.

Q. You spoke of Richard Fields being shot; was that on account of a personal feud?—A. Yes, sir; it was.

Q. Do you not know that the chief tried to have certain men arrested who were suspected of having been engaged in that killing?—A. Yes, sir; that is what they said.

Q. Did you know Dick Half-breed, or Richard Fields? Do you know that he was opposed to this Oklahoma measure?—A. Yes, sir; I knew him intimately. I think he was opposed to it.

Q. You spoke of Mr. Boudinot signing a paper at Muscogee. How many names were on that paper?—A. I do not remember.

Q. One, two, three, four, or five?—A. I do not know.

Q. At the same time they were there did not the Cherokee Nation have a delegation representing the nation?—A. Yes, sir.

Q. Did not these commissioners represent both the Ross and Downing parties—were they not elected with that view?—A. Yes, sir.

Q. Did not they oppose most emphatically the proposition submitted by Clinton Fish?—A. I heard so.

Q. Suppose Mr. Boudinot signed that paper, and three others; that made four. Do you think the voice of four as against the voice of eighteen or twenty thousand ought to weigh very much?—A. No, sir; I do not think it should.

Q. Where does Spencer Stevens live now?—A. At Vinita.

Q. He used to be superintendent of schools, did he not?—A. Yes, sir; he was superintendent of schools.

Q. What is he doing now?—A. Teaching school.

By Mr. GRAFTON:

Q. Do you know of any trains being stopped within the Indian country within the last three or four years?—A. No, sir.

Q. Do you know of the United States mails having been robbed there within that time?—A. No, sir; I do not.

Q. Do you know of anything of that kind happening in the neighboring States?—A. Yes, sir; I have read accounts of it in the States of Texas, Missouri, and others. I have read of trains being stopped and robbed in States.

Q. Recently, have you not?—A. Yes, sir; last fall they tried to wreck a train in the Cherokee Nation, right near my home, but they were white men. They were arrested and taken to Fort Smith and sentenced.

Q. Were they citizens of your country?—A. Yes, sir; I believe it was white men who attempted to wreck the train.

By Mr. BOUDINOT:

Q. Did they not throw it off of the track?—A. I am not positive about that.

Q. Do you not know that they killed the engineer?—A. Yes, sir; I believe he was killed.

Q. You were asked by Colonel Adair if the people of the Cherokee Nation, in your opinion, were not in favor of carrying out their treaties. You stated they were?—A. Yes, sir; I believe I did.

Q. And as the treaties provided for establishing a court, you are satisfied the people are in favor of that?—A. Yes, sir.

Q. If the treaties provided for a delegate to Congress, would they not also be in favor of that?—A. Yes, sir.

Q. Then they are in favor of that, if the treaty provides for a delegate to Congress to represent the Cherokees, giving him the same pay and the same rights on the floor of Congress as other delegates. Do you think they would oppose that measure?—A. I do not know that they would.

Q. Well, if the treaty that has been spoken of provided for that, don't you think they would agree to that provision?—A. They don't talk about that much.

Q. You say my brother edited the paper at the time. State to the committee if he did not advocate the division of the lands in severalty, and the establishment of the United States courts, &c.?—A. I do not remember of ever seeing the article in the paper.

Q. Don't you know his views on this question, that he is in favor of the division of lands in severalty, &c.?—A. I do not remember ever hearing him say so.

Q. How many parties are there in the Cherokee Nation?—A. There are three parties.

Q. What are they called?—A. The Ross party, the Downing party, and the Independent party.

Q. What is the difference between the Ross and Downing parties; any difference at all?—A. I think they are nearly about the same.

Q. What is the difference between the Independent party and the other two parties?—A. I do not know. I never took the trouble to inquire.

Q. Don't you know the Independent party is not in favor of dividing the lands in severalty?—A. I do not know whether that was their creed or doctrine.

By Mr. ADAIR:

Q. Has not that Independent party joined the Ross party?—A. Yes, sir.

Q. Belongs to it?—A. Yes, sir.

Q. Mr. Leip I understand to be an Independent man, and he is a Ross man, is he not—opposed to territorial government?—A. I never heard him say anything about it.

Q. Did not you understand Bell was opposed to the territorial form of government, and that I was in favor of it?—A. That was the talk.

Q. Did not they talk that all over the Coowischoowee district?—A. I believe they did.

Q. This Independent party are known as Independent Ross men, are they not?—A. Yes, sir.

Q. That is the party to which Colonel Boudinot belongs, does he not?—A. I do not know to which party he belongs.

Q. Bell and Leip belong to that party, do they not?—A. I don't know.

By the CHAIRMAN, *pro tempore*:

Q. What is the penalty for murder in the Indian Nation?—A. Hanging. They have degrees out there like you have here in the States.

Q. Have there ever been any persons hung for murder?—A. Yes, sir; one was hung this spring.

By Mr. ADAIR:

Q. Several been hung within the last year or two, have they not?—A. Yes, sir; and there is one in jail now waiting to be hung for murder.

WASHINGTON, D. C., April 19, 1878.

J. ELLIOTT CONDUCT sworn by the chairman, *pro tempore* and examined by Mr. Boudinot :

Question. Where do you live ?—Answer. In Philadelphia, Pa.

Q. Tell the committee if you have had any acquaintance, and to what extent, with the affairs of the Indian Territory ?—A. I have spent many months in the Choctaw and Chickasaw Nation, at different periods, attending their councils at various times, as a matter of pleasure and observation.

Q. What is your business ?—A. I was formerly in the banking business. I am in the drug business.

Q. Will you read the third paragraph of that resolution, and give the committee such information bearing upon that as you have ? Were you in the Chickasaw Nation at the time they applied for the division of the lands in severalty ?—A. Yes, sir.

Q. Were you there at the time ?—A. Yes, sir ; I was there.

Q. Can you remember or state what the action of the council upon that subject was at that time ?—A. The council passed a memorial directed to the Secretary of the Interior requesting that their lands be divided in severalty.

Q. That is, that they be surveyed ?—A. Surveyed and divided among the Chickasaw Indians.

Q. Was there much opposition to that proposition at that time ?—A. I do not remember the vote upon it. I heard a great many addresses by the members in favor of the proposition as well as those opposed to the measure. The measure passed by a considerable majority, but what majority I cannot give, as I did not charge my memory with it. I took a copy of the resolution at the time as a matter of curiosity.

Q. The division of the lands was advocated by the council ?—A. Yes, sir.

Q. Can you furnish copies to the committee ?—A. I have a copy of it at home.

Q. I would like to have it appear.

By Mr. GRAFTON :

Q. Is it under seal ?—A. No, sir ; there is a copy in the hands of the Secretary of the Interior ; that is an official copy that can be obtained.

By Mr. BOUDINOT :

Q. Under that memorial of the Chickasaws the United States proceeded to survey and sectionalize the land in the Chickasaw Nation ?—

A. The lands have been surveyed in the Chickasaw Nation I believe entirely. The entire district of the Chickasaws has been surveyed. I have a copy also of the survey. The lands have not been divided ; the reason why they have not been divided according to the request of the council, is that the Secretary of the Interior took the ground that the treaty between the Choctaws and Chickasaws being a joint treaty with the Chickasaws, they could not have their lands divided except the Choctaws united in asking the government for the same thing. In other words, that the lands belonged to the tribes themselves. That was the opinion of the Secretary of the Interior at that time.

By Mr. CHAFEE :

Q. Who was Secretary of the Interior at that time ?

A. Secretary Delano. I merely state that to give the reason why the Chickasaws have not had their lands divided in severalty.

Q. Is that opinion in writing?—A. Yes, sir; it has been promulgated.

Q. Is it part of the records of the Interior Department?—A. Yes, sir; I think so.

By Mr. BOUDINOT:

Q. Will you state to the committee, from your experience and from personal observation and acquaintance with these Indians, anything that will enlighten them upon the subject of that resolution as to "whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations"?—A. Well, that is like asking me for a legal opinion. I would simply state that so far as the desire of the majority of the council of the Chickasaws at that time was expressed in this resolution, it was that the Chickasaws might have the benefit of their lands in fee-simple; that if they were divided among the Chickasaw people they would get possession of their lands in severalty.

Mr. GRAFTON. I object to this line of testimony.

Mr. CHAFFEE. (To Mr. Grafton.) State your objection, so as to let it go into the record for the consideration of the committee.

Mr. GRAFTON. I object to any inquiry as to the sentiment of the people in reference to the division of the lands in severalty, on the ground that no such authority is conferred on this committee by the resolution of the Senate directing this inquiry, and that the third paragraph of the original resolution as to the division of the lands in severalty, contemplated a report upon a question of law, and not upon any question of fact as to the desires of these nations in the matter; and I also object to any inquiry touching their civil form of government, on the ground that it is an invasion of their natural rights—rights secured to them by treaty stipulations on behalf of the United States—a violation of the laws of the United States, as declared by the Supreme Court.

The WITNESS. I will state simply that the opinion of the Chickasaw Nation at that time, as expressed through their council, and as expressed by a great many of the leading men of the nation outside of their council, was in favor of the division of the lands in severalty. They were afraid that if they should not secure their lands they might lose them when the railroads were built through the nation, and for that reason they desired them to be divided among themselves. The question about the organization of a territorial form of government was not named in connection with the division of the lands in severalty. There was no doubt in my mind at the time that the nation was opposed to any legislation by Congress providing for a territorial form of government. They want their lands deeded to them in fee-simple; that was the point of the whole resolution. That had no reference to the territorial form of government.

The first two clauses of that resolution, whether a civil government can be organized for the better protection of life and property, referred to the establishment preliminarily of the United States courts. My own impression, gathered from the Chickasaws and Choctaws, was, that they were in favor of the United States courts in their district; and, if I am not misinformed, their delegates have been instructed again and again by their council to request that a United States district court should be established in the Choctaw and Chickasaw Nations.

By Mr. CHAFFEE:

Q. What is your means of knowing their opinion in regard to these

matters?—A. From personal acquaintance with a great many of the Chickasaw and Choctaw leading men.

Q. You have been there, have you?—A. Many times. I have spent many months among them at different periods. I have lived among them long enough to learn to talk Chickasaw.

By Mr. BOUDINOT:

Q. Will you state to the committee whether the division of the lands in severalty would benefit the Indians, and if so, why?—A. I am certainly of the opinion that the division of the lands in severalty would be a great benefit to the Indians.

By Mr. HEREFORD:

Q. Why would it be a benefit to the Indians if any one has a right to go upon any part of it?—A. I will state a particular case. My friend Overton Love, a Chickasaw, has a very fine bit of land on the Red River—a very fine cotton-plantation—he is known as an enterprising planter.

Q. He is an Indian?—A. Yes, sir.

Q. By blood or marriage?—A. He is a half-breed. Mr. Love expresses it in this way: "I want to know my home is my own. I want to see it. I want to feel if I die that I can give it to whom I please. I want to know that my children are living in their own homes. That there will be no possibility of the lands reverting to some one else." My own opinion about the Chickasaws right to hold lands is, that it is a very flimsy one; that is the feeling among the Chickasaw people who have got homes. It is the opinion of some who have lands. But among the more ignorant of the Chickasaws and Choctaws they would rather have the lands in common; but the higher classes—the educated classes of the community—are in favor of holding their lands in fee-simple.

Q. Take the case of your friend Overton Love. Suppose he had 200 acres or 500 acres; suppose he should cultivate it and improve it, and he should die—what law is there that would prevent his children from occupying that land?—A. If you will carry your supposition one step further; suppose his children should die, and Overton Love, at three-score years dies, the land goes to the Chickasaw Nation.

By Mr. CHAFFEE:

Q. He can will it?—A. He cannot will it. There would be nothing to prevent his widow or children, were they of age, from entering upon and taking possession of the land, in my judgment; but if he had no children the land would revert to the Chickasaw Nation in common.

By Mr. HEREFORD:

Q. What is the reason he cannot will it?—A. Because it belongs to the nation.

Q. What is the reason he cannot will his possessory rights?—A. The party coming into possession would have to do it prior to the death of Mr. Love. That would be my construction of the clause holding the lands in common. A man has no control over it.

By Mr. GRAFTON:

Q. Do you know what the laws of the Chickasaws are?—A. Yes, sir; I have read the laws.

By Mr. CHAFFEE:

Q. What business are you engaged in? Are you connected with the railroad companies?—A. No, sir; I am not. I was brought up a banker, and am now in the drug business.

By Mr. HEREFORD:

Q. Do not the Indians have the power to sell their possessory rights?—A. There is a division among them upon that question.

Q. Say he should sell it or bequeath it—that he should sell his possessory rights, describing it by metes and bounds, what law is there to take away from that person those lands thus bequeathed to him?—

A. That would be a question of law which I doubt very much whether the laws of the Chickasaw Nation, as organized, would be competent to decide.

Q. They have a right to sell their lands?—A. That is a question—but I think the courts would have sustained it—it is a question whether there is sovereignty enough.

By Mr. GRAFTON:

Q. That has nothing to do with it. Suppose they were to make a system of law giving the right to bequeath lands, is there anything against that? What right would an outside Chickasaw have to come in and dispossess such a party?—A. I believe the council of the Chickasaw and Choctaw Nation could pass laws which would permit such a willing and devising of property, but I do not believe it has been done.

Q. Then that far you recognize its sovereignty? None of the Indians have the right to sell it to anybody except the general government; they could not sell it to you or to me or to the British Crown?—A. No, sir; nor to the chief of the tribe.

Q. As a matter of fact, is there not a provision in the Choctaw and Chickasaw laws by which a man may bequeath his possessory right to lands and the improvements thereon, and everything else; and is it not also provided that his heirs, representatives, and assigns can take possession of those lands against any other Indian, and have the exclusive use and benefit of the same?—A. There is a law that gives the Choctaw the right to sell his improvements, and it is a custom, as I stated before.

Q. Never mind your opinion; I asked for the facts.—A. You have the fact, so far as that is concerned, in the volume of the Chickasaw laws—the exact wording of the law I do not remember—still it is a mere matter of opinion as to my judgment in regard to that law; that, of course, you do not want.

Q. As a matter of fact, the custom is for the Indians to do that thing?—A. It is; that is the custom.

By Mr. GARLAND:

Q. In your intermingling with the people were you at any of their schools?—A. Yes, sir.

Q. State to the committee how they were carried on; state whether they were in a flourishing condition according to your estimate.—A. I visited several of their schools—I believe there are five—that might be called high schools in the Chickasaw Nation; the one I was familiar with was conducted by Professor Haley.

By Mr. HEREFORD:

Q. Is he an Indian?—A. No, sir; he is from Mississippi. I went to Tishimingo and there I found the schools were tolerably well advanced in English; I mean in the higher schools. Familiar with our ordinary English readers, familiar with our declamations, and I was very much surprised by the progress made by the boys in learning, and was very much pleased with it.

Q. Were you in attendance upon any of their court proceedings while there?—A. No, sir; the courts were not in session while I was there.

Q. What impression did you gather from your visit there as to the state of society with reference to the protection of life and property and the general enforcement of the laws?—A. I considered myself as safe in the nations among the tribes as I would have been in the States of Arkansas, Texas, or any of the border States. I traveled about the nations without any fear, and entirely alone, from one end to the other on frequent visits, with just as much freedom from fear as I would over any of the border States.

Q. What is the distance from the council place to the place where the United States courts are held?—A. From Tishimingo to Fort Smith, I do not remember number of miles.

By Mr. GRAFTON:

Q. When was the last time you were there?—A. About two years ago.

By Mr. BOUDINOT:

Q. Are you familiar with the Choctaw treaty of 1866?—A. I have a copy of it; I have read it a great many times.

Q. Do you recollect the terms of the 8th article of that treaty?—A. I do not remember it.

Mr. BOUDINOT. I quote the 8th article of the Choctaw and Chickasaw treaty in full:

"ART. 8. The Choctaws and Chickasaws also agree that a council consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

"1. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe, lawfully resident in said Territory, shall be taken under the direction of the superintendent of Indian Affairs, by competent persons to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

"2. The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations respectively who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the number and proportions indicated.

"3. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate, but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days; and provided that the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

"4. The general assembly shall have power to legislate upon all sub-

jects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said Territory; the arrest and extradition of criminals escaping from one tribe to another; the administration of justice between members of the several tribes of the said Territory and persons other than Indians and members of said tribes or nations; the construction of works of internal improvement, and the common defense and safety of the nations of said Territory. All laws enacted by said council shall take effect at the time therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations, except as herein provided for.

"5. Said council shall be presided over by the superintendent of Indian affairs; or, in case of his absence from any cause, the duties of the superintendent, enumerated in this article, shall be performed by such person as the Secretary of the Interior shall indicate.

"6. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all proceedings of said council, and to transmit a true copy thereof, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior immediately after the session of said council shall terminate. He shall be paid \$500, as an annual salary, by the United States.

"7. The members of said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom, by the most direct route, to be certified by the secretary of said council and the presiding officer.

"8. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory, with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

"9. Whenever Congress shall authorize the appointment of a delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in the said council.

"10. And it is further agreed, that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of 'governor of the Territory of Oklahoma'; and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belongs to an executive officer charged with the execution of the laws which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory, and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

"11. And the said marshal and the said secretary shall each be entitled to a salary of five hundred dollars per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior, it being understood that the said fee lists may at any time be corrected

and altered by the Secretary of the Interior as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be \$500, to be paid in like manner by the United States.

"12. And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations, the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations.

"And whereas it is desired by the said Choctaw and Chickasaw nations that the said council should consist of an upper and lower house, it is hereby agreed that, whenever a majority of the tribes or nations represented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house, consisting of one member from each tribe entitled to representation in the council now provided for, the relations of the two houses to each other being such as prevail in the States of the United States, each house being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerks of each house to make out and transmit to the Territorial secretary fair copies of the proceedings of the respective houses immediately after their respective sessions, which copies shall be dealt with by the said secretary as is now provided in the cases of copies of the proceedings of the council mentioned in this act. And the clerks shall each be entitled to the same per-diem as members of the respective houses, and the presiding officers to double that sum."

(Treaty of 1866, 14 U. S. Statutes, p. 772.)

Q. That article, as you observe, provides for a court, to which, we understand from Mr. Grafton, they interpose no objection, if appointed as contemplated by the treaty. You also see the article provides for a legislative assembly, and that it is to have power to legislate and pass laws for the government of the tribes, for the protection of the person and property of the people in that Territory. Is that so?—A. That is stated here in this article of the treaty.

Q. Do you believe from your acquaintance with the Choctaw people that they indorse that view?—A. That would be an expression of my private opinion. I believe that the Ocmulgee council, so called, does not carry out the full intent of this eighth article of the treaty. It does not go to the length as contemplated by the treaty.

Q. That is not exactly the question I asked. I say from your personal acquaintance with these Indians, do you think they would object to Congress carrying out that provision of the treaty of 1866?—A. No, sir; I do not believe they would object.

Q. That article provides for a Delegate to Congress. Do you believe they would indorse that?—A. I believe the Chickasaws would. I do not believe the Choctaws would.

By Mr. GRAFTON:

Q. Is not that a joint treaty?—A. Yes, sir.

By Mr. ADAIR:

Q. Which is the more numerous?—A. The Choctaws.

By Mr. BOUDINOT:

Q. The tenth article of the treaty provides that the United States

reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, and not inconsistent herewith, &c. Do you believe they would indorse that provision of the treaty?—A. The Chickasaws would.

By the CHAIRMAN *pro tempore*:

Q. That is your opinion?—A. Yes, sir.

By Mr. ADAIR:

Q. You have read the several Indian treaties of 1866, besides that which you have read—the Cherokee, the Creek, and Seminole treaties. Do they not have a provision for reestablishing a general Indian council somewhat different from the Ocmulgee council?—A. I believe so.

Q. Was that council not established in 1869?—A. About that year; about that date. I have their proceedings; but I do not remember; but I think it was established about that time.

Q. Was it not legitimized by act of Congress, in 1870, making appropriation to pay the expenses of that council?—A. It was recognized to the extent of paying the expenses of the council.

Q. The council has settled its expenses, has it not?—A. It has.

Q. Are there not thirty-two tribes represented in that council?—A. About that number; yes, sir.

Q. At first there were only four or five tribes; now they are increased to eleven. From the action of the Executive and of Congress, that is to say, the President of the United States and the action of Congress, have they not indorsed this council?—A. Congress has, most assuredly.

Q. And do you not think the construction that the several Congresses have put on the treaty within the last ten years, as well as the construction put upon the treaty by the three Presidents, Johnson, Grant, and Hayes, and the construction that all the departments of the government have put upon that council, is correct—that it is an Indian council?—A. It is recognized, most assuredly, as an Indian council, and was organized by Indian delegates from these various tribes.

Q. The treaty says the superintendent of Indian affairs shall preside over the council?—A. It does not say he shall preside, but that he may preside.

Q. Do not all three of the treaties specify that that council may be presided over by any person that may be selected by the Secretary of the Interior?—A. It provides for that in case of the absence of the superintendent of Indian affairs. It provides that it shall be presided over by some person to be named by the Secretary of the Interior; and the Secretary of the Interior shall also appoint a secretary of the council.

Q. The other treaties to which I alluded, do they not provide such persons, or that some other persons may be appointed besides the superintendent of Indian affairs?—A. There is a difference in the wording of the treaties; in regard to the Ockmulgee council there is none.

Q. Don't you think the construction that Congress has placed upon these treaties shows clearly that the treaties do not mean that this is organized into a Territory of the United States? It is not territory of the United States now, is it?—A. No, sir.

Q. Still the council provided by the Choctaw treaty is already established?—A. It certainly does not make it a Territory by having the Ockmulgee council, or by having it recognized by the government.

That does not establish a Territorial government as we usually understand it.

Q. Then the treaties have been carried out for that thing, or do you think Congress, for the last ten years, has made a mistake?—A. I have always felt in regard to the Ockmulgee council that it was a little bait thrown out for the Indians to play with; there is really nothing in it. The meetings of the council do not mean anything. It is a good school, however, for them to learn to legislate in; there is nothing in it. The acts of the Ockmulgee council do not amount to anything to any considerable extent.

Q. Through the meetings of this council the Comanches, Kiowas, Arapahoes, and the other wild tribes have been induced by the civilized tribes to send delegates there to represent them?—A. They have.

Q. Has it not been a benefit to them?—A. It has in that way, but not so much benefit to them as the fair that was established about the same time.

Q. You think the fair has been a good thing?—A. I think so, certainly.

Q. Don't you think the council has done a very good thing in bringing those wild Indians in contact with the civilized tribes, &c.?—A. So I say in that way. It has no real power, what you would term legislative power, of any consequence.

Q. Are not the legislative powers defined in the treaties? Have you ever read the proceedings of the Ockmulgee council?—A. Every one.

Q. Well, then, don't you think it has accomplished a very good work in bringing civilizing influence to bear upon these wild fellows?—A. It has, just as the fair has done.

Q. Certainly, the fair is a creature of that council, and there have been some wild fellows in the fair who had been sent out for, has there not?—A. Yes, sir.

Q. Were any of the wild Indians awarded premiums?—A. Yes, sir; for riding.

Q. From your observations there, don't you think the council has had a good influence upon these wild fellows?—A. It has a good influence; yes, sir.

Q. Don't you think it has had a good influence in preventing the wild fellows from making war on the Texas frontier; influenced them to lay down the tomahawk, &c.?—A. Yes, sir; it has.

Q. Don't you think that the fair has done as much good in this respect as the Army?—A. Yes, sir.

Q. Your opinion is, then, that that council has a good civilizing influence upon the wild Indians?—A. Yes, sir; in bringing the wild ones in contact with the civilized Indians.

Q. Well, a United States court can be established without interfering with that council, can it not?—Most assuredly.

Q. And may be established without establishing a Territorial government, may it not?—A. Yes, sir.

Q. This question of sectionalizing the lands in that country is a question that is settled by their treaties?—A. It is.

Q. Whenever they want them sectionalized, their legislative bodies may request it. You think that would be proper, don't you?—A. Yes, sir; it cannot be done until they request it according to the treaty.

Q. You remarked you felt quite as safe there as you would in Arkansas. The law is enforced there as well as in any other frontier community?—A. The law against the introduction and sale of whisky is very rigidly enforced, much more so than in the neighboring States.

The law against breaking the Sabbath is rigidly enforced among the Chickasaws, much more so than among the Choctaws.

Q. Do you not find them as religious as the people in the States?—A. Without doubt. The attendance upon their churches and their religious meetings gave evidence that their tendencies are in a religious channel.

Q. From your observation, then, the citizens of the United States who have been adopted by those people are as well off as they would be in the States, having no land to pay for and no taxes to pay?—A. That is a question as to what you would call faring better.

Q. The whites who have been adopted have certainly found very pleasant places for themselves without much corresponding benefit to the Indians.—A. I think the introduction of the white element in the way it has been introduced has not been of the best kind.

Q. You have read the Choctaw and Chickasaw statutes pretty well. If a man dies there owning a place on which he has improvements, horses, hogs, and stocked generally, is not his whole estate appraised, including his improvements; for instance, under the law, would not an administrator be appointed to administer upon the estate? Does he not render a schedule account of the improvements as well as of the stock? Is not that the law?—A. You have, of course, a copy of the Choctaw laws. The Chickasaw laws are so administered, and under that law he has the right. Suppose he should have no direct heirs; suppose he died having no heirs, would not the doctrine of escheat obtain the same as in the States; would it not go to the State?

Q. Yes; but suppose I want to give it to somebody, could I not give it?—A. I think not.

Q. Suppose Mr. Love having no heirs of inheritance at all, could he not will his property to some person in the Chickasaw Nation not related to him by blood; would not that will be good under the Chickasaw laws?—A. I believe if any member of the Chickasaw council should make a motion to contest that will, it would not be sustained. From the opinions expressed by the people, it is their desire to have their lands divided so they could have a fee-simple.

Q. They have a deed already in common?—A. From the United States.

Q. Don't you think the general policy of holding their lands in common—the Indians are a grazing people, a stock-raising people—don't you think it is better for them?—A. No, sir; I think it is a great drawback to the Indians to hold their lands in common, a very great drawback. I believe if the United States Government had granted the request of the Chickasaw Nation and divided their lands at the time that request was made, they would have been much more advanced than they are.

Q. Why do you think so?—A. Because I judge from my own natural inclination of having a desire to hold what I own, and from the history of the world.

By Mr. GRAFTON:

Q. How long have you lived in Philadelphia?—A. Two years. Prior to that time I lived in New York City.

Q. How long had you lived there prior to your two years' residence in Philadelphia?—A. About twenty years, New York and Charleston together. I was in business in the two cities.

Q. When did you visit the Choctaw and Chickasaw country first?—A. In 1857.

Q. How long did you remain there at that time?—A. About three months. I visited them again in 1858 and 1859, in the winter of those years. Again immediately after the close of the war, and for continuous years since.

Q. State what years since the war.—A. 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, and 1875.

Q. Were you at the capitals of both nations?—A. Yes, sir.

Q. Did you have any business relations there?—A. I used to sell goods there to merchants in those nations.

Q. Did you ever have a store at Fort Smith?—A. No, sir.

Q. Did you have a stock of goods there when the war broke out?—A. No, sir. I never had goods there. I sold goods to George Stedham, a Creek. I had as much confidence in him as any man I ever knew.

Q. Did you ever own any stock in the Missouri, Kansas and Texas Railroad?—A. Never; no, sir.

Q. Did you ever own any in the Construction Company which built that road?—A. Never.

Q. Did you ever visit those Indian councils in the interest of these railways?—A. No, sir; never.

Q. Did you ever go to those councils to obtain any railway charters?—A. I asked the Chickasaw council to confirm an act of the Choctaw council, giving a charter from Fort Smith westward to build a road on the line of the 35th parallel.

Q. Is that the Atlantic and Pacific Company?—A. No, sir.

Q. An independent scheme?—A. An independent scheme.

Q. Who were the promoters of that scheme?—A. Parties in Arkansas.

Q. Can you name any of them; any of them living in New York?—A. No, sir; none outside of my own parties.

Q. You have said you are acquainted with a great many Indians in the Chickasaw country. Please name some of them; give the names of some of the leading men.—A. Well, the present governor, B. F. Overton, Overton Love, Mr. Harris, Mr. Renoylds.

Q. What Renoylds?—A. Lem Renoylds. By thinking a little, I could recall a dozen or more members of the council in the Choctaw Nation. I recall Allen Wright, Coleman Cole, present governor; George D. James, a Chickasaw, formerly school superintendent. The Pytehlyns and Fulsoms.

Q. You testified in regard to one of the schools in the Chickasaw Nation. What school was it?—A. The one at Tishimingo.

Q. Did you ever visit any of the Choctaw schools?—A. Yes, sir.

Q. Which ones?—A. The Armstrong Academy.

Q. Did you find that in successful operation?—A. Yes, sir. The Choctaws are not so far advanced as the Chickasaws.

Q. Was your object in attending the council to obtain this railroad charter?—A. No, sir. The charter had been obtained from the Choctaws, and application had been made to my firm to assist in building the road westward from Fort Smith, and from my intimacy with the Chickasaws, I went down there and attended one of their councils and asked them if they would confirm the action of the Choctaws.

Q. As they hold their lands jointly?—A. Yes, sir.

Q. Have you been there within the past year?—A. No, sir.

The committee at this point took a recess until half past two o'clock p. m.

AFTER THE RECESS.

VALENTINE DELL, sworn by the chairman *pro tempore*.

Examined by Mr. GARLAND:

Question. Colonel, where do you reside?—Answer. Fort Smith, Arkansas.

Q. What is your occupation?—A. I publish a newspaper.

Q. What is the name of your paper?—A. The "New Era."

Q. Published at Fort Smith, Arkansas?—A. Yes, sir.

Q. What circulation has your paper?—A. Between six and seven hundred.

Q. How far from the Choctaw Nation is your paper published?—A. Just on the line, within a stone's throw almost of the nation.

Q. Has your paper any circulation in any or all of the Indian nations—the five nations?—A. It has, sir.

Q. More possibly in the Choctaw Nation than in any other of the nations; or how is that?—A. Yes, sir; there are more copies of my paper that go to the Choctaw Nation than to any of the others.

Q. How long have you been publishing your paper?—A. Nearly 15 years.

Q. How long have you lived there?—A. I have lived at Fort Smith since the year 1859.

Q. And you have published your paper 15 years?—A. Yes, sir.

Q. During the time you have been living there have you mingled with the people in the different Indian nations?—A. I have, sir; most every day with persons from every part of the Indian Territory. I should state, perhaps, that I have lived some years in the Indian Territory; in fact with the exception of between three and four years I have lived on the border since 1851.

Q. That is the Choctaw Nation particularly?—A. Yes, sir; lived some years in the Chickasaw Nation also.

Q. How long in the Chickasaw Nation?—A. About four years.

Q. You have, then, a pretty general acquaintance with the people of the nations close to and contiguous to the Arkansas line where you live?—A. Yes, sir; and I have met many persons there. Fort Smith is, in a manner, the headquarters of the Indian Territory. We have the United States court there, having jurisdiction over the Indian Territory. There are four sessions of the court a year, and the people from all parts of the Territory come in there every day. That court is in session a greater part of the year, and people are brought in from the Territory every day, almost, as witnesses and to trade, &c.

By Mr. GRAFTON:

Q. Brought into the court, trading?—A. No; people come in to trade in the town.

By Mr. GARLAND:

Q. In other words, they come to Fort Smith for one purpose or another, and you are in the habit of meeting them and talking to them?—A. Yes, sir; almost daily.

Q. Now, Colonel, you were present and heard the examination this morning. In order to make the question short, you can answer in your own way and state to the committee, *first*, what the opinion of the people there over those different nations, with whom you have met, is in reference to territorializing that country, or, if you please, passing a bill

on the plan of these Oklahoma bills. Have you seen any of those bills?—
A. Yes, sir; I have.

Q. State the opinion of those people with whom you have met, so far as the matter has been discussed in your presence, and state your own opinion also in reference to the condition of that country, and in reference to these measures. Give a detailed statement of it in your own way.—A. Well, I have made the Indian question a study. It has been my principal study for a number of years, and I have always considered it a highly important question, not only to the Territory, but also to the government, and hence I have studied it to make myself familiar with it in all its bearings, being acquainted with the Territory and its people, from one end to the other, from the east to the west; and knowing its condition thoroughly, I have felt naturally interested in it, especially as its condition necessarily had a very important effect upon the western portion of Arkansas. I was present at every official sitting of the council held at Fort Smith in September, 1835, which concluded the treaties ratified the following year by the Senate of the United States with those tribes in the Territory, and I published officially from day to day the proceedings, under the direction of Hon. D. N. Cooley, the president of the council.

Mr. GRAFTON. What has that got to do with the matter?

Mr. CHAFFEE. He is giving his views.

The WITNESS. I make this statement for the purpose of showing the connection with this resolution:

“Resolved further, That the said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory, and whether any of such money has been taken from the school-funds of any such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purpose.”

I think that treaty of 1866 was the chief cause of all the trouble in that Territory, and that it was a grand mistake from beginning to end. There has been no security for life or property since that treaty to several classes of people; for instance, after reconstruction in our own State, I turned my attention to the colored people of the Territory, and being known in the Territory as their friend, they came to me for advice. They had no right anybody was bound to respect, and the provisions of the treaty were not complied with in regard to them. I have a few papers here which——

By Mr. CHAFFEE:

Q. I wish you to answer the question Mr. Garland asked. From your knowledge, what is their views in regard to the formation of a government similar to that proposed by the Oklahoma bills; what do they think about it?

The WITNESS. I think if a free and untrammelled expression could be had of the people a decided majority would be in favor of adopting a government such as contemplated in those bills.

By Mr. GARLAND:

Q. From your knowledge of the condition of affairs there, what is your impression as to whether it would be for the benefit of those people or not to make a change in their government?—A. It would be de-

cidedly for the benefit of the great majority of the people to make that change in every way.

Q. Have you attended any of the schools in these different nations in the Territory?—A. Not recently; I have not been in the Territory.

Q. Have you any practical knowledge as to the working of the common-school system there?—A. The schools, I understand, are progressing as favorable as can be expected, although quite a number of Indian children who wish to obtain a better education are attending our schools at Fort Smith, and others pass through our town going east to Virginia, Tennessee, and some of the Eastern States. I think the schools are making fair progress.

Q. Have you attended any meetings of the court proceedings?—A. Yes, sir; I have very frequently.

Q. Are they conducted in a good and orderly manner, as you have seen in other courts?—A. I understand now. You mean Indian courts. I have not attended any of their courts.

Q. What is your idea, Mr. Dell, as to the enforcement of the laws and the state of peace in these nations; is life and property protected?—

A. I think, from the very nature of things, there is very slight protection for life or property in that Territory. I can enumerate many instances that have come under my notice that have been brought up in the United States court. I have published more or less of the outrages committed in that Territory. There seems to be no remedy for them.

By Mr. CHAFFEE (chairman *pro tempore*):

Q. Do you think that it is any worse than in Arkansas?—A. I do. There is no comparison.

Q. You have lived in that State?—A. Yes, sir; I have lived in that State. We have peace and prosperity in Arkansas, but I cannot say as much for our neighbors across the line.

Q. Do you think there is less security for life and property in the Indian Territory than there is in the State of Arkansas?—A. I do not think there is any comparison. We have as much security for life and property in Arkansas as there is in the State of Maine.

By Mr. GARLAND:

Q. Have you discussed this question in your paper—the question of a change of government in that Territory?—A. I have for the past ten years; and I have repeatedly visited Washington for that purpose, and for the purpose of inducing some legislation in relation to it.

By the CHAIRMAN *pro tempore*:

Q. What ground have you taken in the paper?—A. I have taken the ground in my paper that the present status of the Indian Territory is a disgrace to the civilization of this age and to the Government of the United States. No free expression of opinion can be had in the Indian Territory. The majority, if they had a free expression, would gladly become citizens of the United States if their rights were secured to them as owners of the soil and their annuities coming to them unimpaired, and no lands of theirs given away to the railroads.

Q. Do you know anything of the management of the school fund in either of those nations?—A. I know nothing about the school fund.

Q. You know nothing about it?—A. No, sir; I do not.

By Mr. BOUDINOT:

Q. You spoke about your connection with the colored population. Did you tell the committee the plans they had in regard to their condition there, and what they want done?—A. No, sir; I did not.

Q. Do you remember their passing any resolutions, or having applied to you to see that they had their rights there?—A. Yes, sir. The condition of the colored people, who form a large portion of the *bona-fide* citizens of that country, being born there and having the rights of citizenship, is so anomalous that, if known, it could not exist long.

Q. What is their probable approximate number in the Chickasaw and Choctaw Nations?—A. I suppose, about six thousand.

Q. They were made free by the treaty of 1866?—A. Yes, sir.

Q. But they were not incorporated as members of the Choctaw and Chickasaw Nations?—A. No, sir.

Q. What is their present condition?—A. Their present condition is the same as it was eight years ago; as is shown by a memorial I have here, which shows their condition is the same to-day that it was then.

Q. I ask you, then, if you are well acquainted with the feeling and sentiments of the colored people of those two nations?—A. Yes, sir; I am.

Q. Does that memorial or resolution introduced by Vice-President Wilson explain their views in regard to their position there, and does it represent their sentiments?—A. Yes, sir. It fully explains their wants and their condition, and at the same time the memorial gives parts of the treaties which have been utterly neglected and willfully disregarded.

Q. Have you that memorial with you? If you have, please produce it, and make it part of your evidence.—A. Yes, sir. It was introduced in the Senate by Vice-President Wilson on the 16th day of March, 1870, and is as follows:

“To the Senate and House of Representatives in Congress assembled.

“Memorial of a committee on behalf of the colored people of the Choctaw and Chickasaw tribes of Indians, representing their grievances, and praying the adoption of such measures as will secure to them equal rights and privileges with white citizens.

“The undersigned, a committee on behalf of the colored people of the Choctaw and Cherokee tribes of Indians, appointed at a convention held by said colored people near Scullyville, Indian Territory, on the 15th of January, 1870, would respectfully represent to your honorable bodies that although freed from slavery by the result of the late war, we enjoy few, if any, of the benefits of freedom.

“Being deprived as yet of every political right, we are still wholly in the power of our late masters, who were almost a unit on the side of the rebellion against the government, and who, from having been compelled to relinquish their ownership in us, regard our presence among them with no favorable eye.

“That we, under these circumstances, and in our helpless condition, have suffered and still do suffer, many ills and outrages, even to the loss of many a life, may be readily surmised, and is a notorious fact.

“By the treaty held at Fort Smith, Arkansas, in September, 1865, the following stipulations were enacted in our behalf, viz:

“ART. 3. The Choctaws and Chickasaws, in consideration of the sum of \$300,000, 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 5 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 \$300,000 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 the said nations, respectively, within two years from the ratification of this treaty, then the said sum of \$300,000 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 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 \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

“ART. 4. 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.”

“But thus far none of the conditions contained in the above articles have been fulfilled, and the time set for their fulfillment has long since expired.

“We sought to bring our grievances to the notice of your honorable bodies at the last session of Congress, and for this purpose held a mass meeting on the 16th of February, 1869; but before we could perfect

arrangements to send our petition by a trusty messenger, Congress had adjourned.

"On the 25th September, 1869, the colored people residing in the eastern portion of the Choctaw and Chickasaw country held a convention at Scullyville, near the western boundary of Arkansas, to take into consideration their condition, and there passed the following resolutions:

"Resolutions adopted by the colored people of the Choctaw and Chickasaw Nations, in convention assembled, at Scullyville, September 25, 1869

"Whereas the Choctaws and Chickasaws utterly failed, and willfully neglected to fulfill the stipulations of the treaty made with the Government of the United States, and approved July, 1866, in regard to the colored people of said nations: Therefore, be it

"*Resolved*, That we do no longer consider those stipulations in relation to us as of any force whatever.

"*Resolved*, That we consider ourselves full citizens of those nations, and fully entitled to all the rights, privileges, and benefits as such, the same as any citizen of Indian extraction.

"*Resolved*, That as we can claim no other country as ours, except this Territory, we desire to continue to live in it in peace and harmony with all others living therein.

"*Resolved*, That we are in favor of having this Indian country sectionized, and a certain amount of land allotted to each inhabitant as his own.

"*Resolved*, That we are in favor of opening this Territory to white immigration, and of selling to them, for the benefit of the whole people of these nations, our surplus lands.

"*Resolved*, That this convention elect three trusty men to act for us as delegates whenever our interests demand it."

"A convention to be held by the colored people of the western portion of the Territory, to take similar action in relation to their condition, was frustrated by the Indians, who threatened the life of any colored man attempting to meet at the appointed place and time, tore down, and destroyed the printed posters giving notice of the proposed convention, and had a leading colored man, on his way to the place of meeting, arrested through the United States agent.

"Upon this, another meeting of the colored people was held on the 15th of January last, at Scullyville, Indian Territory, at which they reaffirmed the resolutions of September 25, 1869, and passed the following additional resolutions, viz:

"Whereas the colored people of the Choctaw and Chickasaw Nations were by force, intimidation, and threats against their lives, prevented from holding a peaceable convention in which to deliberate upon an amelioration of their deplorable condition, and bring it to the notice of the government:

"*Resolved*, That we regard the action of those engaged in preventing us from exercising the right of assembling peaceably as unwarranted, unjust, and tyrannical.

"*Resolved*, That we regard the arrest of Richard Brashears, while on his way to the proposed Armstrong Academy convention, at the instigation of the United States agent and by the United States marshal, as a most outrageous and flagrant violation of our rights as freemen and a disgrace to the government.

"*Resolved*, That we are less than ever inclined to leave our native country, and more than ever claim protection from the government, equal

rights with the Indians, and a speedy throwing open of the Territory to white settlement.

“And whereas not a single stipulation of the treaty of Fort Smith concerning us has been kept by our late masters; and whereas, by a most insidious clause in said treaty, a large number of our brethren who at the time were either still in the Union Army or had not ventured to return to their country, are debarred from again becoming residents of their native country:

“*Resolved*, That we earnestly entreat the national government not to permit so cruel an outrage to be inflicted on its own defenders, and not to allow rebels to punish loyal men for their loyalty.

“*Resolved*, That James Ladd, Richard Brashears, and N. C. Coleman, be, and are hereby, authorized to act as delegates for us, the colored people of the Choctaw and Chickasaw Nations, to lay this our petition for relief before Congress, and in case they are unable to proceed thither, to authorize Hon. V. Dell, of Fort Smith, Arkansas, to be our representative at Washington.’

“Believing, as we do, that your honorable bodies have the power and the will to redress our grievances as well as the right, notwithstanding all ‘treaties’ so called, of which so much only is kept by our late masters as suits their convenience, we trustfully turn to you to afford us the desired relief, and to secure to us those rights to which we claim to be entitled as men, as citizens of these United States, and natives of the Indian Territory.

“And as in duty bound we will ever pray.

“JAMES LADD,

“RICHARD BRASHEARS,

“N. C. COLEMAN,

“*Committee on the part of the colored people
of the Choctaw and Chickasaw Nations.*”

“DEAR SIR: I have the honor to lay before you the following statement in relation to the condition and situation of the colored people of the Indian Territory so called, especially of those living in the Choctaw and Chickasaw countries. Liberated from the bondage in which they had been held by their dusky masters, by the results of the late war, they have occupied ever since that the dangerous position of having neither the shadow of a political right to protect themselves nor the sympathy springing from self-interest of their former masters to shield them from injustice and cruelty.

“Thus it inevitably results that the lot of these unfortunate people is an extremely trying one, and if, as was once the case, the negroes of the Southern States enjoyed no rights a white man was bound to respect, the same holds true to a far intenser degree of the relations between the semi-barbarous Indian and his former slave. As a consequence the outrages upon that unhappy people were great and numerous, and the killing of them, though at the present day less indulged in, was a frequent occurrence little thought of by the semi-savage perpetrators.

“Thus matters stood until the treaty held at Fort Smith in September, 1865, and ratified July, 1866, by which the Choctaws and Chickasaws agreed to give forty acres of land to each colored family to cultivate as their own, or, in case they should choose to leave the Indian country, one hundred dollars, out of a certain fund belonging to the tribes and held by the United States Government. By a very unjust stipulation of the treaty, all negroes claiming former residence with the tribe, but not

living at the time, September, 1865, in the Territory were to be excluded from the benefits of the above conditions, and forbidden to return to their own country. The effect of this clause was directed, unaware it is to be hoped, to the Commissioner, against the large number of Indian-Africans, who, true to their loyal instincts, had made their way into the Union lines, and were then still either serving in colored or loyal Indian regiments. Thus the government, to which those men had remained true and had fought to maintain, was made unwillingly a party to confer a premium upon treason, and inflict great hardships and injustice upon its own friends. But the Indians, actuated by a feeling of deep hatred to their former slaves, as, indeed, might have been expected from a class of beings the majority of whom are little removed from barbarism, were loth to carry out even those meager provisions of the treaty granting to the colored man but a very small piece of land in a vast and fertile region made valuable wherever cultivated by his industry and labor alone, or the ultimatum of leaving his native country forever, and to this day the colored citizen of that country can neither acquire a home nor does he possess any rights an 'Indian is bound to respect.'

"That the colored people, under these circumstances, felt discouraged and greatly apprehensive in regard to their future, was but natural. They knew not what to do, and continued to suffer, as they had done before the treaty was made. They had no one to protect or advise them. In the beginning of the past year leading colored men from different parts of the Indian Territory came to the writer, at Fort Smith, and, relating their grievances, asked for advice. This was given, to the effect that they should, if possible, hold a convention or mass-meeting at some convenient place and declare, in view of non-compliance of the Indians with the stipulations of the treaty of 1866, that they did no longer feel bound by its provisions, and that they regarded them as null and void; also, to take higher grounds and claim citizenship of their native country, and equal political rights with the Indians, and an equal share in all the benefits of citizenship, including annuities, educational facilities, &c.; furthermore, to protest against the injustice of the treaty in excluding a large number of their brethren from the Territory on account of their loyalty to the government during the war; to declare themselves in favor of sectionizing the country and opening it to general immigration; and, finally, to appeal to the Government of the United States for protection.

"This advice was acted upon, and in February, 1869, a numerously-attended meeting took place near Scullyville, Choctaw Nation, at which resolutions in accordance with the above points were enthusiastically adopted; an executive committee of three members elected, with power to proceed to the seat of government, or send some one there, to present a petition, numerously signed, to Congress for relief. The committee, too poor to defray the expenses of a journey to and stay at the capital, addressed themselves to the writer to perform that duty for them; but being a member of the Arkansas State senate, and the legislature being in session at the time, he found himself unable to comply with their wishes. When he was at liberty to do so, Congress had adjourned. The agitation among the colored people of the Choctaw and Chickasaw tribes, in relation to their unhappy condition, was kept up throughout the past year, and in the fall they concluded to have another convention to reiterate their grievances, and endeavor to bring them to the notice of the government. It was accordingly arranged to hold two conventions, one in the eastern portion of the Territory, near Scullyville, and the other at Armstrong Academy, in the western portion. The one at

Scullyville came off on the 25th of September, 1869. The following resolutions were passed:

"Whereas the Choctaws and Chickasaws utterly failed and willfully neglected to fulfill the treaty made with the Government of the United States, and approved July, 1866, in regard to the colored people of said nations: Therefore, be it

"*Resolved*, That we do no longer consider those stipulations, in relation to us, as of any force whatever.

"*Resolved*, That we consider ourselves full citizens of those nations, and fully entitled to all the rights and benefits as such, the same as any citizens of Indian extraction.

"*Resolved*, That we can claim no other country as ours except this Territory; we desire to continue to live in it in peace and harmony with all others living therein.

"*Resolved*, That we are in favor of having this Indian country sectionized and a certain amount of land allotted to each inhabitant as his own.

"*Resolved*, That we are in favor of opening this Territory to white immigration, and of selling to them, for the benefit of the whole people of these nations, our surplus lands.

"*Resolved*, That the convention elect three trusty men to act for us as delegates whenever our interest demands it.

"The convention at Armstrong Academy was to have been held soon after, but from various causes was postponed till December 16, 1869. But in the mean time the Indians, having taken alarm at the claims set up by their former slaves, determined to prevent the assembling of the convention, and crush by force, if necessary, any attempt of the colored people to even peacefully deliberate upon their sad condition. For this purpose they sent out parties to tear down posters stuck up to call the convention, and throughout the country told the negroes that it was against the laws of the United States and their own country for them to hold conventions, and that any one venturing upon it would be killed. As was to have been expected, the intimidation practiced was complete, and no convention was held. Nay, more than this, a leading colored man from the eastern portion of the Territory, on his way to attend the Armstrong Academy convention, was arrested by a deputy United States marshal, at the instance of the United States agent, who himself has always been working in opposition to the claims and interests of the colored people.

"The following is the writ of arrest:

"UNITED STATES OF AMERICA,

"*Western District of Arkansas:*

"I do solemnly swear and believe from reliable information received from the agent of the Chickasaw and Choctaw Indians that James Ladd and Richard Brashears, negroes, did, in the month of November, 1869, send messages, circulars, and letters to individuals in the Indian country with intent to disturb the peace and tranquillity of the United States, contrary to the ninth and tenth sections of act of July 30, 1834, and I pray that warrants be issued for their arrest.

"A. H. GARSON.

"Sworn to and subscribed before me this 7th day of December, 1869..

"JAMES O. CHURCHILL,

"*United States Commissioner.*

"The following letter was ostensibly made the immediate grounds of arrest:

"FORT SMITH, ARKANSAS,
"November 27, 1869.

"DEAR SIR: As you are aware, the colored people of the Chickasaw and Choctaw Nations must have a convention to take measures to obtain their rights as men and citizens of the nations and lay their grievances before Congress.

"We have agreed to meet at Armstrong Academy on Thursday, December 16th, and hope that you will immediately send word to all the colored people of your section to meet there on the day named.

"Explain as much as possible the reason of the meeting and see that there be a full attendance. Now is the time for action. If we do not work for ourselves, who will?

Yours truly,

"JAMES LADD.

"RICHARD BRASHEARS.

"Per V. DELL.

"Mr. LUNON BUTLER,

"Armstrong Academy Post Office, Choctaw Nation.

"P. S.—We expect to be on hand on the day named with many friends. By next mail we will send you printed circulars."

It will thus be seen that upon the hapless colored people in the power of a vindictive semi-barbarous race, are visited ills and wrongs practiced in the border-ruffian times in Kansas preceding the great rebellion; and as there frequently, so also in this instance, is the power of the government used by unscrupulous agents to oppress its friends and supporters. Both the Choctaw and Chickasaw Nations were almost a unit during the rebellion, and kept their whole force of fighting men in arms against the government. Richard Brashears, the colored man arrested by the United States marshal, was taken, with another colored man, a tedious journey of one hundred and fifty miles to Van Buren, Ark., before the United States commissioner. On his way thither he called upon the writer for help and advice. Being greatly distressed and astonished at his arrest, the writer immediately went with him before the commissioner at Van Buren, and demanded by what right Brashears had been arrested. The commissioner, James O. Churchill, held that there were no grounds whatever justifying the arrest of Brashears, and promptly ordered his release. Nothing daunted by the unlooked-for opposition encountered, the executive committee of the colored people of the Choctaw and Chickasaw Nations determined to have another convention called to give expression to their sentiments, and consequently issued a call for a meeting near Scullyville, in the eastern portion of the Territory, as follows:

"Attention, colored men of the Choctaw and Chickasaw Nations!

"The contemplated convention to be held at Armstrong Academy on the 16th of December, 1869, having been frustrated by the intimidation of the colored people of the Choctaw and Chickasaw Nations by ex-rebels and persons claiming to be United States officials in sympathy with them, and who arrested a member of the committee calling said convention, a convention, therefore, is again called, to be held at the old camp-meeting ground, near Scullyville, Chickasaw Nation, on Saturday, Jan-

uary 15, 1870, to assert our rights as citizens of our native country and our claim upon the United States Government for protection therein.

"WM. EDWARDS.

"THOS. BLACKWATER,

"R. BRASHEARS,

"J. KEARNEY,

"JAMES LADD,

"Committee."

The convention was held at the time and place designated. The attendance was pretty good, yet not what it would have been had the previous intimidation not been practiced. The resolutions adopted on September 25, 1869, were adopted with the following additions:

"Whereas the colored people of the Choctaw and Chickasaw Nations were by force and intimidation and threats against their lives prevented from holding a peaceable convention in which to deliberate upon an amelioration of their deplorable condition and bring it to the notice of the government,

"Resolved, That we regard the actions of those engaged in preventing us from exercising the right of assembling peaceably as unwarranted, unjust, and tyrannical.

"Resolved, That we regard the arrest of Richard Brashears, while on his way to a proposed Armstrong Academy convention, at the instigation of the United States agent and by the United States marshal, as a most outrageous and flagrant violation of our rights as freemen and a disgrace to the government.

"Resolved, That we respectfully ask the removal of Captain Olmstead, United States agent of Choctaws and Chickasaws, for his inability to do us justice and his sympathy with the rebel element.

"Resolved, That we are less than ever inclined to leave our native country and more than ever claim protection from the government, equal rights with the Indians, and a speedy throwing open of the Territory to white settlements.

"Whereas not a single stipulation of the treaty of Fort Smith concerning us has been kept by our late masters; and

"Whereas, by a most insidious clause in said treaty, a large number of our brethren who at the time of making the treaty (September, 1865) were either still in the Union Army or had not ventured to return to their country are debarred from again becoming residents of their native country,

"Resolved, That we earnestly entreat the national government not to permit so cruel an outrage to be inflicted on its own defenders, and not to allow rebels to punish loyal men for their loyalty.

"Resolved, That James Ladd, Richard Brashears, and N. C. Coleman be, and are herewith, authorized to act as delegates of the colored people of the Choctaw and Chickasaw Nations, to lay our petition for relief before Congress; and in case they are unable to proceed, to authorize Hon. V. Dell, of Fort Smith, Ark., to be our representative."

The following letter, addressed to the writer of this by Ely S. Mitchell, one of the most intelligent and influential citizens of the Indian Territory, clearly and truthfully pictures the feeling prevailing among the Indians toward the colored people. It is well worth a careful and attentive perusal. Mr. Mitchell himself is in favor of a removal of the colored people, and his admission as to the hostility of the Indians toward the former, and the latter's helpless condition, is significant:

"BOGGY DEPOT, C. N., *December 12, 1869.*

"DEAR SIR: I see that the freedmen of the Choctaw and Chickasaw Nations have called a convention at Armstrong Academy on 16th instant. I am of this opinion, that they will not be able to get many together by that time on account of high water and the shortness of the time given in the notice for the convention, but if they will extend the time they may get enough together to give an expression of the majority of freedmen in this country. I have been watching with a good deal of interest the question of the freedmen of the Choctaw and Chickasaw Nations. The freedmen themselves are very much divided in their notions about their wants, but I believe the universal opinion is that they cannot live in the Choctaw and Chickasaw Nations under the Choctaw and Chickasaw laws, and there is one class of them that was absent from the nation at the treaty of peace made at Fort Smith, September, 1865, all of which was excluded by that treaty of '66, and would not be able to get land if the treaty is carried out. Now, I would suggest that if the freedmen would ask the government to set apart for them a country in the leased district which was set apart for that purpose according to the treaty of '66 and have an agent appointed for them, and give them rations for one year, which would enable them to get a start; also ask for farming implements and have the \$300,000 to remain in the hands of the government as a permanent investment, the interest to be used for the support of the government of the freedmen after they are moved to their new homes; in this move the freedmen would have the united assistance of the Choctaws and Chickasaws in everything except the turning over the \$300,000 to the freedmen; and I am of the opinion that the Choctaws and the Chickasaws would sooner give up the money, particularly if the United States Government would demand it, than to give the freedmen the forty acres of land, which is not enough no how for them; and another advantage would be that any freedmen could go to the colony that he wanted to and they would soon have a flourishing community; and I am of the opinion that the government would favor this policy of colonizing the freedmen remaining among the Indian tribes numbers of freedmen would like to remain in the Choctaw and Chickasaw Nations if they could have the protection of the United States Government, but if the Choctaws and Chickasaws gave them land, they also make them citizens; they come under their law, and I know that if the freedmen were put under the Choctaw and Chickasaw law they could have no chance at all, and there are very few of them that could remain in the country long; they would have no chance in the Choctaw and Chickasaw courts. If this course was adopted, it would not compel those that wished to remain in the Choctaw and Chickasaw country as they are now; some of them would remain, but the majority would go. There have been a good many of their leading men that have come to me for advice, and they invariably say that they cannot think of remaining in the Choctaw and Chickasaw country and come under the Choctaw and Chickasaw laws, and as a remedy that will work well with both freedmen and Indians, I suggest the colonization of the freedmen, either in the leased district or in the country purchased of the Seminoles north of Canadian River, and as an inducement for the government to adopt this plan, it could be said that the freedmen would raise plenty of corn for their military posts on the frontier. Knowing that you could be of advantage to any plan for the settlement of the freedmen question in the Choctaw and Chickasaw Nations, if you would use your influence, and I think I have controlling influence with those in this part of the country,

I would willingly co-operate with you in any plan that you may suggest. If my plan does not suit, I would like to see the freedmen settled somewhere, so they could go to work and make a living.

"Hoping to hear from you, I am, yours truly,

"E. S MITCHELL.

"V. DELL, Esq."

"The question naturally arises, shall these rebel Indians have their own way, be permitted to break treaties that don't suit them, and compel a faithful, suffering race, true to the government, to leave their native homes which their labor principally redeemed from being an unbroken wilderness; or shall the government interpose its strong arm, render justice to all, give both Indian and negro a sufficient portion of land and open the remainder to general settlement; thus giving to civilization a most beautiful and fertile region, large enough to form two respectable States, but which does not now contain a population equal to that of a ward in one of our first-class cities?

"Very respectfully,

"V. DELL,

"Editor New Era, Fort Smith, Arkansas.

"General O. O. HOWARD,

"Commissioner of Bureau F., R. and A. L., Washington, D. C."

Q. You swear that that is a correct copy of that memorial?—A. Yes, sir.

By Mr. GRAFTON:

Q. Were you present at the meeting?—A. I was not there.

Q. How, then, can you swear that these resolutions were passed at that meeting?—A. The proceedings were brought to me by persons present and well known to me.

Q. That don't matter. Answer my question. Can you swear from your own personal knowledge these resolutions were passed at that meeting?—A. I was not there, but I am willing to swear they were passed; they were brought to me by men who were there.

By Mr. BOUDINOT:

Q. How long have you lived in the Territory?—A. I have stated that before. I was about to say that part of this memorial is officially taken from the United States clerk's office in regard to certain testimony.

Q. Have you heard this question of Territorial government, popularly so called, discussed by numerous citizens of the Cherokee Nation, intelligent people, and have you written about it from time to time?—A. I have for the last ten years.

Q. You stated you are familiar with the opinion of the intelligent people and their expressions to you for the last ten years?—A. Yes, sir.

Q. Will you state to the committee if these opponents of the Territorial government there have not persistently misrepresented, not only through the papers, but through their letters giving the impression that the organization of a civil government for the protection of life and property without interfering with the tribal organization is simply in favor of the railroads and for the purpose of depriving them of their lands, and giving them to the railroads?—A. That has been one of the chief arguments used to turn the mind of the common people against any consideration of changing their present form of government, and it has been used extensively all over the Territory.

Q. Well, from your observation and acquaintance, can you tell the

committee whether a person would be safe in advocating the most generous form of government which would protect them in every respect in their property and not disturbing their tribal organizations; in other words, do you believe my life would be safe while traveling through the Cherokee Nation, simply because of my views upon this question?—

A. Well, most of the people of the Indian Territory—I mean the *bona fide* settlers—are as peaceable, as well-behaved as any class of people can be; yet there are in that Territory men who from the very nature of the condition of the Territory would not scruple to put out of the way any man that was opposed to them in their peculiar views, and especially would they be down on a man who advocated Territorial legislation like that of the Oklahoma bill.

I have been told years and years ago, “If you set foot across that line you climb a tree;” I was told that by a number of people. I was told, for instance, by a man, a leading citizen of the Choctaw Nation, a white man, but married to a Choctaw, and bitterly opposed to anything of the kind that I advocated. He took his paper home to his wife, she expressed the benevolent opinion that it was a pity that somebody did not shoot me down, and yet to-day he is in favor of my plan. There has been a vast change within the last few years in the Territory.

Q. You are familiar, I suppose, Mr. Dell, with the character and the number of cases which come up before the United States court for trial?

—A. Yes, sir.

Q. What proportion of criminal cases come before that court from the State, what proportion from the Indian Territory?—A. The criminal cases are almost exclusively from the Indian Territory, not one in a hundred probably from the State of Arkansas.

Q. Can you give the committee any idea of the number of cases of murder that come from the Indian Territory?—A. I did not bring the last issue of my paper with me, in which a statement is published of the cases now on hand.

Q. Can you give those of any previous courts?—A. In many of the terms there are from fifteen to twenty murder cases. It is notorious that frequently five or six persons were hung at one time there. Still, I would say that the people of the Indian Territory are not so much to blame for that, as their unfortunate condition is such that they cannot help it. Some of those criminals were white men, some negroes, and some Indians.

Q. Tell the committee, from your knowledge, living on the border there, if that Territory is not a convenient harbor for persons of bad habits in the States, who flee from the States, where they can get away from the laws.—A. Since the facilities of travel have increased, the Territory has filled up with outlaws. The time was that I could travel there without arms, but since the railroads have been extended through the Territory it has become a refuge for outlaws, as Texas was thirty years ago.

Q. Then you do not mean to say that the *bona fide* citizens of the Territory are responsible for this condition of affairs?—A. No, sir. There are as nice people there as anywhere in the States.

Q. Then it is the outlaws from the States?—A. Yes, sir.

By Mr. CHAFFEE:

Q. Have they any right there?—A. No, sir; they go there without any right.

By Mr. BOUDINOT:

Q. Tell the committee how they are kept out, or how they are attempt-

ed to be kept out.—A. The Indians must lay complaint before the agent, and the agent calls upon the military, but the Territory is so extensive that they are enabled to hide; they cannot be gotten out.

Q. There is no local law to remove them?—A. No, sir, none; and that is the reason why the good people want to become citizens of the United States, to protect themselves by law against these scoundrels. There is another class who are eagerly sought for by the people of the Territory—these are the mechanics, farmers, &c.

Q. What effect does the present state of affairs in the Indian Territory have upon Arkansas?—A. I do not know that it has any effect except that it cripples us in our development, being placed as we are up against a Chinese wall.

By Mr. GRAFTON :

Q. You mean you cannot go over the line and get the land?—A. We have more land than we want. We want an outlet to the Pacific, a railroad through there. We do not want the land; we have plenty on our side. The United States has recently tried to sell millions of acres there but cannot.

Q. Do you know the value of the land?—A. I do not know if it has any. It is very cheap; I have land right on the Indian line, and I have offered it for sale at two dollars per acre, and it is good land too.

Q. Do you carry on any other business besides editing the paper?—A. No, sir.

Q. Are you a married man?—A. Yes, sir.

Q. Have you a family?—A. I have.

Q. Do you support your family from the income of that paper entirely?—A. Yes, sir; I have no other source of income.

Q. What proportion of the circulation of your paper is in the Indian Territory?—A. Well, not a great deal. I have a small number of copies to distribute through a number of post-offices in the different nations.

Q. Are they paying subscribers?—A. Paying subscribers.

Q. You cannot state to the committee how many?—A. No, sir; except from my books.

Q. You have no other means of knowing?—A. No, sir.

Q. What proportion of your subscribers are Indians and what proportion are white people?—A. Well, about equal; some negroes, some white men, some Indians.

Q. The subscribers citizens of the tribe?—A. Yes, sir; all of them.

Q. How do you know that?—A. Because I know them personally.

Q. How long ago since you lived in the Chickasaw Nation?—A. Since 1854, twenty-four years ago. No, I beg your pardon; in 1859.

Q. You have not been in the nation since that time, then?—A. Yes, occasionally on excursions, picnics, &c., by steamer.

Q. How did you go?—A. By boat.

Q. You have not been in the Chickasaw country since the year 1859?—A. No, sir.

Q. Then your visits since the war have been of these excursions and picnics?—A. Yes, sir; that is all.

Q. You say you talked very largely with the people of these nations who come to Fort Smith. You mean by that you have talked with people who have been brought in there under arrest?—A. Some; but also with persons who come in to trade, &c.

Q. That includes the class you talked to, of course?—A. Includes all I talked to. That is the way I come in contact with the people of the Indian Territory.

Q. People under arrest also?—A. Some.

Q. And of course they have a grievance against the Indian government?—A. No, sir; I never talked with them about that.

Q. Did you talk to them about the Oklahoma bill?—A. No, sir; I did not.

Q. You never talked about that with men under arrest?—A. No, sir.

Q. You talked with people on business?—A. Yes, sir; people coming there for trade, attending court, &c.

Q. Will you please state to the committee what the provisions of the Oklahoma bill are?—A. Each one?

Q. No. You have been giving evidence about the Oklahoma bill; let us see whether you know what the bill provides.—A. It provides for the distribution of the lands—160 acres apiece to all lawful inhabitants; it provides for a Territorial government; in short, such as is usually given to Territories of the United States, with this difference, that the bill provides that all railroad grants should be annulled and turned over, and the surplus funds derived from the sale of the surplus turned over to the government for the benefit of the *bona fide* citizens living in the Territory. That is about the groundwork of those bills.

Q. Is that the way you present it in your paper?—A. Yes, sir; that is the way I present it in the paper.

Q. You say the colored people in the Choctaw Nation have no rights that anybody respects?—A. No, sir; I did not say that exactly.

Q. What did you mean by that?—A. I meant they have nothing in the shape of security for "life, property, or the pursuit of happiness." They have not been given the forty acres of land which article 4 of the treaty makes it incumbent on the Choctaw Nation to give them; and to-day a negro can be kicked off of the land he tills, and nobody is held responsible for it. I can name many instances where these complaints have been made to me. Of course there is no remedy provided for in the courts.

Q. Do you undertake to say that the colored people are not permitted to till the land?—A. I did not say any such thing.

Q. Is it not a fact they can take a farm and till it?—A. Undoubtedly they can, and they have, until a recent period, been the chief tillers of the soil, and as a matter of course, it is to the interest of the Indians to have them till the soil. But if a negro has a nice piece of land well fenced in that he has been cultivating ever so long, and a Choctaw wants it, he makes the negro move off of the land, and the negro has no recourse. This has been done often.

Q. In how many instances?—A. I know in many.

Q. Can you name one instance?—A. I could name a great many if I was prepared. I came here unprepared to name any instances of that kind.

Q. So you do not know of any particular instance where that has been done?—A. I do not know any particular names, because this testimony is unexpected to me. My business here was not on this business at all.

Q. You say a majority of the people want a change of government such as is contemplated in this Oklahoma bill. How do you know that?—A. I know it from talking with a great many of the people, citizens of the different nations.

Q. Have you talked with one-half of the citizens of the Choctaw Nation?—A. I think not. I could not well have done so.

Q. Do you know how many people there are of the Choctaw Nation?—A. Yes, sir; I think I do.

Q. How many do you think there are in that nation?—A. Well, including the negro population, there are some sixteen thousand or eighteen thousand people.

Q. Well, don't you know that each and every individual member of that tribe has an undivided interest in the land?—A. I do, except the negroes.

Q. And that it would take a majority of votes upon that question. You must have some intercourse with all those people?—A. No, sir; that is not the sequence at all. When I see a representative man who knows the opinion of others, I get the opinion of those for whom he speaks.

Q. Will you please name some of those representative men from whom you have gathered this information?—A. I can give you but few from memory now, because I am not prepared for it.

Q. Can you give us a half a dozen of those Choctaws?—A. Perhaps I could.

Q. Please name them.—A. I could give you perhaps a hundred by to-morrow morning.

Q. I am not asking for one hundred. I will be happy if you will name six. Can you name five?—A. Yes, sir, I can name five. I will, since you insist upon numbers. I will give you five or six; perhaps a dozen.

(The witness after a pause:) Well, there is on file in the department a document, and from that I will give you a hundred—

Q. I am not asking about that document; I want your opinion.—A. Well, there is Mr. Welsh.

Q. Where does Mr. Welsh live?—A. At Atoka, Indian Territory.

Q. Is he a Choctaw?—A. He is a Choctaw.

Q. Is he a white man?—A. A white man with an Indian wife.

Q. What does he do?—A. I do not know really what he does—farmer, I think.

Q. Who else? Can you name anybody else?—A. Jerry Ward.

Q. Where does he live?—A. He lives in Skullyville, Indian Territory.

Q. In the Choctaw country?—A. Yes, sir.

Q. What does he do?—A. I think he is a farmer.

Q. Has he ever held an office?—A. I do not think he has.

Q. Has he ever been a member of the council?—A. I do not think he has.

Q. Can you name anybody else?—A. If you want names I will give you names in the morning. I cannot remember any now.

Q. Have you traveled over the Indian country since the treaty of 1866 was adopted?—A. Not a great deal. I have been just over the border.

Q. How far into the interior of the country have you been since the year of 1866?—A. Not very far.

Q. How do you undertake to state, or upon what grounds do you undertake to state, there is no security for life or property, when by your own statement you say you have not been there?—A. I state it from the records of the country and the records of the court and the general status of the country. As I said, Fort Smith is the political center of the Indian Territory, and any one can find out more there than anywhere else.

Q. That is where your paper is published, is it not?—A. Yes, sir.

Q. You intimated that a great deal of these disturbances arose from people coming over there into Arkansas and getting intoxicated, firing pistols, &c.; is that correct?—A. I gave different instances.

Q. Where did they get their whisky?—A. I suppose at Fort Smith.

Q. They did not get it in the Indian Territory?—A. I suppose not.

Q. How many criminal cases have been tried there within the last year? How many persons charged with the commission of crimes in the Indian Territory have been brought down there for trial?—A. I cannot tell how many.

Q. Can you give an estimate upon that subject?—A. Seventy-eight cases before the court now in session.

Q. That is from the nations, is it not?—A. Yes, sir; I presume so.

Q. That court has jurisdiction over the whole five nations?—A. Yes, sir; over all the territory.

Q. What is the population of all the nations?—A. About sixty thousand.

Q. How will that correspond with the criminal cases in the State of Arkansas, your own State?—A. Well, at the last session of the circuit court in my county we did not have a single criminal case—no murder or anything of the kind.

Q. How many murders have been committed within the last year?—A. I do not know of any.

Q. Do you know anything about murders committed in Texas?—A. Nothing except of some flagrant cases that have been published in the newspapers.

Q. As a newspaper man, don't you get as many flagrant cases committed in the States as in the Indian nations?—A. By no means; we have a very peaceable State. Arkansas is as peaceable a State as the State of Maine.

Q. I am not speaking of Arkansas.—A. Then you attack the civilization of the United States.

Q. So you have given these questions a great deal of study. What has been your motive in aiding all these propositions for territorializing the Indian country?—A. Because it is due to the people of Oklahoma themselves. I think they are living under the most despotic tyranny any people ever lived under.

Q. You have no selfish motive, then, have you?—A. I do not know of any selfish interest whatever.

Q. You simply wish to aid in the civilization of the people of that Territory?—A. That is one of the points.

Q. What is the other?—A. The other is to get rid of the pandemonium such as exists there now alongside of us.

Q. You say there is no free expression of opinion on the matter. Do you mean that that is denied the Indians themselves?—A. It is denied to anybody who advocates territorializing the Indian nations on the plan of these Oklahoma bills.

Q. By whom is it denied?—A. By those who oppose it.

Q. Who are they?—A. The present chiefs and those in office in that Territory.

Q. How do they hold office?—A. I suppose they are elected by the people.

Q. Then do not they reflect the sentiments of the majority?—A. By no means; if you get a man to talk privately he will tell you that he is in favor of the change, but that if it was known he would endanger his life.

Q. Have you ever heard—did any one say that to you?—A. Yes, sir; I know it from those with whom I have talked in the Territory.

Q. Has it not been adduced from the circulation of rumors, &c.?—A. No, sir.

Q. Do you know of any man having been injured for advocating these measures such as is contemplated in the Oklahoma bills?—A. I will say I was here last summer, and no sooner was it known out there, before I got a number of letters sent to me here asking me to try and do something for them in the way of change of government, and saying that they could not express their views there for fear of their lives; and upon that I will further state that there were letters sent to the Interior Department giving a statement of the condition of affairs there, and to also asking a reconsideration of a certain decision rendered in regard to the employment of skilled labor. That decision was reversed by the present Secretary of the Interior upon the basis of the laws and treaties.

Q. Never mind that; answer my question. Can you name a single case where a man has been deprived of his liberty by reason of advocating these things?—A. The discussion of that question is not expressly prohibited, but every one there knows very well that it is not safe, and is very careful not to put his head in a noose.

Q. But you know of no man being deprived of his liberty on that account?—A. I do not know of any man, because no one there talks about it.

Q. And from that, do you infer that a majority are in favor of it?—A. No; they talk to me, but dare not talk about this matter in the Territory.

Q. In regard to this memorial, you say you were appointed by a delegation of colored men to present this memorial?—A. Yes, sir.

Q. You were?—A. Yes, sir.

Q. Requested to present this memorial to Congress?—A. Yes, sir; and explain its provisions.

Q. Did they pay you anything for that?—A. Nothing, not a dollar.

Q. Did they pay your expenses for coming on here to Washington?—A. No, sir.

Q. Not one penny?—A. No, sir; not one penny.

Q. You had no hope of reward at all?—A. No, sir; they had no money to pay me, they were poor colored people.

Q. Have you received any money since you have been here for the advocacy of this Oklahoma bill in your paper?—A. No, sir.

Q. Nor at any time previous?—A. No, sir.

Q. And you have no expectation?—A. No, sir.

Q. You have received nothing from the railroads?—A. I have received nothing from the railroads.

Q. Nothing from the school fund?—A. Not a dollar.

Q. Nothing from the postal commission fund?—A. Not a penny from the postal commission fund; I was scarcely aware that anything of this kind was going on when I came here.

By Mr. BOUDINOT:

Q. State the population of the five tribes?—A. About 60,000.

Q. What is the population of Sebastian County?—A. Twenty thousand.

Q. What is the population of Crawford County?—A. Fifteen thousand.

Q. What is the population of Washington County?—A. About 25,000.

Q. How much in Benton County?—A. Nearly as much if not more.

Q. These are the border counties, and they number how much?—A. Close on to 90,000 or 100,000.

Q. That is 40,000 more than those five tribes; and now, as Mr. Graf-ton wants to make a comparison as to the crimes committed in the

State and those committed in the Territory, can you tell the committee the proportion of crimes committed in these four counties as compared with those committed in the Indian tribes with a population of 60,000?—A. I can only state that at the last session of the court at Greenwood, there was no criminal case tried, except one for larceny.

Q. Do you know of a single case of murder having been committed in any of those four counties?—A. I do not remember any.

Q. What proportion of offenses of a criminal character committed in the Indian Territory are for larceny?—A. Well, as far as larceny is concerned, but few cases have come under my observation. There are trivial cases brought in for larceny from a great distance that should never have been brought in; for instance, hog stealing or something like that. There is a great deal of whiskey sold there, notwithstanding the law prohibits the introduction and sale of intoxicating liquors, and many of our State cases on the border result from the riotous behaviour of those who come over and get drunk.

Q. The character of the criminal cases that come to the United States court at Fort Smith are only where one party is an Indian and the other a white man or a negro. The offenses committed by Indians never appear there?—A. No, sir; there was an attempt made once in the Proctor case to bring it into that court, but that was squelched.

Q. Do you know of any case, within the last year, of any attempt having been made to wreck a train, and an attempt made to rob it?—A. Yes, sir; the man was found guilty and sentenced to be hung.

Q. For wrecking a train in the Indian Territory?—A. Yes, sir; and on another occasion one of the railroad hands, Bob Donnelly, was shot down while performing his duty.

By Mr. GRAFTON:

Q. Was this man who was convicted for wrecking the train an Indian?—A. I cannot tell.

Q. You do not know?—A. I do not think he was. I think he was a white man, but an Indian citizen. I am not certain about that.

Q. Is it not your observation that the Indians as a rule are well disposed, peaceable, and law-abiding citizens?—A. The *bona fide* citizens are just as peaceable as any other class of people. I have traveled through that country without arms in the old times. The trouble is, many of the whites who go in there are refugees from justice from the States, and hence we cannot blame the Indians. The changed condition of affairs there has arisen since the introduction of railroads, &c., and the discussion of territorializing the government has aroused very bad blood in that territory.

Q. Did you not state that there was a perfect pandemonium down there; that there was no security for person, property, and life?—A. Yes, sir.

Q. Persons driven out from their country go there, and there are a great many bad people there, whisky-sellers, &c.?—A. Yes, sir.

Q. Well, then, don't you think it would be a good thing to establish the United States court there?—A. No, sir; I do not.

Q. Why?—A. I will give my reasons. The establishment of the United States courts would be a complete failure, for the reason that there are some fifteen tribes, and it would be almost impossible to obtain a jury upon any single case in this United States court. There would have to be a court for each of these particular tribes. Now, if, for instance, you have one court at Gibson, in the Cherokee nation, or at Atoka, in the Choctaw nation, or Tishimingo, in the Chickasaw na-

tion, only one court, the juries would be summoned from the different tribes, and for each offense tried you would have to have a jury from the tribe the offender belongs to. Besides that, I think few juries within the Territory, in its present political and moral condition, could be found who would dare render a true verdict for fear of their lives, nor could you get a witness to swear to the truth and not be in danger of being waylaid.

Q. How much property do you own in Fort Smith?—A. If it is necessary to answer that, I own a residence, printing-office, several lots, and about a thousand acres in the country.

Q. Don't you think the establishment of the United States court in that country would interfere with the value of that property?—A. I do not think so. The people of Fort Smith do by no means depend upon the United States court. A great many would like to see the court away from there, as it is a source of very great annoyance, and brings some bad characters together there.

Q. Your idea of a United States court, when you express those views, is this court is to have jurisdiction over Indians, is that it? Now, suppose a court was to have jurisdiction over everybody, whites and Indians, do you think your objections would obtain then?—A. Yes, sir; it would, most decidedly; for those bad characters would not stand a trial, and if caught they would generally get out of it in some way.

Q. They would not stand a trial?—A. I do not think there is any power to bring in but a small portion of the law-breakers.

Q. Not by the United States Government?—A. That has been tried time and time again.

Q. Then you think there is no remedy, except upon the plan of making them a Territory, so as to drive out those bad citizens? How would that increase the power of anybody there?—A. The people would soon find the power themselves, as they do in other States and Territories.

By Mr. ADAIR:

Q. Have you ever been much in the Cherokee country?—A. I have, previous to the war.

Q. You have not been there since the war?—A. No, sir.

Q. Have you not heard that the Cherokee chiefs have called our people together for the purpose of discussing this Oklahoma question?—A. Yes, sir.

Q. Have they not had the privilege of voting for it or not as they chose? Has not that question been submitted to the Cherokee people indiscriminately, to everybody?—A. Yes, sir.

Q. Have you not seen notices in the Cherokee Advocate to that effect?—A. Yes, sir.

Q. Have you not seen notices to the same effect about the Creek and Seminole country?—A. Yes, sir. You ask me in regard to the Cherokees, if the whole people were not notified to participate and express their views. They were; but I assure you I know some gentlemen who did not participate or express their views because they could not.

Q. Name them.—A. I would rather not give names, for there is just such a condition of affairs there that it would not be safe.

Q. I pledge you my neck that they shall not be hurt.—A. You cannot stand between them and a bullet.

Q. Who was ever threatened for it and who threatened them? You seem to know a great deal about that country, and I see you have not been there since the war.—A. I know a great many, and I am intimately acquainted with men who are strenuously in favor of a Territorial gov-

ernment of some kind. There are the Wheelers, whom I believe are some kin of yours.

Q. Have you ever heard of the Wheelers being threatened?—A. They never expressed themselves to me.

Q. Are you acquainted with William Wheeler?—A. Very well.

Q. Is he afraid of anything?—A. I do not know; he keeps his mouth shut; he says he is in favor of territorializing the government.

Q. Was he not at Talequah at the last election?—A. Yes, sir; I think he was.

Q. Did not the council pass a law allowing him full right of citizenship?—A. I do not know positively. I know it from the fact that he has been in business and established a saw-mill there in the Cherokee country. He must have been made a full citizen.

Q. He is protected, is he not?—A. Yes, sir.

Q. He has free access to the timber?—A. Yes, sir.

Q. You do not hear any complaint, do you?—A. None.

Q. Did you name the outlaws? Name a few; who are they?—A. Well, I am not acquainted with these outlaws personally.

Q. Well, then, how do you know they are there?—A. Well, I think if a man is shot down that is evidence enough, as was the case of Bob Donnelly, and his murderers were known and not meddled with in any way.

Q. Then you think the court is not doing its duty?—A. No, sir; I do not mean that; the court does all that it can do.

Q. You have given us a comparison between Arkansas and the Indian Territory. Did not the two contending parties in Arkansas about five or six years ago assemble at the State capital with arms?—A. So I was told.

Q. They were about to fight?—A. So rumor said.

Q. Did not the United States have to interfere in order to preserve the peace, one party being in possession of the State capitol, and the other occupying the streets?—A. Yes, sir.

Q. Did not the United States have to interfere, the whole State authorities being totally paralyzed?—A. Yes, sir.

Q. Have you ever heard of any such thing in the Indian country?—A. I cannot see the parallel.

Q. I do not ask that; answer the question. What about the Brooks and Baxter difficulty?—A. Since I come to think of it, in the election before the last in the Cherokee and Choctaw and other nations, a number of people were killed during the canvass, as we had reports from day to day. If you will give me time I will furnish the names.

Q. Between whom were these difficulties in the Indian Territory?—A. Between the Downing and Ross parties in the Cherokee nation.

Q. Who was killed?—A. Why a judge was killed—I do not know his name—and another man was shot in his bed.

Q. Name them?—A. I cannot name them.

By Mr. BOUDINOT:

Q. Bushyhead was the name of one of them, was it not?—A. Yes, sir.

By Mr. ADAIR:

Q. Have you ever heard of anybody being shot in the States and Territories of the United States?—A. Certainly I have.

Q. Do they ever have difficulties on account of elections in civilized communities elsewhere?—A. Yes, sir.

Q. Have you not been employed by the colored individuals in the Indian Territory, and have they not agreed to give ten dollars a head to secure them their rights?—A. No, sir; they have not agreed to give me anything.

Q. They have not employed you to attend to their interests?—A. Only so far as I feel it convenient for me to do and not neglect my other business.

Q. Have you not agreed to get each one of them forty acres of land and a mule?—A. That is an old Arkansas saw that may be traced back to old Brooks, but I never said anything of the kind. I told them they were entitled to forty acres under the treaty.

Q. Do you know of any of them having been deprived of their land?—A. Just before I left for here one came to me and said that a man wanted him to leave his land. I told him to go to the agent.

Q. What was his name?—A. I do not remember.

Q. Do not the Cherokees provide for the colored schools?—A. To a certain extent they do.

Q. Does not the treaty of 1866 provide for their rights?—A. I do not think they have their rights.

Q. Do not the Cherokees provide special schools for their especial benefit?—A. Some; very few.

Q. Do not they have the same facilities for education afforded them?—A. I do not think they have.

Q. In what case?—A. I do not think the colored children have the same schools that the Indian children do.

Q. But they have them according to their wish?—A. I do not know.

Q. How long since you were among the Seminoles?—A. In the year 1854.

Q. How long since you visited the Creeks?—A. About the same time.

Q. The Choctaw and Chickasaw country?—A. About the same time.

Q. Do you know anything of your own personal knowledge about the situation of the internal affairs of these people since the war?—A. I think I do.

Q. Have you not obtained your knowledge from what you have heard others say?—A. Yes, sir; to a great extent.

Q. Have you not been opposed to the establishment of the United States courts under the treaty?—A. I have, for the reasons given.

Q. Have you not done it for other purposes?—A. No, sir.

Q. Have you had any mercenary motive in it?—A. No, sir; I have given the reasons in full a little while ago.

Q. Did you say you lived in the Chickasaw Nation? If so, how long did you reside there?—A. About four years.

Q. Was that before the war?—A. Yes, sir; before the war.

Q. Were you married in that country?—A. No, sir.

Q. What were you doing there?—A. I was there at first in the Army. The last time I had a contract for wood.

Q. You were always treated very kindly there?—A. Yes, sir; traveled through there without arms during my visits.

Q. Have they been kind to citizens of the United States?—A. They have. I am only speaking of my own impressions.

At 4 o'clock and 15 minutes the committee adjourned until 10 o'clock Monday morning, April 22, 1878.

Committee met at 11 o'clock a. m., Monday, April 22, 1878.
Present the Chairman, Senators Garland, Chaffee, and Saunders.

GEORGE A. REYNOLDS sworn by the Chairman.

Mr. GARLAND. Grafton, you will please examine the witness.

By Mr. GRAFTON:

Q. State your name.—A. George A. Reynolds.

Q. State your age.—A. I am about 45 years of age.

Q. Place of residence.—A. Parsons, Kansas.

Q. How long have you been living in Kansas?—A. Nearly 22 years.

Q. Last past?—A. Twenty-one years last past. It will be 22 years in October.

Q. How much of that time have you spent in the Indian Territory?—A. Nearly five years as a United States Indian agent; a portion of the time in the employ of the Missouri, Kansas and Texas Railway Company; during the last 13 years, more or less, I have lived in the Indian country.

Q. For what nation were you agent?—A. The Seminoles.

Q. During what time?—A. I was appointed in February, 1865, resigned about August, 1869.

Q. Did you go immediately into the employ of the Missouri, Kansas and Texas Railway Company after you were discharged from office, or after you resigned?—A. Yes, sir; I was relieved on the 1st day of August, in the year 1869.

Q. How long did you remain in the employ of the railroad company?—A. Until June last.

Q. Were you all that time in the Indian Territory?—A. Most of the time.

Q. Do you know of any public lands in the United States not owned by Indians?—A. Yes, sir; a good many.

Q. Do you know Bob Reams?—A. Yes, sir.

Q. Where does he live?—A. At Macalester. He did live there. I think now he lives ten or fifteen miles above, on the line of the railroad, at the water-tank.

Q. Is he an Indian by birth or marriage?—A. By marriage.

Q. Have you any knowledge of any difficulty Bob Reams was engaged in with a Choctaw Indian?—A. Yes, sir.

Q. Please state all you know about it.—A. Mr. Reams and some others had some difficulty with ex-Sheriff Jones.

Q. Give his initials, if you know them.—A. Samuel, I think; I am not certain.

Q. What was the result of it?—A. There was a feud existing for five months, maybe longer, and Mr. Jones was killed.

Q. Who killed him?—A. I did not see the man. I do not know; report said Mr. Reams killed him.

Q. Please state the circumstances of the killing, and how near you were to him when he was shot.—A. I arrived there about 9 o'clock in the morning. Got off the train to settle some claims and to pay the Indians for damages done by the railroad. I got off the train about 9 o'clock and stepped up to the store, and the first man I met was Sheriff Jones; he was under the influence of liquor at the time; he was a great friend of mine, our relations were always friendly; he said he wanted to see me a moment; he laid off his revolvers and handed them to Judge Folsom. I pointed to a room and said that room will do.

Q. State what it was and where it was.—A. In the store at Macalester. In Macalester's store. I stepped into that room; it is a storehouse

65 feet long. Mr. Jones had his arms around my neck and my hand was on his shoulder, and while we were leaning upon a crockery-cask a shot was fired and he was killed.

Q. Did you see who fired that shot?—A. No, sir; I did not.

Q. Did you ever have any conversation about it afterwards with Mr. Reams?—A. Yes, sir.

Q. Did he confess that he fired that shot?—A. Yes, sir.

Q. What action was taken in regard to the matter, if any?—A. He was arrested, tried, and acquitted.

Q. The Macalester of whom you spoke as owning the store in which this shooting took place, is he the same J. J. Macalester to whom the letter introduced in evidence on page 13 of the record is addressed?—A. It is J. J. Macalaster; I suppose he is the same man.

Q. Were you personally acquainted with Dr. Hailey who testified here?—A. Yes, sir.

Q. Also with Mr. Pusley?—A. Yes, sir.

Q. And with Tandy Walker?—A. Yes, sir.

Q. They are all Choctaws?—A. Yes, sir.

Q. And Mr. Macalester, also?—A. Yes, sir, by marriage.

Q. Will you please state whether these gentlemen are interested in a coal mine; Macalester, Walker, Hailey, and Pusley?—A. I think all four of them are.

Q. They are all friendly with Mr. Reams?—A. Yes, sir.

Q. And have been all through this difficulty?—A. Yes, sir.

Q. Has not that difficulty continued to exist?—A. Yes, sir; it was revived by the brother of Sheriff Jones coming there.

Q. When was that?—A. During the last year, 1877, a short time after his brother was killed, Charley Jones, I believe they call him—I never saw him—arrived at Macalester.

Q. Were you at Muscogee in July past?—A. Yes, sir.

Q. Did Bob Reams state to you at that time that he had letters warning him not to return?—A. Yes, sir.

Q. What did he say was the cause of it?—A. It seems Charley Jones wanted to revenge the death of his brother.

Q. He was afraid to go back?—A. Yes, sir; he was advised by his friends not to do it.

Q. Do you think there was any real danger?—A. Yes; I think there was from him, under the circumstances. If he got to drinking he seemed to think of his brother, and I have no doubt when under the influence of liquor he would have killed him.

Q. You have lived a great deal on the frontier?—A. Yes, sir.

Q. Are not feuds common there?—A. Yes, sir.

Q. In all the frontier States and Territories?—A. Yes, sir.

Q. Are they any more so in the Indian Territory than elsewhere on the frontier?—A. No, sir; they exist everywhere, but not more there than anywhere else on the frontier.

Q. In that respect there are no exceptions?—A. No, sir.

Q. What has been your observation with regard to the safety of person and property in the Indian Territory?—A. So far as the Indian population itself is concerned, life and property is as secure among them as in any place I have even been in my life. I would consider myself as safe traveling through the Indian Territory as in Connecticut or anywhere else, so far as the Indians are concerned. I have carried money—\$50,000 at a time—there without any fear.

Q. Have you ever been in the Choctaw country?—A. Considerable; yes, sir.

Q. Visited their schools?—A. No; not in the Choctaw Nation; never visited their schools.

Q. Then you have no personal knowledge about them?—A. No, sir; I have not.

Q. What is your impression with regard to freedom of speech among the Choctaws upon questions among themselves—from your observations?—A. I do not think there is any freedom of speech in the discussion of matters in what they believe to be against their interests.

Q. Is there any killing?—A. Oh, no, sir; I was going on to say that discussion of political questions are discussed by themselves generally, and I have always noticed among the Indians when talking among themselves on such matters they would look around and see who was present, and see if those entertaining the opposite opinions were present or not. I think that was so among them, and the Indians are different from other people.

Q. Is not that owing to their habit of thought?—A. I think so, sir.

Q. Have you ever known any Indian to be deprived of his liberty by reason of his political views?—A. No, sir.

Q. Have you ever known any one to lose his life by reason of that?—A. No, sir.

Q. Have you ever known any Indian to be denied the benefit of the schools or any other right or privilege by reason of his political views?—A. Oh, no, sir; not at all.

Q. You have traveled over that country?—A. Yes, sir; I have been there as much as any white man ever has.

Q. You have had a great deal of intercourse with the people?—A. Yes, sir.

Q. Talked with a great many of them in regard to these matters?—A. Yes, sir; I venture to say that I know more Indians than any man here, of all classes and parties.

Q. What progress are these nations making in education, art, and sciences?—A. I think they are doing exceedingly well.

Q. Is it not true that most of the disturbing elements are from white people going into the country, of one kind or another?—A. Well, I think their situation is just such that—

By Mr. GRAFTON :

Q. I mean refugees from justice; bad men who go there?—A. I think it arises a great deal from that class of people. I think the Indians themselves are unfortunate in being so situated that they cannot prevent them going into the country, and this is going on from bad to worse all the time. I think there are less white men there now than there ever will be again.

Q. Why is that so?—A. I presume it is because the laws are not executed. I never knew but two men to be driven out of the Territory. They were gamblers, and they came back.

Q. Is it neglect on the part of United States officers to put them out?—A. Yes, sir.

Q. While Indian agent did you have any complaints?—A. No, sir; there was one white family in the Seminole Nation, and there are only two now.

Q. At that time there were no desperadoes in there?—A. Nothing of that kind; no, sir. I have had occasion to tell parties to drive a little faster; not to attempt to stop in the nation.

Q. The Indians themselves were peaceable and well disposed, were they not?—A. Yes, sir.

Q. Have you any knowledge of any money having been expended in that Indian Territory, either to their public journal or to any official or to any other person for the purpose of gaining influence, directly or indirectly, or of any other thing of value having been given for that purpose by the railroads, its employes, or any one engaged in promoting their interests?—A. No, sir. I have no knowledge of that whatever. I will state I put in my own money myself in a newspaper at Muscogee. I put it in, however, simply as a matter of investment, nothing else. I did it with Colonel Boudinot. The paper was afterwards taken to Vinita. It proved not to be a paying investment to me. That press and material is at Maclester. The Star Vindicator is published from that.

Q. Was that your individual money?—A. Yes, sir; my own individual money. I lost about \$600.

Q. It was merely a private undertaking?—A. Yes, sir.

Q. It was to promote the Territorial bills?—A. Yes, sir; and to disseminate knowledge and to promote the interest, progress, and education of the people and a higher civilization for the people.

Q. The object was for the people to be educated up to the standard of American citizenship so as to enable them to hold their lands in severalty, &c.?—A. Yes, sir; and some form of government different from that of their present tribal organizations.

Q. Have you ever been reimbursed in any way for that money?—A. No, sir.

Q. Neither directly nor indirectly?—A. No, sir; neither directly nor indirectly.

Q. Did you make that investment by and with the knowledge, advice, and consent of anybody connected with the railroads?—A. No, sir; not at all. I made it with my friend Colonel Boudinot.

Q. Did he state to you at the time that the railroad was interested in it?—A. I do not think he made any statement at all in reference to it. One day he stopped at my house and we talked about it; we thought it would pay, and I believe it would have paid under different circumstances.

Q. What is the security for person and property there in that Territory, in reference to white men?—A. Well, I do not think a white man has much of a show for person or property there. The laws are not properly executed. The laws do not properly protect them; they are not executed as against a white man perhaps so well as against an Indian—that was merely an observation of mine. I do not know much about that, however.

Q. Was there much opposition to that paper at the time?—A. Yes, sir; there was very serious opposition; it was suppressed by the Creek council; an order was made to confiscate it.

By Mr. SAUNDERS:

Q. What kind of council?—A. The Creek council.

By Mr. GRAFTON:

Q. Do you regard those white men in the Creek Nation as temporarily residing there?—A. No, sir.

Q. You do not?—A. No, sir.

Q. Do you know of any white people that have property in that country who go in there temporarily?—A. Yes, sir; I know a good many; nearly all of the merchants are white people.

Q. They are licensed traders, are they not?—A. Yes, sir; licensed traders.

Q. Have you ever known any of them to lose their property?—A. No, sir; none. I referred to stock-grazing people; that class of property.

Q. You mean a white man cannot go graze his stock with any security?—A. No, sir; I do not think he can.

Q. Do you not know that that is prohibited by law and treaty?—A. I know no white man can go there; and if any white man is in there, I think he should be protected.

Q. Don't you know that is prohibited by treaty and by law?—A. I know white men are prohibited from going in there; but they do go in there and are staying there, and I think they should have protection of some kind.

Q. They go in there with their eyes open and at their own risk, do they not?—A. Yes, sir.

Q. Do you think they merit any special legislation at the hand of Congress to allow them to go in there and invade the rights of these Indians?—A. Well, I do not think they ought to have any special legislation, specially for them; but they are there, and some law should be thrown around them. I think they should have some protection.

Q. Ought they not to go out?—A. That is for the officers of the law to determine, and not for me. As an abstract principle, I have no doubt that they ought to go out.

Q. Well, what is the condition of the freedmen down there?—A. The condition of the freedmen in the Choctaw Nation is very insecure and deplorable. The provisions of the treaty have not been carried out. The negroes merely stay by sufferance.

Q. Have you ever known any of them to be molested?—A. No; sir; I understand they do not have the privileges of the schools.

Q. Have you ever known any one of them to be murdered because he was a colored man?—A. No, sir.

Q. Is there not a friendly feeling between the negroes and the Indians?—A. To a certain extent there is, but there is a restlessness on the part of the people to have the matter settled, and the status of the negro population should be determined in some way.

Q. Are they not permitted to cultivate the soil?—A. Yes, sir; they are permitted to do that, but whether protected in that, I do not know.

Q. Do you not know that the treaty provides for the protection of their property?—A. No; the treaty does not in the Choctaw Nation, I think.

Q. I will read, from the memorial introduced in the testimony by Colonel Dell, article 4 of the treaty between the Choctaws and Chickasaws. Now, then, do you not know that in compliance with this treaty's stipulation laws have been passed by the Choctaws to protect these negroes in all their rights?

(NOTE.—The reference made by Colonel Dell to article 4 of the treaty is contained in Mis. Doc. No. 106, Forty-first Congress, second session, of the Senate.)

A. I do not know that. I want to say this: The reason I say they are not protected, is that they have no right to the soil, no right to the lands, no right to the schools, no right to hold office, as they have in the Creek and Seminole Nations.

Q. That is, the law grants it to them there?—A. Yes, sir.

Q. You do not mean to state that any right has been denied them provided for by these treaties?—A. That is what I mean to say.

Q. Do you know of any State in the South where the people, after the slaves were emancipated, divided their lands with them?—A. No, sir. I think the Indian people set a noble example. I helped to make

the treaties of 1866, and I think they did a grand thing in providing for their former slaves in the manner they did.

Q. You would commend that action?—A. Yes, sir; I would, and did in public addresses at the time.

Q. So you think in that regard there is a higher state of civilization there than in the Southern States?—A. I think there was a great deal more justice done than was done in any of the States.

Q. Did you ever talk with any of the colored people there about that?—A. Yes, sir; some of them; I never made it my business specially to do it.

Q. You did it incidentally?—A. Yes, sir.

Q. Is there any distinction made there between people who were in the Union Army and those in the Confederate army?—A. Yes, sir; more or less of that; but that is dying out there; there used to be a good deal of feeling on that account between the rebels and Union people, so called.

Q. Do you think that that was worse than in the States?—A. No; I do not think it was. I think it is dying out there as it is in the States, and I think it ought to have died out long ago.

Q. Has it not been dying out faster there than in any of the States?—A. No; about the same.

Q. Do not Tandy Walker, J. J. McAlister, Bob Reams, and Dr. Hailey complain of the Choctaws and Chickasaws because they impose a tax upon that coal mine?—A. They used to speak and complain about it; I do not understand it to be so now; they get the same amount of royalty they used to get; it increased the amount on the railroads; they get the same, and the Choctaws get their portion.

Q. So they have no grievance on that account now?—A. No, sir; not on that account now; that matter went into their local courts, and it engendered some feeling at the time.

Q. Do you apprehend that Dr. Hailey, Tandy Walker, or any of the people are in danger of their lives by reason of their giving testimony here before this committee?—A. None in the world.

Q. You think that is all moonshine?—A. All moonshine.

Q. Do you think they have had any letters warning them about this danger?—A. Yes, sir; I do not remember, but it seems to me there is one here from Judge Folsom.

Q. Is that Folsom interested in the coal mines?—A. No, sir.

Q. Has no interest in them?—A. No, sir.

Q. But you do not think there is anything in it?—A. My own opinions are known to everybody in that country, and I should not feel myself in danger on that account.

Q. Have you any property in that Territory?—A. No, sir; none at all.

Q. None in Vinita?—A. No, sir; I wish I had.

By Mr. SAUNDERS:

Q. What proportion of the Indian population—grown persons, persons capable of answering for themselves—are in favor of dividing the lands in severalty?—A. I think there is a considerable party. I should think possibly one-half.

Q. Does that sentiment seem to be growing among them?—A. That sentiment is growing; they do not want the railroads to have any of the lands, but they want it divided among themselves, so as to have a better title than they now possess.

Q. Is there any party among them that wants a change, so as to have the lands divided?—A. Yes, sir.

Q. About one-third in favor of that?—A. Yes, sir. I do not know but that if that question was submitted, with a proper understanding, as a separate and distinct proposition, a majority would be in favor of it.

By Mr. GRAFTON:

Q. But, in connection with that, that is a project to wipe away their present system of government, laws, privileges, and customs. Are they in favor of that?—A. I stated that as a direct proposition. I did not say anything about the other.

By Mr. SAUNDERS:

Q. That would follow, of course, if the other succeeds?—A. I stated that I thought one-third, perhaps, were in favor of the division of the lands in severalty.

By the CHAIRMAN:

Q. Are they in favor of the Territorial form of government?—A. No, sir; I do not think they are.

By Mr. SAUNDERS:

Q. Of course, one is looking to the other; that is, if they hold their property in severalty and divide it, each individual holding it for himself, it would work out something of a change in their form of government, like our form of government.—A. I suppose so.

By Mr. GRAFTON:

Q. If that proposition was put to them—that is, to divide their lands in severalty, and that would work to abolish their present system of government, laws, privileges, and customs—what do you think would be the result of it; would they favor it?—A. I will answer that question by saying, as now generally understood, the question of the organization of a Territorial form of government among the more ignorant portion has been understood to carry with it the giving up of their lands to the railroads, and, ultimately, their being driven away West. In that view, and with that understanding, none are in favor of a Territorial form of government.

Q. As an expert, then, you have traveled over that country. Please state what your belief is in regard to the number of the people favoring the proposition, if put to them as I have stated, to wit, that the division of the lands in severalty would work a change of their government and the giving up of their present system of government and accepting a government whereby their officers would be appointed from Washington.—A. I think that if that was properly understood among them, the proposition to appoint these officers from Washington would not affect them much, because the title to their land is insecure—insecure so far as held in common. They are as much concerned in that as in the other; they want to hold their lands in fee simple. I have always held these views myself, that the Indian people as a class are in a condition to assume American citizenship, and in that sense it would be better for them. I have always maintained, on the other hand, that the Indians themselves will never ask for the change. The Indian people are not much in the habit of giving up their customs.

Q. If the proposition were put to these Indian people that a division of the lands in severalty was to work to abolish all their laws, privileges, and customs; that these three things were to go hand and hand—one following as a sequence to the other—how many would favor it?—A. I know none.

Q. Do you mean to say that none would favor it in that view?—A. I mean to say some would. I do not mean a majority.

Q. What proportion?—A. I think one-fourth.

By Mr. SAUNDERS:

Q. Does not this opposition arise as much from prejudice as from fear that the railroads will get their lands?—A. They fear that as much as anything; they do fear their lands would be grabbed up and taken and that they would in time have to remove to another home.

Q. Do you think they fear the lands would be taken away from them generally from the class of white people who would flood their country?—A. I think if they had a fee-simple title it would be as good as my own in Kansas, and they could do as they please with it.

Q. You think if they had a title in fee simple in severalty that class of white people could come in, and that is the reason why they want a change?—A. I say if a bill should pass it should protect the Indians in their individual property, and they should have the privilege of selecting their lands before anybody else.

Q. What proportion of the Choctaws—now supposing their lands were divided in severalty—what proportion are capable of taking care of their individual property from people who would flock in there from the border?—A. O, I think the border people would not flock in any more than people from Massachusetts or the average white man, I don't care where he is from. I think the Indians are as capable of taking care of their individual property as a class as the people in Missouri, Kansas, or any of the other States. They have come in contact with the whites since the war, and I think they are learning their ways pretty fast.

Q. What proportion can read and write in the English language and what proportion their own?—A. There are a great many English-speaking people among the Choctaws.

By Mr. GARLAND:

Q. Have you read these different Oklahoma bills, as they are called?—A. Yes, sir.

Q. What, in your judgment, if these bills are passed, on the theory upon which they are framed, and extended to the Indian Territory—what proportion of the people would favor the project of territorializing that country upon that theory?—A. The bill which seems the most fair is the one that provides that the patents shall contain a condition prohibiting the alienation or sale of the same by the patentees, or of their heirs, for the period of twenty years. I should be willing to submit that question to the people, and as a friend to the Oklahoma bills, I would be willing to stand or fall by that decision.

By the CHAIRMAN:

Q. Under the theory of these bills?—A. Yes, sir.

Q. The general bills?—A. Yes, sir; I think the bills ought to be perfected, however.

By Mr. GARLAND:

Q. From your knowledge of the people in that section of the country, do you think they are capable of being incorporated so as to become good citizens under our system of government?—A. I do. I think it would be a good thing. I think it ought to be done, and if it was done they would bless the Congress that did it.

By Mr. BOUDINOT:

Q. You were asked by Colonel Grafton if the newspaper started to

be published at Muskogee advocated these measures. Will you look at that paper and see if that is the prospectus, and state if I did not intend to advocate, in publishing it, the views as set forth in the prospectus? Please read the prospectus, so that it may go in as part of your evidence.—A. Yes, sir; you intended to advocate the views set forth in this prospectus, which reads as follows:

“1875.—PROSPECTUS OF INDIAN PROGRESS.

“A weekly newspaper to be called ‘The Indian Progress’ will soon be published at Muskogee, Creek Nation, Indian Territory; the first number will be issued early in October next.

“The publication of the Progress is a purely Indian enterprise; as it will be owned, edited, and printed by Indians. As soon as the requisite type can be procured, at least two columns a week will be printed in Cherokee, two in Choctaw and Chickasaw, and two in Creek and Seminole; the remaining twenty-one columns will be printed in English. Thus the paper will present a novelty heretofore unknown in the newspaper world, and furnish a medium of information to the five civilized nations of the Indian Territory which they have never before enjoyed.

“It will be the ambition of the conductors of the Progress to give to its readers in the Territory the earliest news from the outside world; to keep them advised of all movements in Congress and the departments affecting their interests, and to discuss fairly and frankly the political questions so nearly concerning them.

“Its columns will be open to friend and foe alike, for the discussion of the great questions of the day; as we shall claim and exercise the right to entertain and express our views, so we cordially invite those who differ from us to use the columns of the Progress in showing to the people wherein we are in error. For honest and manly opponents we have the greatest respect, and will always treat such with the utmost courtesy. We intend to make the Progress the standard of Indian news, so far as it relates to affairs in this Territory, for the people of the United States. It is no disparagement to our bright and enterprising neighbors, the Oklahoma Star and Atoka Vindicator, to say our opportunities are unrivaled for enabling us to make the Progress the best and most reliable Indian newspaper ever published.

“As its name indicates, the paper will be the advocate of progress and a higher civilization among the Indians; it will insist on the faithful observance of every guarantee of the treaties; it will defend the property rights of all the Indians, and aid them to the extent of its ability in preserving to themselves and posterity the lands they occupy.

“Corruption and fraud in high or low estate will find an inveterate and uncompromising foe in the Progress. The Caddo resolutions of August 4th, as amended at Atoka on the 10th (a copy of which is hereto appended), will form the basis of the political creed of the ‘Indian Progress.’

“The support of all friends of Indian civilization and advancement is respectfully solicited.

“All communications addressed to the Muskogee Publishing Co., Muskogee, Creek Nation, Indian Territory, will receive prompt attention.

“E. C. BOUDINOT,
“For the Muskogee Printing Co.”

CADDO RESOLUTIONS, ADOPTED AUGUST 4TH, 1875.

"Whereas, the people of this Territory are subjected to great inconvenience and expense by being compelled to attend the courts at Fort Smith, besides the injustice of being tried by a jury who are strangers to them and their people; therefore,

"Resolved, 1st. That we are in favor of the establishment of a United States court at some convenient point within this Territory, with such powers and jurisdiction as is provided for by the treaties of 1866. Provided, that the juries for such court be selected from among the citizens of this Territory.

"2d. That we recognize the grand council which meets yearly at Ocmulgee, Creek Nation, as the legislative body for the Territory contemplated by the treaties of 1866; and that its powers should be enlarged in the manner provided by the treaties, and that we recommend the superintendent of Indian affairs to select some point on the railroad as a more convenient place for holding its sessions hereafter.

"3d. That as the treaties provide for a Delegate in Congress, we are in favor of such legislation by Congress as will enable the Indians to elect such a Delegate whenever they may be disposed to do so.

"4th. That the interest of all citizens of the nations are the same, and we characterize the attempt of any one to array the full-bloods and white citizens of the nation, as contemptible demagoguery, and deserving the detestation of all true friends of the Indians.

"5th. That any legislation by Congress with reference to this Territory should provide for a prompt and equitable settlement of all just claims and demands which each or any of the different tribes to be affected by such legislation may have against the United States.

"6th. That in view of the recent action of the United States Government, indicating the intention to settle a large number of plains Indians among us, and from the fact that such action would greatly retard our progress and result in great loss to us pecuniarily, we enter this earnest protest against the settlement of any other Indians not belonging to tribes resident within the limits of this Territory, without first obtaining the consent of the people among whom they are to be located."

Q. Will you please state to the committee under what circumstances those Caddo resolutions were adopted?—A. They were adopted by a meeting held at Caddo. You had been invited to make a speech. I was present when the speech was made and the resolutions were adopted.

Q. Do you recollect the names of any prominent people there who attended that meeting?—A. Dr. T. J. Bond, I think, was there.

Q. Who is he?—A. A citizen of the Choctaw Nation.

Q. What position did he hold at that time?—A. Superintendent of public instruction.

Q. He is a Choctaw Indian?—A. Yes, sir.

Q. Tell the committee how much of a crowd was present on that occasion?—A. There was a very large crowd; as large a crowd as I ever saw in the nation.

Q. Where did they come from?—A. All over, up and down the line of the railroad.

Q. From the country?—A. Yes, sir.

Q. Off the line of the railroad?—A. Yes, sir; all about there.

Q. Tell the committee who presided over that meeting.—A. I think Dr. Bond himself.

Q. After I got through speaking were there any resolutions intro-

duced? If so, what were they?—A. Those purporting to be the Caddo resolutions.

Q. They are on that paper?—A. Yes, sir; I read them.

Q. Do you know who introduced those resolutions?—A. The committee appointed, I think, or perhaps G. W. Harkins. It seems to me that it was he who introduced them.

Q. They were adopted by the meeting?—A. Yes, sir.

Q. Was there any difference of opinion in regard to their adoption?—A. There was no discussion in opposition to them.

Q. They were adopted by the meeting?—A. Yes, sir.

Q. What is the distance from Caddo to Atoka?—A. About twenty miles, I think.

Q. Was I invited to speak there by the people of the Choctaw Nation?—A. Yes, sir; that was my understanding. I was present.

Q. Was there a large crowd there?—A. Yes, sir; a very large crowd.

Q. Any notable persons, officers of the nation present?—A. Governor Cole was there.

Q. Do you recollect whether he took his seat upon the stand from which I spoke?—A. Yes, sir; he was on the stand.

Q. Were the resolutions introduced there also?—A. Yes, sir.

Q. What were they?—A. The same; just the same.

Q. The resolutions known as the Caddo resolutions?—A. Yes, sir.

Q. They were adopted by acclamation, were they not?—A. Yes, sir.

Q. How many were at that meeting?—A. I should think about 150 or 200. At Caddo there was a larger crowd.

Q. After the adoption of those resolutions that paper was established by myself, with your assistance, at Muscogee, in the Creek Nation, was it not?—A. Yes, sir.

Q. What became of that paper?—A. Well, there was an order of confiscation obtained as against the building and press, &c.

Q. State to the committee what officers of the Creek Nation came for the purpose of suppressing that paper. Was it the sheriff or the light horse?—A. I think the light horse. I was not there. That is my understanding, that the light horse came and demanded this suppression. Mr. Moore, the national agent, was as officious, perhaps, as anybody in procuring that order.

Q. Tell the committee if I had authority or the permission of the agent to publish the paper there?—A. I have seen a written order to that effect.

Q. Giving permission to publish the paper there?—A. Yes, sir.

Q. What was that order that was issued by the Creek Council?—A. It was an order confiscating the property and directing that the property should be sold for the benefit of the Creek Nation.

Q. Tell the committee if you understand how we succeeded in getting the press away from there?—A. I was in the East at that time when the press was taken away to Vinita.

Q. And at Vinita I established the Indian Progress and advocated the identical principles laid down in these resolutions?—A. Yes, sir.

By Mr. CHAFFEE:

Q. What excuse was given for giving that order to confiscate the newspaper; what were the grounds of complaint?—A. My recollection is, Senator, that it was considered against the public policy of the Creek Nation.

Q. Was it on account of advocating those views?—A. Yes, sir.

Mr. PORTER. I am one of the representatives of the Creek Nation.

The paper was put up there without authority. It was a private enterprise, like anything else. It was upon our soil and we had a right to suppress it; it was there without consulting our wishes, and the Creeks ordered it to be sold.

The WITNESS. I will say in justice to the Creeks the order was not carried into effect. The paper was suppressed and the material was moved away, but the sale was not carried into effect and the building was not sold by them.

By the CHAIRMAN:

Q. Did you not say that Mr. Boudinot had an order to publish the paper?—A. Yes, sir; from the United States Indian Agent.

Q. Did he have a right to issue such an order?—A. I supposed he had.

Q. There was a conflict of opinion there?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Is it not a fact that the United States agent issues licenses to others without consulting the Creek Nation?—A. Yes, sir.

Q. Is it not a fact that he issues permission for men to remain in the nation without consulting them?—A. Yes, sir.

By the CHAIRMAN:

Q. Where does he get his authority to issue permission—in the treaties?—A. Yes, sir.

Q. I mean the treaty with the Creek Nation?—A. Yes, sir.

By Mr. PORTER:

Q. Is it not a fact that the licenses are suppressed where the people object to people remaining there?—A. Yes, sir; I think the agent has the right, however.

By Mr. BOUDINOT:

Q. Does anybody live there who have not consulted the authorities?—A. Yes, sir.

Q. Do you know of any Cherokee citizens permitted to remain there and carry on business without consulting the authorities?—A. Yes, sir.

By Mr. PORTER:

Q. That is simply a matter of courtesy between the two tribes?—A. It is a matter of courtesy.

By Mr. BOUDINOT:

Q. Tell the committee if from information you have got from citizens of the Creek Nation and others acquainted with the suppression of that paper of mine at Muscogee, if you are not satisfied that the real reason for its suppression was because they complained that the discussion of these questions would convince the Indians of the propriety of the course I was advocating?—A. I think the real reason was because they did not want those views advocated in the Territory; that is, certain parties did not—those in authority; that certainly was my understanding at the time when I lost my six hundred dollars.

Q. You have been asked whether there is not a free and untrammelled expression of opinion upon practical questions in that country. Tell the committee in how many places you heard me argue those questions in that country?—A. I think you made seven or eight speeches.

Q. Did you ever hear me advocate in any speech, public or private, or see any communication of mine in any newspapers, pamphlets, or other-

wise, or in any other form, the idea that those Indians should not be protected in every acre of land they occupied?—A. No, sir; you always advocated that doctrine.

Q. Was it not notorious that the reasons I gave for advocating these measures were that I considered their title as insecure if the lands were not divided in severalty?—A. Yes, sir.

Q. Tell the committee if my position, as you understand it and know it, has not been persistently misrepresented by the delegates here, and those there prominent in authority in the Indian Territory opposed to the views I have advocated; and also, whether the arguments and speeches I have made there in regard to these questions have not been misrepresented to the ignorant class of people.

Mr. CHAFFEE. I do not see what pertinency that has to the inquiry.

Mr. BOUDINOT. I wish to show this: that my position in regard to political questions in that country has been persistently misrepresented by those in authority, and the ignorant people have been humbugged; that my life has been jeopardized; and I wish to show it because an attempt has been made to show that these things are not so, and that the freedom of speech is permitted there.

The WITNESS. I think such means are made use of there as any political party would make use of in order to carry its points.

Mr. GRAFTON. Just like they do in the States?

The WITNESS. Yes, sir; I think so.

By Mr. BOUDINOT:

Q. Don't you know that this idea of a Territorial government is understood to mean among the ignorant masses to be the destruction of their homes, the taking away of their lands, and ultimately end in driving them out of that country?—A. I believe I stated that, and in that view they would not be in favor of a change.

Q. Do they not believe I have been advocating those views?—A. I have no means of knowing, but I presume they do.

By Mr. CHAFFEE:

Q. You do not mean to say they are opposed to an American system of government being extended over that country if they could be protected in all their rights?—A. I do not think they would ask for a change; but I believe they are capable of being vested with American citizenship, and should be at an early day.

Q. Their hostility only arises to a change because they suppose they would have to give up their laws, privileges, customs, and tribal organizations?—A. Yes, sir.

By the CHAIRMAN:

Q. You have read these Oklahoma bills?—A. Yes, sir.

Q. Under those bills as framed and as they can be perfected, could they not still have their laws, privileges, and customs, as well as make their own laws?—A. Yes, sir.

Q. If they can do that don't you think they would be in favor of a Territorial government?—A. Yes, sir.

Q. Suppose that a bill of that kind was before this committee and the committee should go down there and explain it to them so that they should understand that it did not take away their laws and customs, &c., but allowed them to retain them, don't you think they would be in favor of it?—A. No, sir; I do not think all of them would.

Q. I mean a large majority?—A. I think a proper understanding will do away with much of their prejudice against it.

By Mr. GRAFTON :

Q. Just in that connection, are you well acquainted with the laws, privileges, and customs of these Indians? If so, tell the committee what powers could be conferred upon any government, the creature of Congress, without abridging their laws, privileges, customs, &c.?—A. O, well, you could have a Territorial government down there that would allow them to elect their own governor, secretary, &c. You could bring the five tribes within such a bill as that. It could have been done if a little more scope had been given to that grand council; that would have done very well.

Q. Don't you know any form of government that has been proposed here in all these bills would necessarily violate their treaty stipulations, their laws, privileges, and customs?—A. I do not think it would violate their treaties.

Q. You do not?—A. No, sir; I do not. I think the Indians have given as much consent for the establishment of a United States court and a different form of government as they can, and I take the further position that Congress can establish any form of government it may see fit to impose upon them, because Congress is the guardian and they are the wards of the nation.

By Mr. BOUDINOT :

Q. Tell the committee if you were at the grand council convened at Fort Smith in September, 1865?—A. Yes, sir.

Q. Were you a public official?—A. Yes, sir; agent of the Seminoles.

Q. Tell the committee if these five civilized nations represented by delegates here were not represented there by their leading men?—A. Yes, sir; of both sides.

Q. Was not the question of organizing a Territorial government before those delegates assembled at Fort Smith?—A. Yes, sir.

Q. Do you remember my making a few remarks there upon that subject before the close of the council in the presence of the delegates in which I advocated that Territorial organization?—A. I do, sir.

Q. Were not the Seminoles present with their delegates at that time?—A. Yes, sir.

Q. Did I not state in those remarks that I was authorized by the Seminoles to say that they authorized me to express their views on that subject?—A. Yes, sir; I did hear them authorize you to speak for them.

By Mr. HUBBARD :

Q. Was it not a proposition that a Territorial government should be adopted?—A. Yes, sir.

Q. Didn't the Indians agree to that treaty?—A. No, sir; I did not hear anything upon that subject. That treaty was called in 1865 for the purpose of bringing together the northern and southern Indians. It was a treaty of amity and peace, looking to the organization of an Indian Territory; but it was provided by this council that delegates should be sent to Washington, and we came on here and made the treaty of 1866.

Q. Was it not proposed that the railroad should be built as a measure of civilization?—A. Yes, sir.

Q. Was any railroad built at that time?—A. In 1866.

Q. Has there not been a provision that the railroad should be built by— —A. I know it was re-enacted in the treaty of 1866.

By Mr. BOUDINOT :

Q. You were asked by Mr. Grafton if there was any protection for white men in the Indian Nation. He asked you if the laws did not prevent their coming in there. Is it not a fact that white men not citizens are living there, holding property? Do they not have the right to remain there?—A. Yes, sir; those living there by permission of the several nations and the United States authorities.

Q. They have the right to hold property?—A. Yes, sir.

Q. Is there any law to protect them in that right?—A. I think not.

Q. What is your opinion in regard to the division of the lands in severalty as a means of advancing them in civilization?—A. I should think it would be very much better for them. That has always been my opinion.

By Mr. HUBBARD :

Q. Why?—A. Because it would give them a better title to the lands; because I believe the time has come when the Government of the United States should settle up with these Indians and pay them what they owe them; pay them up, and turn the school funds over to them to manage, which they can do as well as the government, and make a better investment than five per cent. per annum.

Q. How is it about the sale of liquor throughout the Territory; is it generally sold?—A. Yes, sir. A man can get a drink of almost anything, if he knows where to go to get it.

By Mr. GRAFTON :

Q. Please explain the status of a white man if he goes to that country and carries property there. Is it not by courtesy of the nation? In other words, is it not at the suffrance of their people, and at his risk?—A. It certainly is.

By Mr. HUBBARD :

Q. If he gets no permit?—A. Yes, sir.

Q. But if he pays for this permission?—A. There is a permit system in the civilized nations, which permits white men to come in there to labor for the Indians, and for that he pays so much. With the Choc-taws it is \$25 a year.

By Mr. GRAFTON :

Q. For that he is permitted to remain in the country, subject to the laws, &c.?—A. Yes, sir.

Committee, at 12 o'clock m., adjourned until Friday, April 26.

FRIDAY, April 26, 1878.

Committee met at 10.45 a. m., and the examination of witnesses was conducted by Senators Garland and Saunders, acting in subcommittee. Counsel and delegates all present.

Examination of GEORGE A. REYNOLDS continued:

Q. When did your employment with the Missouri, Kansas and Texas Railroad Company begin?—A. I do not recollect the year; between seven and eight years ago, I think, and it terminated last June.

Q. It began about 1870?—A. Yes, sir; about 1870.

Q. Were you in the employ of the Missouri, Kansas and Texas Railroad Company when you embarked in the newspaper enterprise?—A. Yes, sir.

Q. Was it not understood between the officers and the management of the railroad company and yourself and other parties interested therein that it would be a part of your duties to advocate a Territorial form of government in the Indian Territory?—A. No, sir; it was not so understood.

Q. And to advocate, also, the distribution of the land in severalty?—A. No, sir; not at all. My convictions on that subject had been formed long before I knew of any railroad company in the Territory or its construction. I advocated in my reports as United States Indian agent the establishment of self-government of the civilized Indians. I reported they did not need any agent—that they were capable of taking care of themselves.

Q. Are you still of that opinion?—A. I am; yes, sir.

Q. You think that office, then, should be abolished?—A. Yes, sir; long ago.

Q. As an unnecessary expense to the United States?—A. Yes, sir.

Q. Do you think the railroads have done the Indians any good by way of civilizing them?—A. I think it has been the means of civilizing them, and that it has done them much good by bringing in supplies there at greatly reduced rates. I think it has done the Indians as much good as it does the white people. I think the railroads do everybody good through the country which they pass.

Q. Is it not true that the people living on the river courses do not use the railroads?—A. Yes, sir; that is in the main true.

Q. Those especially engaged in planting?—A. Yes, sir; those engaged in raising stock like to be away from the railroads.

Q. How much cotton is shipped out through the railroads?—A. Not much. I do not know. I have no particular means of knowing. Not more than four or five hundred bales a year.

Q. Does the railroad bring in any considerable portion of the supplies in that country?—A. Yes, sir.

Q. Is not most of the cotton shipped out by steamboat?—A. None that I know of.

Q. Are not these Indians a stock-raising people?—A. Yes, sir.

Q. Rather more than tillers of the soil?—A. Yes, sir; it is more adapted to their tastes. That has been my experience among them.

Q. Before the war they had large flocks, had they not?—A. Yes, sir.

Q. They have not been able to increase their stock since the war, have they?—A. I think there is not as much stock now as there was before the war.

Q. Did not they lose most of their stock during the war?—A. Yes, sir; about two-thirds of it. Probably it was stolen out of the country or driven out and used up by the Army—almost totally destroyed.

Q. Do you think they would go along better as a stock-raising people by having their lands divided up in severalty than they do now by holding them in common?—A. Yes, sir.

Q. State the reasons why you think so.—A. Each individual would have in the neighborhood of 800 acres if the lands were divided up, and he would have a more secure title. As to the question of stock-raising, it would be the same as in Kansas. My own experience in my own State is that herd laws are not a bad thing.

Q. Speaking about the insecurity of title, you have been connected with the railroad matters before their council numbers of times, have you not?—A. Yes, sir.

Q. Has not the idea always been advanced to the Indians that their title was insecure by every man who went to obtain a charter for a rail-

road? Has not that been one of the main arguments used why they should be divided up in severalty in order to get a better title, &c.?—A. It is; I suppose that is their opinion generally.

Q. That is the opinion advanced by persons now, and all the forms of government since 1855 have been favored by that kind of thing, and that kind of argument has been advanced to the Indians?—A. That kind of argument has been used by those who favor Territorial government, or different government from that which is there now.

Q. Do you think there is more security for persons and property since the railroad has been built than there was before?—A. I do not think that has had much effect upon it.

Q. You do not think so?—A. No, sir.

Q. Do you know who disburses the money here in Washington for the Missouri, Kansas and Texas Railroad Company, or the present managers of that concern?—A. I do not, sir.

Q. Who pays off the "boys" here? Do you know?—A. I do not know. There are not any boys employed here. I never heard that there were.

Q. Do you know of any money having been expended here in Washington by the Missouri, Kansas and Texas Railroad Company, or by any person interested therein, either directly or indirectly, for the purpose of making "atmosphere" or creating sentiment in favor of these Oklahoma bills?—A. No, sir; I do not know of any such use of money being made.

Q. Have they not agents here who are under their employ?—A. Yes, sir; as I understand it they have Mr. Hubbard representing them in the departments as well as elsewhere; they have such agents as that.

Q. His business, among other things, is to create "atmosphere"?—A. I do not know the use of that term. If you mean creating sentiment in favor of these Oklahoma bills, I suppose that would be a legitimate occupation for any one who might see fit to do it; but whether that has been done or not I do not know. I only know Mr. Hubbard represents the company in Washington.

Q. Have you received any pay from the railroad company since you have been in Washington?—A. No, sir.

Q. Nor any other thing of value?—A. No, sir. I am representing the Seminoles, and they paid me to come here to represent them.

Q. Have you any hope of reward from the railroad company?—A. No, sir; I hope to be able to get a good farm whenever I am able to pay for it.

By Mr. GARLAND :

Q. You hope to do what?—A. I hope to buy a farm, a corner lot, or something of that kind.

By Mr. GRAFTON :

Q. You think whenever the lands are divided up in severalty you can secure the land?—A. I think when the Indians have a right to sell I would be better off if I could buy a farm.

Q. Do you know a gentleman by the name of Ruggles?—A. Yes, sir.

Q. Please state what connection he has with the Missouri, Kansas and Texas Railroad Company.—A. Mr. Ruggles is the attorney of the Missouri, Kansas and Texas Railroad Company in New York City.

Q. He pays the agents here?—A. I do not know whether he does or not.

Q. Do you know any other persons who visit Washington City in the

employ of the Missouri, Kansas and Texas Railroad Company, or the present management of that railroad company?—A. No, sir; I know no one else.

Q. They have had other persons here for years?—A. Yes, sir; advocating these measures.

Q. Have you any knowledge, or have you heard it by rumor or otherwise, that there has been a large amount of money raised in the city of New York for the purpose of securing the passage of these Oklahoma bills?—A. No, sir; I have not heard of that; and I think it would be very poor policy for the company if it were known that they had; there would be a good many in Washington who would want it.

Q. When did you first meet Mr. Hubbard?—A. I met him when down there on the postal commission and since I have been in Washington this winter. I believe I was introduced to him there.

Q. When was that?—A. A year ago last September or October—at the time of the fair there.

Q. How long did he remain in the nation at that time?—A. I saw him on two different days.

Q. Was he in the employ of the railroad company?—A. No, sir; he was at the head of that postal commission; at least, that is my understanding of his business there.

Q. Did he advocate the division of the lands in severalty at that time down there?—A. I did not hear him advocate that.

Q. Did he advocate a change of government for the Indians there?—A. Yes, sir; I think he made a speech; my recollection is that he did make a speech on that subject down there.

Q. So he was creating "atmosphere" down there as well as attending to his postal affairs?—A. I suppose so; he made speeches, as many others did. I made a talk myself, and of course the question came up about this Territory and all that.

Q. Do you know anything of the disbursements of money in that country by Mr. Hubbard while there?—A. No, sir; I do not.

Q. Have you any knowledge of the disbursements of money here in Washington City by Mr. Hubbard?—A. No, sir; none whatever.

Q. Did he pay Mr. Hailey any money?—A. I have no knowledge that he did.

Q. Did you pay him any money?—A. No, sir.

Q. Well, did you get any of that postal money from Mr. Hubbard?—A. No, sir.

Q. Do you own any property in the Indian Territory?—A. No, sir; none at all.

Q. No real estate?—A. None at all.

Q. Have you any legal or equitable interest in any property in that country, personal or real?—A. No, sir; none at all.

Q. You have no interest in a hotel at Vinita in the Indian Territory?—A. No, sir; none at all.

Q. Neither legal nor equitable?—A. Neither one.

Q. Do you know whether Mr. Ruggles has paid any person from the Indian Territory any money here?—A. No, sir; I do not believe he has; I do not know anything about it.

By Mr. BOUDINOT:

Q. You say you are here as the agent of the Seminole Nation?—A. Yes, sir.

Q. When did the nation employ you?—A. Last July.

Q. Were you present at the time of the meeting of the Seminole council?—A. Yes, sir.

Q. Were you unanimously elected by that council?—A. Yes, sir; in the general council as their attorney to represent them here in Washington.

Q. What were your duties understood to be by the Seminole council when they elected you?—A. My duty here was to urge the passage of a bill giving them money for lands that they sold the United States Government known as the Seminole reservation.

Q. Was it understood what your views were upon this Indian question?—A. They have always been known; they did not elect me to represent them on political questions; it was to attend to this matter about the lands.

Q. That was your sole business in coming here to Washington City?—A. Yes, sir; that was the only business that brought me here.

Q. Mr. Grafton asked you about Mr. Hubbard acting as postal agent a year ago last September?—A. Yes, sir; about the time of the fair.

Q. Where did you meet him?—A. I met him at Muscogee.

Q. What was going on there at the time of that fair?—A. People were assembled there in council.

Q. Did you hear Mr. Hubbard express his views publicly or privately upon the question of the division of the lands in severalty, &c.?—A. I heard him make a speech on that subject while there, saying it would be best for the Indians, &c.

Q. Did you hear anything about his being deputized by Professor Seelye, a member of the Committee on Indian Affairs of the House of Representatives, to represent his views on that subject?—A. Yes, sir; I believe he did make such a statement.

Q. He was not representing the railroad company then, but Professor Seelye?—A. Yes, sir; I suppose that was his mission.

Q. What are your views, Major Reynolds, on the subject of United States courts in the Territory? You say you have a more general acquaintance with all those Indians than probably any person present, more even than the delegates themselves; that your business called you there, &c. Now, what are your views in regard to the material for getting jurors there for the United States courts?—A. I should think they could get a jury in any of those nations equally competent as the colored professional jurymen at and around Fort Smith, Arkansas.

By Mr. GRAFTON:

Q. What is that?—A. I think they could get a jury in that country equally competent as the colored professional jurymen that are around Fort Smith, Arkansas.

By Mr. BOUDINOT:

Q. You think they have as high a grade of intelligence as you find anywhere else in the border States?—A. I certainly do.

Q. Do you know anything of attempts to throw trains off of the track?—A. Yes, sir; I know of one attempt, at Blue Jacket switch, which occurred about a year and a half ago.

Q. Was that attempt successful?—A. No; they displaced a switch, and then commenced firing on the train. Afterward, they were captured and sentenced to the penitentiary—one for five years, and one for six years.

By Mr. GRAFTON:

Q. When did this happen?—A. This May or June a year ago.

By Mr. BOUDINOT :

Q. The attempt that you speak of first was in the year 1876; when was the second attempt ?—A. A year ago last February.

Q. Was that successful ?—A. Yes, sir.

Q. Was the train thrown off of the track ?—A. Yes, sir.

Q. Anybody killed ?—A. Yes, sir; the fireman was killed.

By Mr. GRAFTON :

Q. Did you say it happened a year ago last February ?—A. Yes, sir.

Q. Where did it happen ?—A. At Pryor's Creek.

By Mr. BOUDINOT :

Q. Do you know of any firing on trains ?—A. Yes, sir.

Q. Any one killed ?—A. No, sir; I know Beach and Wills were fired at, but not killed.

By Mr. GRAFTON :

Q. What year was that ?—A. About the same time; it possibly occurred from some misunderstanding between them and the people.

By Mr. BOUDINOT :

Q. Is there any local law or regulation by which these parties could be captured and held for trial ?—A. I do not know of any; there may be.

Q. Don't you know that the warrant has to come from Fort Smith whether it be for Indians, white men, or negroes ?—A. Yes, sir.

Q. Are you acquainted with Judge George W. Stidham ?—A. Yes, sir.

Q. Who is he ?—A. A Creek Indian.

Q. Where does he live ?—A. He lives at Eufaula.

Q. What is his business ?—A. He is a merchant and farmer.

Q. He is held in high esteem in the nation ?—A. Yes, sir; well respected in the nation so far as I know. I believe he was a delegate here once.

Q. Do you know what his views are on the subject of dividing up the lands in severalty ?—A. Yes, sir; I have heard him express his opinion with reference to the division of the lands in severalty.

Q. What were they ?—A. He expressed it somewhat in this way: that he had a good place in a good locality; that he had a number of children, and that he believed that he could make a selection for himself and them better than any one else, and he would like to see that done before he died. I believe those were his exact words.

By Mr. GRAFTON :

Q. That he would like to select the lands for his own children ?—A. Yes, sir.

By Mr. BOUDINOT :

Q. And that he would like to have that done before he died ?—A. Yes, sir.

Q. What are his views now; do you know ?—A. What his views are now I do not know, but those were his views as expressed to me two or three years ago.

By Mr. GRAFTON :

Q. Have not the Creek Indians laws under which possessory rights may be transmitted by law or otherwise ?—A. Yes, sir; I think so.

Q. If a man has a farm there and has children, what is the law ?—

A. I understand his improvements can be willed just as they are in the States.

Q. That is, it would go to his heirs under the law?—A. Yes, sir; to his heirs.

Q. The laws are the same there, that his widow receives a certain share and the children a certain share?—A. Yes, sir; I think that is so.

Q. Suppose a man has a farm in the Creek Nation and dies leaving no heirs and wills it to a stranger, can that stranger occupy that land?—A. I am not sufficiently acquainted with the laws on that point; I suppose not.

Q. You do not know what the law is in that case?—A. No; I do not know. In the other case it is my idea—that is my understanding—it goes to the heirs at law.

Q. Well, now, in regard to that train that was wrecked, you stated that the parties were captured and sent to prison?—A. Yes, sir.

Q. Were they Indians?—A. No, sir.

Q. Were they white men?—A. Yes, sir.

Q. Termed, I suppose, outlaws?—A. One was a citizen of Chetopah, on the border, and the other I do not know about.

Q. Chetopah, in what State?—A. Kansas.

Q. They were citizens of the State of Kansas?—A. Yes, sir.

Q. Were any of those parties captured who were engaged in wrecking a train in the year of 1870?—A. Yes, sir; two of them.

Q. Were they Indians?—A. No, sir.

Q. Were they white men?—A. Yes, sir. I understand they were white men, married, however, to Indian women.

Q. Men who had gone down there into that country?—A. Yes, sir.

Q. What was the understanding in regard to the shooting of the engineer and fireman of the train?—A. It is not known who they were; they were shot at when they were driving their trains, probably from some fancied injury sustained from the railroad company or the engineer.

Q. Are not the Indians generally well disposed and peaceable?—A. Yes, sir. I do not think these crimes happen there more than anywhere else on the border.

Q. Have these attempts to wreck railroad-trains been more frequent there than elsewhere on the border in neighboring States?—A. No, sir; I do not think they have. I can't recall different places where trains have been attempted to be wrecked on the Kansas, Pacific, &c.

Q. Down in Kansas?—A. Yes, sir.

Q. And on the Texas Pacific and on the Central Pacific?—A. I do not think it is any more frequent. The only question is whether there is any remedy when done in the Indian Territory.

Q. Have there been any more convictions in the States than in the Indian Territory?—A. No, sir; I do not think there has been any more. I think there were two or three sent to the State penitentiary in the State of Kansas.

Q. In the State of Missouri what was the result?—A. I think they were acquitted.

Q. Do you know of any having been captured down in Texas?—A. No, sir; I do not.

Q. You think, then, these people have been punished in the Indian Territory quite as well as they have in the States?—A. Yes, sir. I think they are just as apt to be convicted there as anywhere else.

By Mr. ADAIR:

Q. You spoke of their having no local laws there. Does not Congress

have the right to pass laws to control citizens of the United States in that country, under the intercourse laws?—A. Yes, sir.

Q. Is not the United States court established at Fort Smith to execute those laws?—A. Yes, sir; I understand the jurisdiction is given the court for that purpose.

Q. Would it not be improper for the Indians to make provision to punish men that the United States courts are required to punish? Would it not be improper, for instance, for the Cherokee Nation to pass laws to punish citizens of the United States for offenses committed by them against other citizens of the United States?—A. I think it would be, for the Cherokee Nation is not an independent government.

Q. Does not the treaty of 1866 provide that the railroad employes that pass through that country shall be controlled by the intercourse laws?—A. Yes, sir; that is in the treaties; that the employes shall conform to the intercourse act.

Q. You think it would be improper for the Indians to assume to pass laws without the proper authority?—A. I think it would.

Q. You think the Indians show a disposition to be respectful to the United States, to let them control that class of people?—A. I think it would be better for Congress to control them, and I think it would be better for all classes for the court to be established.

Q. Do not the Indians have a good code of laws that compares very favorably with those of any of the States?—A. So far as I am acquainted with them they have. I should say they were creditable to those people or any other people.

Q. I believe you stated that your convictions were that it would be wise for Congress to pass an act creating a Territorial form of government over the Indian Territory—you are in favor of that?—A. Yes, sir.

Q. You are in favor of a Territorial form of government?—A. Yes, sir; I am in favor of that.

Q. You are in favor of that?—A. Yes, sir; I am in favor of a conditional form of government of some kind. I am in favor of an allotment of the lands to the Indians, and for them to dispose of their lands as they see fit, and for the government of the United States to adjust and pay up the just claims due these Indians, and that they should take their own money and thus run their own machine to suit themselves; that is what I am in favor of.

Q. Does not the treaty of 1866 provide for the division of the lands in severalty whenever their council shall so request, at the cost of the Government of the United States?—A. I think there is such a provision in some of the treaties; not in the Seminole treaty.

Q. Don't you think it would be a proper respect to the Indians on the part of the government to wait until the Indians make that request?—A. I think the Congress of the United States might notify the Indians to express their views upon these subjects, and it would be in the light of a person who had been requested to resign from office, carrying with it the idea that the Indians had better make that request, as it was going to be done.

Q. Do you think a notification of that kind can do away with the treaty?—A. I think the Congress of the United States can do away with a treaty, and change the treaty by law, as it has done heretofore.

Q. Do you think Congress would have acted in good faith in doing away with a treaty?—A. I would be disposed to allow Congress to judge of that for itself.

Q. What is your idea? Don't you think that Congress would be acting in bad faith in view of the relations they sustained to that country—

the relations of guardian and ward?—A. I think Congress has the right to do this.

Q. Don't you think the Indian treaties are as sacred as those made with any foreign power?—A. I do not think they are of the same nature.

Q. But you think they are as sacred?—A. I think the promises of the government and individuals should be kept always; but unfortunately they are not always.

Q. Don't you think these promises made the Indians, that they made in the treaties as to sectionalizing the lands—don't you think that those promises should be kept?—A. I think Congress has the right to change the law any time they see fit. That is my view about it.

Q. Don't the Indians own their lands?—A. Yes, sir; and nobody wants to take them away from them. I want them to be in shape so that they can dispose of them as they please.

Q. Then you think they own their lands?—A. Yes, sir.

Q. You think Congress would be justified in dividing your lands up without your consent, do you?—A. Well, that is not a parallel case.

Q. Do you think Congress has the right to do it?—A. I hold the Indians have a perfect title and a right to their lands.

Q. Do you think if Congress, without asking you about it, should cut up your lands in Kansas, and in spite of your remonstrances, do you think that would be right?—A. Yes; if Congress saw fit to perfect my title, and give me a good one where I had none at all.

Q. You think they have the right to do it, then?—A. In the relation of guardian and ward I think so; yes, sir.

Q. What do you mean by guardian and ward?—A. I mean, if you were an independent people, Congress, of course, has no right to do it, but if you are the wards of the United States, I think they have the right.

Q. Are not the Indians under the protection of the United States?—A. Yes, sir.

Q. Is not the United States bound to protect them in all their legal and equitable rights—rights of property, &c.?—A. Yes, sir.

Q. Bound to protect them in their treaty rights?—A. Well, unless Congress wants to change them, they are; yes, sir. That, I think, is a right Congress has reserved to itself.

By Mr. GRAFTON:

Q. You said something about a report that you made while agent of the Seminoles. Do you know R. S. Stevens?—A. Yes, sir; I have known him about twenty years.

Q. What was his business out there at that time?—A. R. S. Stevens was a banker at the time I was agent. He came on the construction and management of the road about the time I resigned my office as Indian agent.

Q. He came on the Missouri, Kansas and Texas Railroad Company about the time you resigned?—A. Yes, sir; I went with him, and took a position on the road.

Q. You stated you made a report advocating a Territorial form of government—division of the land in severalty, &c.?—A. No, sir; I did not say that.

Q. What did you say?—A. I said in many of my reports I recommended that the office of the Indian agent for the civilized tribes be abolished, that they were capable and competent to take care of themselves. My opinion upon that subject has been published by the government.

Q. Did you have any understanding with Stevens about your employment on the railroad?—A. No, sir; I went to him for employment as soon as I got out of the agency.

Q. Was anything said about your advocating a Territorial form of government?—A. No, sir. I was an old friend of his, and I wanted business, and I went with him.

Q. Do you know whether it has been one of the prime objects of the railroad company to get a Territorial form of government in that country?—A. I have no doubt in the world that the railroad companies are very anxious to have it established, for better security to their property. They want to increase their business, &c.

Q. Are they moved in that enterprise by their own interest, or are they influenced by a desire to christianize and civilize the Indians?—A. I presume they are, like everybody else, selfish in that. Their prime object is to obtain business, so as to increase the value of the road much more than it is now.

VALENTINE DELL recalled.

The WITNESS: Mr. Chairman, before proceeding this morning with my examination, I desire to ask the consent of the committee to expunge from the record the following questions and answers on page 166 of the testimony taken on the 19th instant:

"Q. I am not asking about that document; I want your opinion.—A. Well, there is Mr. Welsh.

"Q. Where does Mr. Welsh live?—A. At Atoka, Indian Territory.

"Q. Is he a white man?—A. A white man with an Indian wife.

"Q. What does he do?—A. I do not know, really, what he does; farmer, I think.

"Q. Who else? Can you name anybody else?—A. Jerry Ward.

"Q. Where does he live?—A. He lives near Skullyville, Indian Territory.

"Q. In the Choctaw country?—A. Yes, sir.

"Q. What does he do?—A. I think he is a farmer.

"Q. Has he ever held an office?—A. I do not think he has.

"Q. Has he ever been a member of the council?—A. I do not think he has."

Mr. GARLAND. The testimony, colonel, has been printed, and I do not see how the committee could strike out that testimony without necessitating the reprinting of that whole day's proceedings; nor do I see what good it would do, as printed copies of the testimony are in the hands of all the parties interested here, so that to expunge the testimony now would not accomplish the purpose you desire.

The WITNESS. As it is stated there, there is either not enough or too much. I could give a hundred names. I only gave two or three names to the committee, and, as it is stated there, it does not give my testimony the proper force it ought to have. My reasons for asking that that part of the testimony be stricken out are that I shall decline to give names, because it would endanger the lives of those persons, as matters are now in the Territory.

Mr. GRAFTON. We do not want to do any injustice by insisting upon any technicalities. The witness can put in any explanation he wants, so far as we are concerned, but we shall object to the testimony being expunged. If he wants to correct his testimony he can do that; that is his right, as it is the right of every witness. In order to give the witness an opportunity to make any explanation he desires, I will ask him the question—

By Mr. GRAFTON :

Q. Do you know of any other persons in the Indian country who are in favor of a Territorial form of government, in addition to those whose names you have mentioned in the testimony on page 166 ? And, if so, please give the names, their place of residence ?—A. I received a letter—

Mr. GRAFTON : I wish you would answer my question.

The WITNESS. I received a letter—

Mr. GRAFTON. You say you have stated either not enough or too much in this connection. It will shorten this if you will confine yourself to the question. I am asking this in justice to you and all others concerned. I ask you to name those hundred persons. I do not care about your letters ; give me the names.

The WITNESS. I have not their names with me.

Mr. GRAFTON. So, then, you were mistaken when you said you could give a hundred names ?

The WITNESS. I can give them to you, sir, but don't want to for the reason stated above.

By Mr. GRAFTON :

Q. Did you not know you were to be recalled for cross-examination ?—A. No, sir.

Q. When were you subpoenaed ?—A. Some time this week.

Q. Did not Senator Garland state to you last Friday that you were to be recalled to-day ?—A. No, sir ; it was on Monday.

Q. And you have had ever since last Monday to prepare that list of a hundred names ?—A. I did not suppose I would be called upon for those hundred names.

Q. You did not ?—A. No, sir.

Q. So you cannot furnish them ?—A. If you want them, I could by to-morrow morning or this evening.

Q. You stated that a week ago.—A. I will furnish them if you want them.

Q. You have put in evidence, as part of your testimony, a petition which was introduced in the Senate in the 41st Congress. (Mis. Doc. No. 106, Senate, 2d ses. 41st Con.) Turn to page 153 of the testimony and you will find, addressed "To the Senate and House of Representatives in Congress assembled," a "Memorial of a committee on behalf of the colored people of the Choctaw and Chickasaw tribes of Indians," &c. Who constituted that committee ?

The WITNESS. Are not their names there ?

Mr. GRAFTON. The name of V. Dell, I believe, is signed to the end of it.

The WITNESS. No, sir ; that is not it.

Q. James Ladd, Richard Brashears, and N. C. Coleman, are they the names ?—A. Yes, sir.

Q. Who is James Ladd ? Is he a Choctaw ?—A. Yes, sir.

Q. Where does he live ?—A. In the Choctaw Nation.

Q. Where ?—A. About ten miles from the line.

Q. A white man ?—A. No, sir ; a full-blooded colored man.

Q. Richard Brashears. Who is he ?—A. A full-blooded colored man.

Q. N. C. Coleman ?—A. The same.

Q. They are all colored people ?—A. Yes, sir.

Q. The colored people in that country have the privilege of attending the schools ?—A. No, sir.

Q. They were there before the war?—A. Yes, sir. They are natives in the Territory.

Q. And during the war?—A. Yes, sir.

Q. Can any one of these men read and write?—A. Yes, sir; N. C. Coleman can.

Q. He can?—A. Yes, sir.

Q. He read that memorial?—A. Yes, sir.

Q. Who wrote it?—A. They brought me a draught of the memorial and I fixed it up ready for the press.

Q. You wrote it just as it is, then?—A. Yes, sir.

Q. Following the memorial, there is a letter (page 159) dated Fort Smith, Ark., November 27, 1869, signed by James Ladd and Richard Brashears, per V. Dell, "Mr. Lemon Butler, Armstrong Academy Post-office, Choctaw Nation." Did you write that letter?—A. Yes, sir; I wrote it.

Q. Did you read it over to Brashears and Ladd?—A. They were at my office, and I read it to them. They requested me to write it, because they themselves could not write.

Q. Neither of them could read?—A. No, sir.

Q. Could either of them write?—A. No, sir.

Q. Coleman was not there?—A. No, sir.

Q. So you wrote that yourself?—A. Yes, sir.

Q. Now, then, we find another call for a convention, headed, "Attention, colored men of the Choctaw and Chickasaw Nations," signed William Edwards (p. 160). Do you know William Edwards?—A. I do not remember him.

Q. You do not remember him?—A. I suppose I knew him once.

Q. But you do not remember him?—A. No, sir?

Q. You do not remember whether he is a colored man or an Indian?—A. I suppose a colored man.

Q. And Thomas Blackwater, R. Brashears, J. Kearney, committee?—A. Yes, sir; all colored men.

Q. Did you ever see that call, the original of it?—A. Yes sir; I have a copy of the printed poster here which was torn down by the Indians opposing the convention of the colored people.

Q. Who wrote that?—A. I printed it.

Q. Who wrote the draft of it; didn't you write that yourself?—A. I did, for the same reason I wrote the other documents, *i. e.*, the inability of the negroes to do so.

Q. Now, then, here is a letter (p. 161) dated Boggy Depot, O. N., December 12, 1869. Addressed to you and signed (p. 162) E. S. Mitchell. Who is he?—A. He is a Chickasaw citizen, and was the secretary of the delegation from that tribe that made the treaty in 1865 at Fort Smith.

Q. Is he a white man?—A. I think white, or nearly white.

Q. How long have you known him?—A. I have known him, I suppose, twenty years.

Q. When was that treaty made?—A. In 1865 and ratified in 1866.

Q. Where?—A. At Fort Smith, Ark.

Q. You were teaching school when the war broke out?—A. Yes, sir.

Q. How long did you continue to teach after that?—A. Until 1864.

Q. You are a Republican?—A. Yes, sir.

Q. Do you know of any time when the teachers and scholars there turned out to stone some Union soldier?—A. No, sir; because no such thing was ever done.

Q. Who wrote that letter to Mitchell?—A. Mr. Mitchell wrote it himself. I have got the original here if you wish to see it.

Q. No, I will take your testimony upon it. Here are a lot of resolutions purporting to have been passed by the meeting or convention of these colored men. Turn to pages 155 and 156 of the testimony and tell the committee who wrote those resolutions.—A. The gist of those resolutions were communicated to me in rough drafts and verbally, and I wrote them down agreeably to the request of these colored men in accordance with their statement.

Q. After the meeting was over?—A. After the meeting.

Q. You say you wrote them agreeable to the suggestion of this delegation after the meeting was over?—A. Yes, sir; though the leaders conferred with me before the meeting was held for instruction and advice.

Q. So, then, they went to your office and you wrote the resolutions, and they had a talk with the colored people and brought them back?—A. They came to me ignorant how to proceed; they knew their grievances but could not put them in shape. Hence they came to me to express their wants in the proper language.

Q. So you wrote it down?—A. I did.

Q. Turn to page 158 and take the resolution passed at Scullyville on the 25th September, 1869, and tell the committee who wrote those resolutions?—A. Those resolutions have the same author as the previous ones.

Q. V. Dell?—A. Yes, sir.

Q. Did you write the petition also?—A. Yes, sir.

Q. The petition—the whole petition sent to the House of Representatives here?—A. I got up those papers in the shape as they are in that memorial; nobody else had any hand in it, that is, in writing them up.

Q. You wrote every thing except the letter of E. S. Mitchell?—A. And except the letter of the United States marshal, and of the United States commissioner, James O. Churchill.

Q. What page is that letter of the United States commissioner?—

A. At the bottom of page 158. I see it quoted.

Q. He wrote it?—A. Yes, sir.

Q. You did not write that?—A. No, sir.

Q. What else is there in that memorial or petition that you did not write?—A. All the writing as coming from the colored people I did, and I got the memorial in shape.

Q. All the writings by which the resolutions are grouped together?—A. Yes, sir; I did all that.

Q. Do you know a man by the name of Finn?—A. Yes, sir; I knew a man of that name some years ago.

Q. What was his full name?—A. I do not remember.

Q. Where did you know him?—A. First at Forth Smith?

Q. In what year?—A. If my recollection serves me right in 1869 or 1870. I do not remember exactly, perhaps it was in 1868. He was, I believe, connected with some office in some of the adjacent counties. I do not remember what office he held.

Q. Did you ever visit any of the colored people in the Choctaw Nation in company with Finn?—A. No, sir; I believe I cautioned the people against him. I did not consider him a reliable man.

Q. You did not consider him reliable?—A. No, sir.

Q. Did you ever engage in any scheme for the removal of the colored people by which you expected to receive some reward?—A. No, sir; I

understood he did. I always was opposed to their removal, and advised them to stay.

Q. You did not believe in Finn?—A. I had no faith in him.

Q. You never hoped to make any money out of that scheme?—A. No, sir; I never engaged in any scheme for the removal of the negroes.

Q. What were you doing when you lived up in the Chickasaw Nation?

—A. I was in the Army three years, from 1851 to 1855.

Q. What office did you hold?—A. Well, I was sergeant of the company.

Q. Do you know anything about the financial affairs of the Choctaw Nation?—A. No, sir; except that there is a large amount of money due then by the government.

Q. Do you know whether the nation has any debt or not?—A. I never paid any attention to their internal affairs of a financial nature.

Q. So you do not know anything about their internal affairs?—A. I say of their financial affairs.

Q. Do you not know whether the nation is in debt or not?—A. No, sir.

Q. Don't you know how much they have invested in Arkansas bonds?—A. No, sir.

Q. Don't you know anything about it?—A. No, sir.

Q. Are you interested in any railway project to construct a railroad west from Fort Smith?—A. No, sir.

Q. Is Fort Smith the terminal point of any railroad at present?—A. In fact it is; in theory it is not. The fact is that the terminus of the Fort Smith and Little Rock Railroad is just across the Arkansas River in the Cherokee Nation, opposite Fort Smith.

Q. Where does it lead to?—A. It ends there.

Q. Where is it from?—A. Little Rock.

Q. It has been built up to Fort Smith and across the river beyond it?—A. It has been built to a station called Cherokee, opposite Fort Smith.

Q. Has it been built up to Little Rock?—A. No, sir. The road commences at Argenta, a suburb of Little Rock, on the northern bank of the river, and runs up, on the northern bank, to a point opposite Fort Smith.

By Mr. SAUNDERS:

Q. Does not extend beyond Fort Smith?—A. No, sir.

By Mr. GRAFTON:

Q. Have you any interest in it, to extend it on through the Indian country?—A. No, sir; none whatever.

Q. None at all?—A. None whatever.

Q. You stated the other day in your testimony that your great desire to have the road extended was in order that you might get facilities through to the Pacific, &c.?—A. Yes, sir.

Q. Don't you trade from Fort Smith east—to Memphis, New Orleans, and down that way?—A. You mean supplies for the—

Q. I mean the trade of your country?—A. Our merchants deal principally with Saint Louis.

Q. It is brought to your place by boat, up the river?—A. Brought by railroad; little by boat of late.

Q. If you had a railroad built across that country, would it facilitate the sending to market your products along there in Arkansas?—A. It would not to any considerable degree, because we would have to travel

seventy-five miles to get to the railroad, and there would not be much difference as to distance. If we had a road built to connect with the Missouri, Kansas and Texas Railroad there would be competition, &c.

Q. How did you get your produce out before the railroads were built?
—A. By means of the river.

Q. Have you a monopoly of the river?—A. There was competition on the river.

Q. It cannot be by reason of the monopoly of the railroad?—A. No, sir.

Q. The truth is the railroad rates are higher than the river rates?—

By Mr. BOUDINOT:

Q. Is that a copy of the paper published by you? (Hands paper to witness.)—A. Yes, sir; it is.

Q. I see a statement in it of the number of cases on the docket of the United States court for next session. Is that statement taken from the records of the court?—A. I suppose it was taken from the records. I was not there when it was published. I suppose it was obtained from the clerk of the court or the jailer.

Mr. BOUDINOT. I desire to make it a part of this testimony, and have it appear in the evidence.

Mr. GRAFTON. This is not official, and before the committee closes this examination we would be glad if the committee would obtain a transcript of the record of the court.

Mr. GARLAND. We expect to do that.

NOTE.—The statement referred to was printed in the Weekly New Era of Fort Smith Ark., Wednesday, April 10, 1878, and is as follows:

“The number of prisoners arriving from Oklahoma indicates that the coming May term of the United States Court will be quite a lengthy one. There are now confined in the United States jail 78 prisoners, charged as follows:

Murder—tried last term and sentenced to be hanged June 21, 1878.	4
Murder—awaiting trial	7
Assault to kill	11
Larceny	42
Violating internal-revenue law	11
Rape	1
Escaped convicts	1
Contempt	1

Total..... 78”

By Mr. BOUDINOT:

Q. I believe you stated the memorial of which you spoke was sent to you by some parties who represented the colored people of the nation, and that you dressed it up?—A. Yes sir.

Q. Was the memorial then as appears in the record, in substance the same as given here?—A. Yes, sir.

Q. Then the letters and resolutions are true in every respect, speaking from your personal knowledge?—A. True; every word of it.

Q. And nothing is in it except by the consent and full knowledge of those parties?—A. Yes, sir.

Q. You know the statements to be true?—A. Yes, sir; and the letter of Mr. Mitchell, who is a citizen of the nation, will go to show they are correct.

By Mr. GRAFTON:

Q. How do you know these resolutions are true? Please state how you know the writings contained in these resolutions are true.—A. They are almost self evident. I know those facts to be true. Every one of those statements is true.

Q. As a matter of fact, since 1866, how far have you been in the Choctaw Nation at any one time?—A. I have not been very far into the Territory since 1866.

Q. How far?—A. Ten or twelve miles.

Q. Any further away from Fort Smith?—A. No, sir.

Q. Your means of knowledge is simply derived from information conveyed to you by these people?—A. By hundreds or thousands of them with whom I have conversed within the last ten years on the subject of the affairs of the Territory.

Q. Of those thousands how many can you name?—A. Well, you might as well ask me for the names of the thousands of folks in Arkansas I have conversed with in my life. I cannot, of course, name them. A man cannot name all the people with whom he has conversed within ten years, whether whites, negroes, or Indians.

Q. When you testify, however, people expect you to give some information as to your source of information, and how you know it. These statements are very broad and not of very much force, unless you can bring it down to something tangible. I do not ask you to name any considerable number; just a few, half a dozen, something like that.

The WITNESS. Do you mean half a dozen I have conversed with on Indian matters?

Q. O, no; of these colored people. How do you know? Is not your source of information derived from these three, James Ladd, Richard Brashears, and N. O. Coleman? You say you have conversed with those men. Can you name any others with whom you have conversed in relation to the statements contained in this petition?—A. I have talked with a great many men during these many years past, but as to stating who they were or giving their names it is utterly impossible for me to do so.

Q. Here is an allegation contained in one of these resolutions: "Whereas the colored people of the Choctaw and Chickasaw Nations were, by force, intimidation, and threats against their lives, prevented from holding a peaceable convention, in which to deliberate upon an amelioration of their deplorable condition, and bring it to the notice of the government; Resolved," &c. Now, what do you know about that?—A. I know this much about it; that the deputy United States marshal who arrested those two colored men mentioned in the memorial brought them to my office at their request. He came with them to my office, on their way from the Indian country, some 150 miles west of Fort Smith, to Van Buren, Ark. They asked me to accompany them to Van Buren. I told the marshal he had no right to arrest these men; that it was one of the most high-handed proceedings I ever heard of in the United States, for a citizen to be arrested for coming to a peaceable convention. I got on my horse and went to Van Buren, five miles from Fort Smith, and at my request the commissioner discharged the prisoners, and he told the marshal he had no right to arrest them.

Q. Can you state any other instances derived from your personal knowledge?—A. These ought to afford abundant proof that I was known all through the Indian Territory, and that these people came to me for protection shows, more than all the names I could give, the relation I held to them.

By Mr. ADAIR:

Q. How is it your memory is so good about facts, and so poor as to names?—A. Well, facts are apt to make an impression on the mind, whereas a mere name is easily forgotten.

Q. How long have you been publishing this paper from which you read that statement?—A. Nearly fifteen years.

Q. Have you since the war advocated in that paper the prevalence of military rule in Arkansas?—A. I advocated military rule in Arkansas shortly after the war; not longer than such a time as the people of Arkansas could get their civil matters in shape to assume self-government in all its functions.

Q. Must we understand from that that there was a time they were incapable of self-government?—A. Yes, sir; there was a time in that State when the State was incapable of self-government. It was during the war, when there was no executive, judiciary, or legislature, and the people were scattered. *Inter arma silent leges.*

Q. About how many years did you advocate that theory?—A. I advocated the resumption of our civil government as early as 1863. In fact, I drew up and printed a proclamation calling on the citizens of Arkansas to get together in convention and take the first steps looking to the resumption of self-government. That was acted upon, and we had a convention at Fort Smith in October, 1863, and soon after had an election, the result of which was recognized by President Lincoln and Congress, and established what was called the Murphy government; and that this important movement took its rise in my school-house, where the first Union organization was formed, is a matter of history.

Q. What did General Blunt give you a flogging for?—A. General Blunt did not give me a flogging.

Q. What was that fuss between you and him about?—A. I opposed General Blunt, and so stated in my paper, when he wanted to go down into the Indian Territory and Texas to plunder those people, and I stated it was a disgrace to the Army and the government. I wrote President Lincoln about it, and protested against his having a command. I was president of the Union League of the State. At the Indian council in 1865 he met me, with a copy of the paper in his hand, and said, "Did you write that article?" I said, "Yes, I wrote it." The article referred to I wrote in April, 1865, denouncing the manner in which he had conducted himself down there. He said, "Will you retract?" I said, "I will not only not retract, but I am sorry I did not make the language stronger than that." He struck at me and missed me, and the momentum of the blow carried him into the middle of the street. I was unarmed, and when he came on again a sentinel near by charged bayonets to stop him. An armed crowd of his followers had gathered, and they tried to stop the sentinel, but some of Blunt's backers were convinced by that time that they had gone far enough, and they knew if an outrage was committed by Blunt and his strikers, there were two regiments stationed there that would have settled him and his crowd.

Q. Did you ever advise a deputy marshal to shoot two men in the Indian country?—A. I do not know of any such occurrence. I never did advise any one to kill anybody.

Q. You never did?—A. No, sir; I never advised any one to shoot another.

By Mr. GRAFTON:

Q. These two colored men who were arrested; by whom were they

arrested—by the Indians?—A. Arrested by the deputy United States marshal.

Q. On page 158 of the testimony there is a writ issued signed by A. H. Carson; who is he?—A. A deputy marshal.

Q. An officer of the United States?—A. Yes, sir.

By Mr. ADAIR:

Q. Has not your paper on several occasions expressed its opposition to these Oklahoma bills?—A. Not that I know of.

Q. You do not know?—A. I do not. I never advocated any opposition to those measures.

Q. I asked if the paper did not?—A. No, sir.

Q. Has it always been in favor of the Oklahoma bills?—A. Yes, sir; in favor of opening the country, but reserving full rights to the Indians as to their land, and everything due them from the government.

Q. When you speak of opening the country, you mean that citizens of the United States may go in there?—A. Yes; make it a Territory of the United States.

Q. You think we have some very fine places there?—A. Yes, sir.

Q. Have you picked one out yet for yourself?—A. No, sir; I do not expect to, either, nor I do not expect to marry an Indian woman.

Q. You could go without marrying in the country if the country were opened?—A. Yes; but all my interests are in Arkansas.

APRIL 26, 1878.

D. M. HODGE, having been duly sworn, was examined by Mr. Garland.

Question. State your full name.—Answer. D. M. Hodge.

Q. Where do you live, Mr. Hodge?—A. In the Creek Nation.

Q. How long have you lived there?—A. All my life-time.

Q. What is your occupation when at home?—A. I am farming when at home. I have a farm.

Q. Are you representing your nation in any capacity here?—A. Yes, sir; I am.

Q. State what it is.—A. I am a delegate of the Creek Nation.

Q. Now, Mr. Hodge, you have heard this investigation pretty nearly every meeting we have had, and without asking you every separate question I wish you would state the views of your people on the subject of the Oklahoma bills. In the first place, have you read these bills?—A. Yes, sir. I would state in the first place that I, as one of the delegates, have represented the views of that people in the protest against this investigation. I do not think that in regard to the internal and domestic affairs of the Creek Nation that the investigation should be had; but if you speak of the Territorial form of government, we are all opposed to it. We have stated that in our protest before the United States Government. That protest represents the sentiment of the majority of our people.

Q. That protest represents the sentiments of a majority of the people of the Creek Nation?—A. Yes, sir; none that I know of are in favor of a Territorial form of government.

Q. Are you in favor of your people—you speaking for the people—of the establishment of a United States court in your country like the court at Fort Smith, Arkansas?—A. The people of the Creek Nation think that is provided for in our treaties with the Government of the United States. I do not think many of them want a United States

court established in that country, but if it is in accordance with the treaties we do not object.

Q. Have the two subjects been discussed somewhat extensively for the last few years; that is, the subject of the United States court as well as the subject of Territorializing the country?—A. The subject of Territorializing our country is talked of more than the other; that is, the establishment of the United States court there in connection with that; they are all opposed to it; they sent us here to oppose it; we express their views on the subject.

Q. You have been instructed by your people to oppose them?—A. Yes, sir; that is what we are sent here for.

Q. What is the idea of your people in reference to dividing the land in severalty?—A. They are opposed to that too.

Q. How many public schools have you in your nation?—A. We have, I believe, twenty-eight; we did have thirty-one; we have twenty-eight neighborhood schools; besides those, we have mission schools.

Q. How long do those public schools hold?—A. Ten months during the year.

Q. In continuous session?—A. Yes, sir.

Q. What do you think the average number of pupils is? Give your best impression.—A. Some of our public schools average more than others. The lowest average that I could mention is fifteen to a school; that is where the country is more sparsely settled. The average attendance is much larger than that—twenty-five or thirty, perhaps.

Q. What is about the highest number?—A. Speaking of the highest number of the neighborhood schools the average is about seven hundred. I mean the aggregate of the whole.

Q. You mean the aggregate?—A. Yes, sir.

Q. You have heard something here in reference to the status of the colored people out there. I wish you would state their status as to how many there are in your nation, and their different relations to the government, &c.—A. I think we have between fifteen and eighteen hundred in our country. They are citizens. They were made citizens by the treaty of 1866, and they have all the rights, privileges, and immunities of any other citizens there.

Q. Do you know anything personally of the management of the school-fund in your nation; has that come under your control?—A. Yes, sir; I am a trustee of the mission-school.

Q. Have you a statement with you in reference to the disposition of that fund?—A. No, sir; nothing with me. I can state, however, according to our treaties we appropriate \$11,000 for school purposes, and beside that, we appropriate out of the general fund, including the fund set apart from our treaties, from \$24,000 to \$27,000, annually, for school purposes.

Q. That is annually appropriated?—A. Yes, sir.

Q. Is it used for any other purpose than school purposes?—A. No, sir. We can use it for no other purpose; our laws do not permit it.

Q. Are the laws faithfully enforced in that respect?—A. Yes, sir.

Q. What is the condition of your country as to peace and order and the protection of life and property?—A. Well, I think, sir, we are as peaceful as any other people. I have heard of no disturbance there since I have been here and even when I am at home I know our country is generally peaceable.

Q. Have you got with you your power of attorney or agency?—A. Not with me here in the committee. I have it in my room, I can produce a copy.

Q. Will you let it go in the record?—A. Yes, sir; I have them and will let them go in the record. It is as follows:

“EXECUTIVE OFFICE OF THE MUSKOGEE NATION,

“Okmulgee, C. N., November 5, 1877.

“I, Ward Coachman, principal chief of the Muskogee Nation, in accordance with the power vested in me by law, and pursuant to act of national council, approved October 25, 1877, do hereby appoint Hon. John R. Moore, Hon. Pleasant Porter, Hon. David M. Hodge, and Hon. Yartehkah Harjo to represent the Creek Nation, as delegates for the year eighteen hundred and seventy-seven, at Washington City, D. C., to act for and represent the Creek Nation, in all respects as per their instructions.

[SEAL.]

“WARD COACHMAN,

“Principal Chief.

“WM. HARVISON,

“Private Secretary.”

“EXECUTIVE OFFICE OF THE MUSKOGEE NATION,

“Okmulgee, C. N., Nov. 5th, 1877.

“Hon. John R. Moore,

“Pleasant Porter,

“David M. Hodge, and

“Yartehkah Harjo,

“Creek Delegates:

“GENTLEMEN: In accordance with an act of the national council approved October 25, 1877, appointing a delegation of four persons to attend to Creek interests during the coming session of the United States Congress;

“You will, as soon as practicable, proceed to Washington, D. C., and there carefully attend to all matters brought before Congress, affecting Creek interests.

“You will, to the best of your ability, oppose all measures brought forward in any manner tending to change our relations with the United States Government.

“You will prosecute, and if possible, bring to a final settlement, all claims of the Creek Government, or the citizens thereof, against the Government of the United States.

* * * * *

“WARD COACHMAN,

“Principal Chief M. N.

“WM. HARVISON, Private Secretary.”

“WASHINGTON, D. C., April 30, 1878.

“I hereby certify that the foregoing is a true copy of the first four paragraphs of the instructions of John R. Moore, Pleasant Porter, David M. Hodge, and Yartehkah Harjo, Creek delegates, bearing date Okmulgee, C. N., Nov. 5, 1877, and signed by Ward Coachman, principal chief, M. N., and William Harvison, private secretary.

“Given under my hand and seal this thirtieth day of April, in the year A. D. 1878.

“E. C. WEAVER, [SEAL.]

“Justice of the Peace.”

Q. What is your pay as a delegate here?—A. Seven dollars a day.

By Mr. BOUDINOT:

Q. In this protest as a delegate you and your associates have declared that your people wish your treaties carried out in good faith, is not that your opinion and the views of your people?—A. Well, in reference to that, I am speaking officially. I am willing to answer any and all questions put by this honorable committee in regard to our nation, but I do not think that it is right to be interrogated by you.

Mr. GARLAND to the witness:

The committee has permitted questions to be asked by all sides, and as long as the questions are legitimate, I will have to insist on your answering. We have taken in persons on all sides and have given them and you a chance to interrogate them for your own information as well as our own; that is what we are trying to get—information.

The WITNESS. What is the question?

Question repeated by Mr. Boudinot.

A. We are a treaty-abiding people. We do not want Congress to violate our treaties. We abide by them ourselves and we wish them carried out.

Q. Then you have no objection to anything being done that is done in accordance with the treaty?—A. Certainly, if in accordance with the treaties.

Q. The seventh article of the treaty of 1866 reads as follows: "Seventh. The Creeks also agree that a court or courts may be established in said Territory, with such jurisdiction and organized in such manner as Congress may by law provide." Now I will ask you if Congress should see fit—

The WITNESS. You are reading from the Seminole treaty.

By Mr. BOUDINOT:

Yes, but there is a similar provision in your treaty. Now, if Congress should see fit or consider it necessary for the protection of life and property to organize a Territorial Government which would not interfere with your laws, privileges, and customs, and without interfering with your tribal relations, I understand you to say you would not object.—A. No, sir; I did not say that. I do not think Congress can establish a government over us without interfering with our laws, privileges, and customs. We have our own government. Congress, in the treaty of 1866, retains to us our nationality.

Q. I say if it should not interfere with your tribal relations, &c. ?—A. Our treaties do not provide for that.

Q. Let me read article 10 of the same treaty. (See 14 U. S. Stat., p. 789.)

Q. Now, the question I ask you is, whether, if Congress should see fit to legislate in a manner in its judgment so as to better protect life and property in the Indian Territory without annulling your tribal organizations—without interfering with your manners, laws, privileges, and customs, would you object to that?—A. Let me see the article, please. The tenth article of this treaty, to which you have referred, is in regard to the establishment of the grand council of the Indian Territory; that is what that means. We have already established that council.

Q. That is not necessary. The question I asked was, suppose Congress should see fit to legislate, are you bound to acquiesce in it?—A. No, sir; I do not think Congress has that right.

Q. Is it not in the treaty?—A. That has reference to the general council of the Territory, the article which you read.

Q. The seventh section of article 10 says: "Congress also agrees that

a court or courts may be established in said Territory with such jurisdiction and organized in such manner as Congress may by law provide. (Page 787, 14 Stats., U. S.) Are you in favor of that?—A. If Congress desires to establish United States courts, of course we no not object to it, if done in accordance with the treaties.

Q. With such jurisdiction as they see fit?—A. Such jurisdiction as is in accordance with the laws and treaties.

Q. It gives such—gives such jurisdiction as Congress may provide?—

A. Yes, sir; when not in violation of our treaties.

Q. It is for Congress to provide for the jurisdiction of that court?—

A. Yes, sir; but in accordance with the treaty, providing for such court or courts.

Q. The words of the treaty say that Congress may provide for it. I ask you if you are in favor of that or not?

Mr. GRAFTON. Are you not misleading the witness?

Mr. BOUDINOT. No, sir.

Mr. GRAFTON. Does not the treaty say that Congress may give the courts such jurisdiction as will not abolish their laws, privileges, and customs?

Mr. BOUDINOT. This article does not; the others do.

By Mr. BOUDINOT: (To the witness.)

Q. Suppose Congress organized a court there as provided by this article in your treaty, without disturbing your Creek organization in the slightest degree, would you object to that being done?—A. I would not, if it does not violate the treaty at all, or impair any of our rights.

Q. And if it does not interfere with your tribal organization?—A. Yes, sir.

Q. If it were possible for Congress to legislate for the better protection of life and property without disturbing your tribal organization, would you object?—A. I would object, because we have the right ourselves to legislate for the protection of life and property.

Q. Have you the right where white men are parties?—A. If they make laws for their own citizens, we do not object to that—there is a law for that; the intercourse law covers that.

Q. Suppose Congress think more legislation necessary?—A. Of course, we do not object to Congress making laws for their own citizens.

Q. I say without interfering with your tribal organization. Do you object?

The WITNESS. Make laws for their own citizens?

Mr. BOUDINOT. Yes, sir; between their own citizens and your citizens, without interfering with your tribal organizations?

A. I do not object to their enforcing the intercourse act, as that covers your question.

Q. I asked if you are in favor of the treaty or not?—A. I don't propose to violate any treaty.

Q. You say they are unanimously opposed to the Territorial form of government?—A. Yes, sir; I do.

Q. What do you mean by that?—A. I mean a Territorial government, such as is contemplated in these different Oklahoma bills pending in Congress.

By Mr. BOUDINOT:

The 3d section of article 10 of the treaty of 1866 reads:

"Third. Said general council shall have power to legislate upon all rightful subjects and matter pertaining to the intercourse and relations

of the Indian tribes and nations resident in said Territory, the arrest and extradition of criminals and offenders escaping from one tribe to another, the administration of justice between members of the several tribes of said Territory and persons other than Indians and members of said tribes or nations, the construction of works of internal improvement and the common defense and safety of the nations of said Territory. All laws enacted by said general council shall take effect at such time as may herein be provided, unless suspended by direction of the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the treaty stipulations with the United States, nor shall said council legislate upon matters pertaining to the organization, law, or customs of the several tribes except as herein provided for." (Page 789, 14 Stats. U. S. at Large.)

Q. Are you in favor of that provision of the treaty?—A. I have told you several times I am in favor of carrying out the treaty.

Q. Your people also, are they?—A. Yes, sir; when our treaty relations to your government are not impaired.

Q. Now, is not that a legislative assembly—that council?—A. Yes, sir; an international council.

Q. Authorized to pass laws?—A. The council has been in existence some time.

Q. Then you have a legislative assembly authorized by the treaty?—A. Yes, sir; an international council.

Q. Then you say you are in favor of a court, inasmuch as the treaty provides for it?—A. Yes, sir; inasmuch as it is provided for by the treaty.

Q. Now, if you have a legislative assembly and a court, are you in favor of a Delegate to Congress?—A. No, sir.

Q. Why not?—A. Because I do not think any member on the floor of Congress can represent anybody but citizens of the United States.

By Mr. HUBBARD:

Q. Are you in favor of the Indians being made citizens, if they lose none of their tribal rights?—A. They cannot be made citizens without losing their tribal rights.

Q. Do you object if they can hold all their rights under the treaties and still be made citizens holding all their tribal rights?—A. I object to the Creeks being made citizens of the United States upon any grounds whatever. I stand upon my nationality.

By Mr. BOUDINOT:

Q. On what side in the late war were you?—A. I was with the Federal Army.

Q. With the Federal Army?—A. Yes, sir; I undoubtedly had to be.

Q. Did you have anything to do with making a treaty in 1861, between the Confederate government and your nation?—A. No, sir.

Q. Do you know that treaty provided for a delegate to Congress—to the rebel Congress?—A. I do not; I never read it; I only heard of it.

Q. Don't you know your people sent a delegate there?—A. No, sir; I do not know it. I was at school at the time.

Q. Now, if Congress should see fit to give you a Delegate—give him the same powers and privileges as a Delegate from other Territories on the floor of the House of Representatives, being the peer of any member from the Territories or States, except he could not vote—what objection would you have to that?—A. Well, I do not expect to do anything about it. Our treaty with the Government of the United States recog-

nizes our own nationality, and I do not think we would acquiesce in it at all.

Q. Is there not a provision in the treaty which says you may have a Delegate?—A. There is no provision in either of our treaties which authorizes a Delegate on the floor of Congress.

Q. Is there any provision which says you shall not have one?—A. No; I do not think there is.

Q. Then, if Congress, in its wisdom, chooses to give you a Delegate, do you object?—A. Most seriously, from the fact that our treaty makes no such provisions.

Q. Then, if it violates no treaty, and they conclude to give you a Delegate, you have no objections to agreeing. Can you tell me what else is necessary to make a Territory? You have a legislature there authorized to pass laws for the protection of life and property in the Territory. You have a United States court, and have got a Representative in Congress, without interfering with your tribal organizations? What else is necessary?—A. We have already an international council.

Q. Can it pass laws?—A. It does pass laws.

Q. What laws?—A. The records of the council will show it.

Q. Will you state a single law it has passed?—A. I have none of the records with me.

Q. Were you a member of it?—A. Yes, sir; I have been a member of that council.

Q. Can you furnish a copy of the records of the council?—A. I suppose I could get a copy; I do not know that I have any now.

Q. Have you any copies of the record here?—A. No, sir; I do not think I have among my papers.

Q. How long did you serve in that council from the Creek Nation?—A. I have been at every session that has been held of the grand council.

Q. We were speaking of the number of sessions you attended; did you attend six or eight?—A. I do not know how many; I have been at every one however.

By Mr. HUBBARD:

Q. You do not recollect whether they have passed a single law or not?—A. The council was carried on in accordance with the treaty. Of course, I do not mean to say it is a legislature, as others are organized now.

Q. Do you know of a single law being passed when you have been there; don't you know they never passed one?—A. I will answer when I get the records of the council.

Q. Do you recollect of any having been passed for the pay and expenses of the members?—A. That is provided for in the treaty of 1866.

Q. Did not they pass a provision for that?—A. Well, I suppose so.

Q. Don't you recollect?—A. The members have always been paid.

Q. Now, you look over the acts and tell the committee if they have ever passed a single law?

The WITNESS (to Mr. Hubbard). You mean the laws having the same force as those passed by the Senate or House of Representatives?

Mr. HUBBARD. No, sir; any laws whatever, in accordance with the acts authorizing the establishment of the council.

Q. Has not the council been a dead letter?—A. No, sir.

Q. In what respect has it not?—A. It has done a great deal of good. It has been the means of civilizing the wild tribes, who sent representatives to it.

Q. What tribes?—A. All the tribes represented in it.

Q. It has been the means of educating these tribes?—A. It has been the means of educating them in governmental matters, as any other instrumentality whereby a people can be educated.

Q. You mean by bringing them together?—A. By creating friendly relations between themselves and the whites, and has been the means of educating these wild tribes, more, perhaps, than others.

Q. We are not talking about the wild tribes; we are talking about those represented in that council. The wild tribes have been influenced by it?—A. Yes, sir; by coming in contact with the civilized tribes.

Q. Then you think the council can do a great deal of good?—A. I think it can. I think that grand council should be perpetuated.

Q. Have you done anything under it for two years?—A. We have had no session for the past two years, from the fact that the government did not appropriate money to carry it on.

By Mr. BOUDINOT:

Q. You have stated that this grand council under the treaty has no right to pass laws for the administration of justice between parties of the several tribes in the Territory, &c. Then if that council could pass law you have no recollection that they have passed such laws. If it should pass laws as now constituted, where no court could take cognizance of them, would it be of any utility. In other words, if that council could pass a law regulating contracts between yourself and myself, the Creeks and Cherokees, Creeks and white men not members of your tribe, would that law be of any use without the other departments of the government being enforced?—A. If the law was enforced our contracts could be carried out in accordance with the law as made.

Q. How could it without courts, without an executive?

The WITNESS. Do you think the council would pass law that cannot be enforced?

Mr. BOUDINOT. No, I do not think they would, and that is the reason they have passed none.

The WITNESS. The council has been held in accordance with the treaty.

By Mr. BOUDINOT:

Q. Is it not necessary, then, for Congress to legislate and give it some other powers so as to give it force in that country?—A. In accordance with the treaties.

By Mr. SAUNDERS:

Q. You say you are paid seven dollars per day; are there any others with you who are paid out of the fund?—A. No, sir.

Q. None others but yourself?—A. No, sir; none that I know of; of course the other delegates are paid seven dollars per diem as well as I am.

Q. There are others who represent the same interest that you do?—A. Yes, sir.

Q. What number?—A. Three others.

Q. Who are they?—A. Colonel Porter, Colonel Moore, and Yartch ka Harjo.

Q. From what fund are you paid?—A. From the general fund.

Q. None out of the school fund?—A. No, sir; we cannot appropriate our school money for any purpose but for schools only.

Q. Then, so far as you know, the school fund has not been used for any purpose of that kind?—A. No, sir.

By Mr. PORTER:

Q. What amount of money has been expended for school purposes?

The WITNESS. Other than neighborhood schools?

Mr. PORTER. Yes; other than neighborhood schools.

The WITNESS. Other than neighborhood schools we have appropriated about fourteen thousand dollars, more or less; I think that we used for mission schools besides the day schools.

Q. How are those moneys paid to the mission schools?—A. They are paid to the superintendents of the schools.

Q. Who are the superintendents of those schools?—A. Of the Tallahassee school, Mr. W. S. Robinson.

Q. What board is he connected with?—A. The Presbyterian Board of Foreign Missions.

Q. Who is the superintendent of the Asbury school?—A. Mr. Marlin.

Q. What board is he connected with?—A. The Methodist board, south.

Q. How many scholars are taught at the Tallahassee school?—A. Eighty is the regular number. I visited that school when home, and there were a little over eighty—between eighty and eighty-five; I was so told by the superintendent, and I saw all the scholars. I did not count them myself, but the school was full. I think there were a little over eighty.

Q. By whom are they boarded?—A. By the Creek Nation.

Q. By whom are they clothed?—A. Clothed by their parents.

Q. How many boys are sent away to the States by the Creek Nation?—A. Eighteen, I believe, were sent away last year.

Q. At what expense per head?—A. I am not certain just what, but I think two hundred and fifty dollars per scholar.

Q. Are not all surplus funds that are accrued each year applied to school purposes?—A. Yes, sir.

Q. How many schools have the colored people?—A. Seven.

Q. Exclusively?—A. Exclusively for their benefit.

Q. Is that an equal proportion of the school fund per head in accordance with their number?—A. Yes, sir; I think a little over a few dollars. The last estimate we made we appropriated for the school fund for the colored schools; they have every right of other citizens.

Q. Are they represented in the council?—A. Yes, sir; they have about twelve or fifteen members in the council.

Q. Are they elected to positions in the districts?—A. Yes, sir; one of our judges is a colored man, and was elected by the last council.

Q. What do you believe to be the feeling between the Indians and negroes there; good or not?—A. I have not heard of any bad feeling at all.

Q. No complaints to the United States by the negroes?—A. Not that I have heard of. There is a colored man who is one of our supreme judges also.

FRIDAY, April 26, 1878.

GEORGE W. STIDHAM, having been duly sworn, was examined.

By Mr. GARLAND:

Question. Judge, state your full name.—Answer. George W. Stidham.

Q. Where do you live?—A. Eufaula, Indian Territory.

Q. How long have you lived in that country?—A. Since 1829—about 49 years.

Q. What is your business when at home?—A. I am farming and merchandising when at home.

Q. Are you representing your people in any capacity here?—A. No, sir.

Q. You are here merely as a private citizen?—A. Yes, sir.

Q. Do you hold any official position at home?—A. No, sir.

Q. You heard the question I put in chief to Mr. Hodge, did you not?—A. Yes, sir; but I am a little hard of hearing, and may not have heard all.

Q. I wish you would state to the committee what is the feeling of your people upon those subjects. I inquire more especially in reference to the division of the lands in severalty, the establishment of a United States court, and the formation of a Territorial government over your country upon the theory of the Oklahoma bills. State the sentiment of your people upon those different measures.—A. I certainly do know the sentiment and feeling of the Creeks, and I know they are unanimous against the establishment of a Territorial government upon any of the plans such as have been proposed all along for a great many years.

Q. You have canvassed among your people on the matter?—A. Yes, sir; talked upon it a great deal. As to the courts, that is provided for in our treaties, and whether the people like it or prefer it or not, it is in the treaty and they will not object to it.

Q. As to holding the land in severalty?—A. Well, that they are opposed to.

By Mr. HUBBARD:

Q. Why?—A. Well, we believe the safest plan for the Indian to have a home is to hold the land in common; a large portion of the people found their belief upon an experience that has been too well taught them to forget it so soon. The portion that remained in Alabama sold out in 1832 and took reservations. They were swindled out of nine-tenths of it; they never got five dollars for it. That is the experience a great many—a large portion of them had, and they have never forgotten it.

Q. Have those matters been settled?—A. No, sir; a large portion remains unsettled. There are nearly nine hundred reservations remaining in the hands of the government for which they never have been paid.

Q. You heard Mr. Hodge's statement in reference to the schools out there. Do you corroborate his statements?—A. I did not hear it all because he spoke low and I am a little hard of hearing. We have what we call the day-schools or neighborhood schools. Of these we have twenty-eight; we had thirty-one, but had to reduce a little in order to send some boys off in the States. I say we did it. I had nothing to do with that, but I know it was done and the number reduced to twenty-eight. There is a very fair attendance in all the schools. There is a law regulating the attendance, and whenever it is reduced to a certain number that school is removed to some other place upon the theory that they can get better attendance. Consequently the schools average fifteen or sixteen regularly. It runs over that and up to thirty-odd scholars sometimes.

Q. Have you had anything to do with the management of the school fund there?—A. No, sir; nothing at all.

Q. Do you know whether the school fund has been used strictly for school purposes; whether it has been diverted to other purposes or not?—A. We have had \$10,000 to \$11,000 a year appropriated by law, which is used especially for the schools. We have invested \$275,568,

and the council appropriates for school purposes the interest of the invested funds under one of the provisions of the treaty of 1866. This particular investment is used for school purposes, to which is added the \$11,000. Then, outside of that, we also provide for the schools out of the general funds. We have two large schools, what we call manual-labor schools. There is one almost in sight of my house, of which I am one of the trustees, and I am there very often. I take a great deal of interest in the education of my people, as much so as any other man who lives in the country. The school is kept full; eighty is the number of boys. We had both sexes attending it at first, but we separated them, and now it is a male school. It is doing well. They are clothed, and everything else is provided for their comfort, including books, stationery, &c., for seventy dollars a year. The scholastic year commences on the first of September and ends on the last day of June, making ten months in a year. *There is not a dollar of school money used for any other purpose; that I know to be a fact.*

Q. You know that to be a fact?—A. Yes, sir; it is kept separate. Instead of touching that the Creeks use the national fund for school purposes.

By Mr. PORTER:

Q. How many boys and how many girls in that school at Tallahassee?—A. Forty of each sex.

Q. These are all Indian children?—A. Yes, sir.

By Mr. GARLAND:

Q. You heard Mr. Hodge's statement in reference to the status of the colored people out there. Do you concur in that?—A. Yes, sir; there is not a particle of difference between us, but until the treaty was made it was a little hard for us at first; at least it was for me, owing to the way I was raised. It did not go down; it was forced upon us, and we got used to it, and we are doing well, getting along well.

By Mr. GRAFTON:

Q. Would you commend that course to your neighbors?—A. Yes, sir. Why, the whole thing has come together so that we are shoulder to shoulder in carrying on our government. They have their full representation in the legislature. We have got plenty of field hands in our legislature. The United States is not ahead of us at all, so far as that is concerned. They are behind us. We have got one upon the supreme bench.

Q. What do you call the legislature?—A. One is called the house of kings, the other the house of warriors.

By Mr. BOUDINOT:

Q. Are you a merchant and farmer?—A. Yes, sir.

Q. Where is your store?—A. At Eufaula.

Q. In the Creek Nation?—A. Yes, sir.

Q. How far from the nearest State line?—A. The nearest State line is Arkansas; that is about eighty or eighty-five miles.

Q. Now, judge, you trade in all kinds of merchandise, produce, &c.?—A. Anything I can sell.

Q. Tobacco and cigars?—A. Manufactured tobacco.

Q. If persons manufactured tobacco in the Creek Nation, could you or he sell that tobacco without paying a tax to the United States?—A. I do not know anything about that. I think there is a punishment or penalty for it; they are afraid to so sell it.

Q. You pay a tax, don't you ?—A. Yes, sir ; I buy my tobacco manufactured in the States, and I pay a tax of five dollars a year.

Q. For the privilege of selling ?—A. To the United States.

Q. You don't pay a tax to your own people ?—A. No, sir.

Q. When you sell to them alone you have to pay a tax to the United States ?—A. Yes, sir.

Q. About what population is there in the Creek Nation ?—A. I think 11,000 or 12,000.

By Mr. HUBBARD :

Q. How was it when you first went there ?—A. A little over 2,000.

By Mr. BOUDINOT :

Q. How much land did the Creek Nation own previous to the treaty of 1866 ?—A. They owned over 6,000,000 acres.

Q. How much do they own now ?—A. We ought to own about 3,250,560 acres. I think it ought to be that much according to the treaties, but we have not got that much.

Q. You sold a good deal under the treaty of 1866 ?—A. One-half.

Q. To whom ?—A. To the United States.

Q. Then the United States owns one-half according to the treaty of 1866 ?—A. Yes, sir.

Q. What did you receive for your land ?—A. Thirty cents an acre.

Q. Thirty cents per acre ?—A. Yes, sir.

Q. I ask you for your judgment. Don't you think it would have been better if they had taken their lands in severalty previous to the treaty of 1866 and divided it up among yourselves than to sell it for thirty cents per acre ?—A. I do not know about that. Of course it was worth more than that, but then we had to take that.

Q. If you had have held the lands in severalty, could the government have compelled you to sell them ?—A. I do not know about that.

Q. Don't you think you would have done better to have had them divided up in severalty than sell them to the government at thirty cents per acre ?—A. I do not know about that.

Q. How many children have you ?—A. Seven.

Q. Your wife is living ?—A. Yes, sir.

Q. That makes nine in your family ?—A. Yes, sir ; if I had my proportion it would be worth more to me. The reason why we have opposed this Territorial bill is on account of our people ; they cannot stand it. I might stand it, but they cannot.

Q. You do not think they are intelligent enough ?—A. No, sir ; they have been swindled so badly it would be the same thing over again. It would not be twelve months before they would not have an acre of land.

Q. I agree they have been swindled, perpetually swindled ; but suppose Congress could adopt such legislation as would make all those Indians secure in their titles the same as held by the people in Arkansas ? Say, for instance, they should not alienate it for so many years ?—A. Do you suppose I have any faith in that ? No, sir ; my faith has been too badly shaken.

Q. You do not believe the United States can give a title that the Indians would not be swindled out of ?—A. They would in a few years repeal it, if I may judge from the manner in which we have been treated.

Q. Suppose Congress should give you and each individual of your nation his equal portion of that three millions and a half acres, amounting to about twenty-seven hundred acres, more or less, and give you and him a patent in fee-simple, and you and he own it by the same

title that Governor Saunders owns his lands in Nebraska, and Governor Garland owns his in Arkansas. Do you believe, after you got such a title, another Congress could take it away from you?—A. They might not take it away from me, but what would become of the balance? You do not know anything about this sectionalizing business. In Alabama, while a man who owns the land was asleep others were hired to personate him, and they went so far as to certify that he sold his lands. The agents were in these speculations, and they were swindled out of nine-tenths of their lands. Congress cannot secure it in such a way but that they will be swindled out of it.

Q. You say everybody is opposed to a Territorial government in your nation. They are in favor of carrying out the treaties in good faith?—A. Yes, sir; I do not like that treaty, but since made I want a strict construction of that treaty carried out.

Q. Then if Congress could legislate so as to provide local laws for the protection of life and property without interfering with your tribal organization or tribal government, and without violating any provisions of the treaty, don't you think the people would agree?—A. Colonel Boudinot, I attribute more sense to you than to think you sincerely believe that Congress could establish a Territorial government over our nation without interfering with our laws, privileges, and customs. They cannot do it.

Q. I believe you say they can establish a court without doing that?—A. That is provided for under the intercourse law.

Q. They could have a United States court there to take cognizance of all disputes without interfering with your laws, privileges, and customs, &c.—A. Yes, sir; with criminal jurisdiction only.

Q. They could have a grand council also to pass laws, composed of all the nations, without violating your tribal regulations?—A. The provisions in the treaties of 1866, as I understand it, was to be a general council or congress of Indian nations, composed of those who may assent to the establishment of said general council. That provision in said treaties guards the local organizations, laws, privileges, and customs well; entirely different to what is now proposed in the Oklahoma bill. It was to be a kind of Indian congress, as I understand it. I look upon it, of course, so far, as a failure. I may differ with many others of my people; but I understand it so far to be an utter failure.

Q. If the courts are established, you have a body to legislate, call it what you please, grand council or Indian congress; you have that to pass laws; you have this court, and now Congress should provide an executive to carry out those laws.—A. According to our treaties, the Superintendent of Indian Affairs was to preside.

Q. He was to be the executive?—A. Yes, sir.

Q. If you have all those departments of the government, is it not possible to establish that kind of a government without interfering with your tribal organization, &c.?—A. That was an entirely different thing from that which is now proposed. If you will notice the provision for the establishment of a Territorial form of government, you will find it provides for certain legislation. They could go so far and no further. They were not a legislature, so as to do any thing; pass any laws—laws contrary to the Constitution of the United States and the treaties made in pursuance thereof with the nations.

By Mr. HUBBARD:

Q. Why was it a failure?—A. The failure was this: We undertook to get up a constitution; under that, it was required that a certain portion

of the nations should agree to it before it could take effect; three-fourths, I think, it was. It has been so long that I have forgotten; it was something like that. We failed to get three-fourths to agree, and so I look upon it as a failure.

Q. If it had been carried out, it would have been a success?—A. I do not know how it would have worked. I cannot look into the future that far.

By Mr. BOUDINOT:

Q. Do you know, from your knowledge of the country, this question has never been thoroughly discussed; that they have not tolerated the expression of opinion adverse to the known popular experience of the people?—A. I do not; they tried a little of the white man's law in Alabama, and they are sick of it. They look upon it as a death-blow to the Indians.

Q. Therefore there is such a prejudice against it you would not feel safe to discuss it as I would?—A. I would prefer not to, myself.

Q. You would not like to do it?—A. I would not like to do anything I am opposed to myself. I am satisfied with what we have.

Q. I am speaking if you entertain the views I do, that it would be best for the people there, and for the better protection of life and property. Would you advocate it among your people?—A. No, sir; I do not see how it would be of any benefit to us.

Q. I am speaking suppose you entertained my views?—A. I do not entertain your views. If I did, I might advocate it.

Q. Would you do it?—A. I might say nothing about it if I considered it was not popular.

Q. You were here in 1868 as a delegate?—A. Yes, sir.

Q. You remember my having a bill introduced here providing that those nations might build the railroad themselves?—A. Yes, sir.

Q. You recollect I put your name in that bill as one of the corporators?—A. I saw you had done so.

Q. Don't you remember that when you got back home the prejudice was so great against it that they threatened your life simply because your name was in the bill as a corporator?—A. The man who threatened me had his name in the bill also. He went home and said I got up that bill. I had nothing to do with it. Major Boudinot got it up. It was a mere form. After we explained it, it was all satisfactory; nothing more was said about it.

Q. Do you recollect the provisions of that bill?—A. That the Indians should build their own railroads.

By Mr. HUBBARD:

Q. Have the Creeks improved considerably since you have been among them?—A. They have improved, but they have had a great many ups and downs. They are improving now as fast as any people can.

Q. What proportion can speak the English language?—A. I do not know; that is a hard question to answer.

Q. How are the full-blooded ones improving?—A. Not quite so much as those mixed with white blood.

Q. The more white blood the more rapidly they improve?—A. Yes; because they have the advantage of a little education. Whenever the full-blooded ones are educated, they seem to do better. We have some full-bloods pretty well educated, and they are pretty sharp people. They are doing well.

Q. Those who are doing well are moving around?—A. No; those who stay in one place do better.

Q. I mean those who travel?—A. Our people don't travel; they stay at home. I travel as much as any one there. Just quietness will improve them more than anything else; any change will hurt them far more than anything else.

Q. You stated they had made more improvements lately than any other time?—A. I said they are improving as fast as any people can. You pass this Territorial bill, and if I live and you live we shall see the day when there will be no Indians in the Indian Territory. They will be wild Indians in less than two years.

Q. Why?—A. Because they will be swindled out of their homes. There is no man who lives there but that knows the effect it will have. And when a man advocates these things, he only does it for his own selfish interests.

Q. Do you believe you would be swindled out of your home?—A. No, sir; I do not believe I would unless some scoundrel personated me and sold my home while I was asleep, like they did in Alabama.

Q. Would Colonel Porter be swindled out of his home?—A. No, sir.

Q. You would be benefited by it?—A. If it was any benefit.

By Mr. HODGES:

Q. In case three were benefited, what would become of the balance?—A. I tell you, the truth is the Indians are a different race from the white people. The Indian takes all his people. I would not have money that could be made out of the rest of my people. There is no escape for it; they will go to it; they will be driven out. Put that on record, so that there it will stand whether I live to see it or not. That will come to pass just as sure as there is a God in heaven, if this is done.

Q. How long will it be before you think they will be ready for a change?—A. I do not know. We are trying to educate them and prepare them for it with the little means we have. If permitted, I would like to explain the conversation with Major Reynolds some years ago, and which he gives in his evidence. I stated to him that I believed Congress will finally force this proposed Territorial bill upon us. My children are all small, and, if it is to be forced whether we desire it or not, I would prefer seeing it in my life-time, so that I can see to securing their interest. I expect there are many others who have said the same thing, looking at it in that way as we do—that the thing is to be forced upon us.

Q. I suppose you have no doubt, from what you have said, the time will soon come when your people will be better off if the lands are divided in severalty?—A. I do not know about that; they are getting along well; they do not trouble anybody; they do not cost anybody anything; they live within their means; they have their lands and the title from the United States.

Q. That is, the nation has?—A. Yes, sir; the nation has. If I sell my horse, I do not see what right I would have to legislate what the owner should do with him.

Q. What right have your children to the lands?—A. They have the same right to them as any other Indian as long as they live.

Q. You gave it to them?—A. As an undivided estate, belonging to the nation.

Q. Does the law give them the right, or is it a custom, or what?—A. Custom, I suppose.

Q. There is no law by which your children have the right to hold land which you occupy?—A. Only to the improvements.

Q. What right to the improvements?—A. Because I made them, and they are my children.

Q. Does the law give them the right to the improvements?—A. Yes, sir.

Q. The improvements upon the property?—A. Yes, sir; any improvements on the place belong to the wife and children, but the land does not.

Q. The land does not?—A. The land belongs to them, all having an equal right to the use of it as long as they please. It is the best security for the Indians. There is not a person in the nation who has not a home, but you cannot say that about the people in this city.

By Mr. GRAFTON:

Q. Suppose the land were divided in severalty to-morrow, what proportion of your tribe would be able to take care of their land and manage their affairs solely for themselves as against the class of immigrants that would flow in there?—A. Not more than one-tenth.

Q. Not more than one-tenth?—A. Yes, sir; not more than one-tenth.

Q. You think nine-tenths would be wild Indians within a few years?—A. Yes, sir; that would be the last Indian war; they would fall back upon the prairies West.

Q. Then the government would have to support them by annuities or they would have to support themselves by the chase and by incursions into the States?—A. Yes, sir.

By Mr. HUBBARD:

Q. Mr. Grafton has asked you some questions in reference to the title to lands, and you stated that you supposed the nation holds patents to the lands from the United States and that that title is in common to the nation, so each individual member shall have an undivided interest in the whole so long as they exist as a nation and live upon it?—A. Yes, sir.

Q. That is the title that is satisfactory to the people?—A. Yes, sir; to every Creek.

Q. And, then, your educated Creeks who would receive some advantage from holding the lands in severalty are satisfied with holding them in common?—A. They are not willing it should be changed, to the great injury of all the balance of the people; and the reasons they oppose it is because they believe a great portion of the nation would be stripped of their homes and driven to the West. I believe that as firmly as I believe there is a God in heaven.

Q. What proportion of your people have you talked with on the subject?—A. I do not know; I have talked a heap. I am an old man, and I have talked a great deal.

Q. You have had frequent consultations with the people?—A. Yes, sir; and I have talked a great deal upon the national affairs of the nation.

Q. You believe you reflect the views of your people?—A. Yes, sir; I honestly do.

Q. You hope some time as a nation to assume the relations of citizenship in the United States?—A. I believe after awhile that can be done. I am raising my children with a view that they may be ready to meet any emergency that comes, and I think all the Creeks are doing that same thing.

Q. You believe, and your people look upon all this as an invasion of your present laws, privileges, and customs, or anything which is in-

tended to destroy your present system of government, or destroy your present title to your lands as a cruel blow to the Indians?—A. A death blow to the Indian race. I know we have some friends who think a change would be for the better. The reason why they advocate this is because they do not know what is to be the effect upon the Indians, and nobody can know but an Indian himself. They believe it might do some good, but I do not see how any Indian could honestly believe that such a thing as that can be a benefit to the people that inhabit the Indian Territory. I have grave doubts that any man believes such a thing can be a benefit to them in view of what has transpired before, and what effect such a thing has had upon our people, and what must inevitably follow any change now.

Q. You have given up half of your lands. Under what advice did you agree to do that? Under what circumstances did you part with them?—A. Yes, sir. The United States claimed that the portion who took sides with the rebellion had laid themselves liable to the forfeiture of the lands. They did not say we had forfeited them, but because we had laid ourselves liable we must take these and give up the other.

By Mr. PORTER:

Q. Was it not stated that the land would be used for the freedmen?—A. It was to be used for the settlement of the freedmen and friendly Indians, I believe, from Kansas. It is in the treaty "friendly Indians."

By Mr. HODGES:

Q. Did not the government withdraw protection from our people first?—A. Yes, sir; at the beginning of the war the Army was withdrawn that was there to protect us from wild Indians, &c., and we were left alone. We were then in a key between two Southern States, Arkansas and Texas, with Missouri on the north. In this situation we were left alone, and, like a drowning man, of course we caught at straws.

By Mr. GRAFTON:

Q. They made your people believe unless they consented to the alienation of half of these lands it might be confiscated and they might lose it all?—A. That was the belief of the people, that for the part they had taken with the South they had lost their lands, and, they did it to save half.

By Mr. HODGES:

Q. Were any of the Creeks in the Federal Army during the war?—A. Of course.

By Mr. PORTER:

Q. What guarantee does the government give the Creeks?—A. They continue to hold that like the former. It was to be reserved to them as long as they remain upon it under the same guarantee of all the former treaties.

By Mr. BOUDINOT:

Q. What is the population of the Creek Nation?—A. I think about 12,000.

Q. What proportion are negroes?—A. There are only 1,700 or 1,800.

Q. Are those negroes as far advanced as the negroes in the States?—A. I do not know anything about the negroes in the adjoining States; but I actually believe that the Indian negroes are smarter than those in the States.

Q. How many are mixed-blood that talk English?—A. I do not know.

Q. Give your best impression as to how many. Do you think there is one-third?—A. A great many do not talk English.

Q. Do you think there is one-third of the Creek Nation mixed?—A. If you take the Indians, it is not that much.

You do not think one-third?—A. No, sir.

Q. Do you think one-fourth?—A. I do not think so.

Q. One-fifth?—A. It may be one-fifth.

Q. One fifth; that would make about 2,000 in the Creek Nation who would be mixed. Are they not able to take care of themselves as the negroes?—A. O, yes, sir.

Q. I was speaking of those who have white blood. Are they as capable as the negroes?—A. Some are. Those who were raised there are the same as full-bloods.

Q. There are 1,800 negroes there who would not fare so badly, would they?—A. I do not know anything about that. Take the Indian negroes. The reason why I think they are more intelligent than the negroes in the States is from the fact they were raised just the same as if they were free. They were not worked as they were in the States. They traded more or less and had privileges they did not have in the States.

By Mr. HODGES:

Q. How many colored citizens in our nation who would favor a Territorial government?—A. I do not think there are any.

Q. How many white men within the Creek Nation who are intruders?—A. A great many.

Q. About what number?—A. I do not know.

Q. The most are around Muscogee and around the railroad stations?—

A. Yes, sir; the majority are a low class of people at that place.

Q. You stated you were making every effort to civilize your own children. Don't you think the Creek Nation is making every effort they possibly can to civilize the present race?—A. They are using the last cent they can get for that purpose.

Q. Don't you know we have not got enough to educate them?—A. That has been my experience since I have been a trustee.

Q. Not enough to supply the wants of the school?—A. Yes, sir.

FRIDAY, May 3, 1878.

Committee met pursuant to adjournment on the 26th ultimo.

Senators present: The Chairman, Mr. Chaffee, Mr. Saunders, Mr. Garland, and Mr. Grover.

Counsel and delegates all present.

GEORGE W. HARKINS, having been duly sworn, testified as follows:

By Mr. GRAFTON:

Question. Please state your name.—Answer. George W. Harkins.

Q. Your age.—A. I am 42 years of age.

Q. Your residence.—A. Atoka, Choctaw Nation, Ind. T.

Q. Are you a Choctaw Indian by birth?—A. Yes, sir.

Q. Have you any knowledge in regard to the amount of money that has been spent by the Choctaw Nation within the past five years for the purpose of maintaining delegates here in Washington to oppose a Territorial form of government, or for other purposes? If so, state it.—A. Yes, sir; \$4,500 was expended in 1874.

Q. And there has been no money spent since that time?—A. No, sir.

Q. How long previous to that time had there been any expended?—

A. Several years before that time there had been none expended; that is the whole amount.

Q. That is the whole amount?—A. Yes, sir.

By the CHAIRMAN :

Q. That is for one nation?—A. Yes, sir.

By Mr. GRAFTON :

Q. From what fund was that appropriated?—A. From the national fund of the nation.

Q. Please explain to the committee how your accounts are kept and how you designate the moneys you receive from the United States?—

A. They are designated as the national fund.

Q. How much of the national fund that you receive each year do you appropriate for school purposes?—A. Twenty-seven thousand five hundred and thirty-four (\$27,534) dollars.

Q. Is that a standing appropriation?—A. Yes, sir.

Q. Was any of this money for the support of the delegates taken from this standing appropriation?—A. No, sir.

Q. All moneys in excess of that \$27,534 you regard as national funds?—A. Yes, sir.

Q. How are they expended?—A. They are expended for the support of the government.

Q. To pay the expenses of officials and other expenses of the government?—A. Yes, sir.

Q. Please explain to the committee how your funds (I mean that \$27,534) are expended?—A. It is paid to the superintendent of public instruction on the auditor's warrant. He then disburses it himself to the district superintendents and trustees.

Q. Vouchers are taken when this money is paid?—A. Yes, sir.

Q. How many schools have you in the nation?—A. We have two large boarding schools, and about fifty neighborhood schools.

Q. How many scholars have you?—A. We have about eleven hundred scholars.

Q. What branches are taught in those schools?—A. All the different English branches.

Q. How long are the schools kept open during the year?—A. Ten months in the year.

Q. What is the average daily attendance of your neighborhood schools?—A. Each school averages from twenty to twenty-five scholars.

Q. Do you know what the scholastic population is—how many scholars?—A. There are about eleven hundred.

Q. Have you any students whom you send to school outside of the nation away in the States?—A. Yes, sir; we have twelve students in Roanoke College, Virginia.

Q. Are they supported from this \$27,534 appropriation?—A. No, sir; they are supported from the revenue derived from the tax on coal and timber.

Q. At what expense are they maintained?—A. At an expense of about three hundred dollars a year for each scholar.

By Mr. GROVER :

Q. Are they regarded as being educated by the nation?—A. Yes, sir.

Q. The object is to have men of higher education than you can obtain by having them educated in your own schools?—A. Yes, sir.

By the CHAIRMAN :

Q. They are scholars who have been selected from your own schools ?—

A. Yes, sir.

By Mr. GROVER :

Q. What is the object of this education ; for what purpose are they being educated ; what are they going to do after graduating ?—A. They are educated for different professions.

Q. You suppose some will study law and become judges ; some will study medicine and become doctors ?—A. Yes, sir.

By Mr. GRAFTON :

Q. The object is to educate professional men for your own people ?—

A. Yes, sir.

By Mr. GROVER :

Q. How many compose the nation to which you belong ?—A. About 16,000.

Q. What is the popular sentiment, as you understand it, among the Choctaws as to the question of becoming part of the United States, and being organized under a Territorial form of government proper of the United States ?—A. Well, the sentiment of the people is entirely opposed to it. Almost unanimously opposed to it.

Q. You think all the people are opposed to it ?—A. Yes, sir.

Q. They believe they can maintain their present organization best with greater success and happiness ?—A. Yes, sir ; that is my opinion.

By Mr. GRAFTON :

Q. Has the question of dividing the land in severalty ever been submitted to your people ?—A. Yes, sir.

Q. Please examine this paper and state whether or not it is a copy of an act of your council submitting that question to a vote of the people ?—A. Yes, sir ; that is, a copy of the act passed to submit that question to a vote of the people in the year 1870.

Q. What was the result of that election ?—A. It was voted down ; that is, a majority was against the survey of the lands.

By the CHAIRMAN :

Q. Against dividing the lands in severalty ?—A. Yes, sir.

Q. And this is the act ?—A. Yes, sir. The act is as follows :

AN ACT to provide for a special election to determine the sentiment of the voters of the Choctaw Nation in regard to surveying the country.

SECTION 1. *Be it enacted by the General Council of the Choctaw Nation assembled*, That the principal chief shall issue a proclamation for a special election to be held on the 4th and 5th day of July, 1870, to determine the sentiment of the voters of the Choctaw Nation in regard to surveying the country.

SEC. 2. *Be it further enacted*, That the special election shall be held at such places as the circuit court is now held in each county, and said special election shall be held in the same manner as is now provided for by law for general elections, except that the judges of said election shall seal and forward the returns thereof to the national secretary by a member of the light-horse, and as soon as practicable after said election, and to be counted by the speaker of the house of representatives of the general council in October, 1870, in the same manner as the votes for principal chief.

SEC. 3. *Be it further enacted*, That every voter shall write out "For surveying," or "Against surveying," as he may see proper, and the judges shall number it properly and deposit in the ballot-box.

SEC. 4. *Be it further enacted*, That this act take effect and be in force from and after its passage.

C. E. NELSON,
Chairman of the Committee.

Passed the House April 1, 1870.

RUFUS TOLSON,
Speaker.

Passed the Senate April 2, 1870.

TANDY WALKER,
President.

Approved April 2, 1870.

ALLEN WRIGHT,
Peace Commissioner Choctaw Nation.

I hereby certify that the foregoing act are true and correct copy taken from the original now on file in the secretary's office.

In testimony whereof I have hereto set my hand and caused the seal of the Nation to be affixed, at Chahta Tamaha, this the 4th of April, 1878.

THOMPSON MCKINNEY,
National Secretary Choctaw Nation.

Q. Do you know what the majority was against it?—A. It was very large; about ten to one against it.

By Mr. GRAFTON:

Q. Why do your people oppose the division of the lands in severalty?—A. They believe that the more ignorant classes will be robbed of their land; that is the general feeling of the people.

By Mr. GROVER:

Q. You believe many would be improvident and would sell their lands for a small sum, and shortly would have no land at all?—A. Yes, sir.

By Mr. SAUNDERS:

Q. Do your people look forward to a day when they will be educated up to this subject or do they incline to hold together as a nation without dividing their property, &c.?—A. No, sir; they look forward to some day, but they do not think that it should be done now, because a great portion of the people are uneducated.

By Mr. GROVER:

Q. How much farming is carried on in your nation?—A. Well, the whole people farm to a greater or less extent, some more extensively than others.

Q. Do they raise crops annually intended for the supply of families?—A. Yes, sir.

Q. Are they pretty well supplied in that manner?—A. Yes, sir; they are pretty well supplied.

Q. Are they about equally supplied, or do some go to want and have to suffer because they do not confine themselves to farming?—A. In general they raise corn enough—sufficient to supply their families.

Q. Then they have cattle?—A. Yes, sir.

Q. And all endeavor to have a certain amount of supplies for domestic use?—A. Yes, sir.

By Mr. CHAFFEE:

Q. What is the extent of the lands belonging to the Choctaw Nation?—A. I have forgotten the exact amount of acres; the country is about 250 miles long by 150 wide. I have forgotten the exact number of acres, however.

By Mr. SAUNDERS:

Q. Do you mean there is that much belonging to that tribe, or to the Chickasaws and Choctaws together?—A. No, sir; to the Choctaws.

By Mr. CHAFFEE:

Q. What portion of that land has been cultivated?—A. I cannot give the exact amount of acres; there is a large tract under cultivation. There are some farms that average 200 acres and some 500 acres.

By the CHAIRMAN:

Q. Do you raise cotton?—A. Yes, sir; cotton and corn.

By Mr. CHAFFEE:

Q. What position do you occupy in the nation?—A. I am the agent for the sale of coal and timber to the railroad companies whose roads pass through the Choctaw Nation.

Q. Do you hold any elective position or are you appointed?—A. Yes, sir; I am appointed by the nation. I was appointed by the nation in 1874 to try and effect a settlement with the government for some lands we claim in the State of Arkansas.

Q. The policy of the government seems to be to induce these wild Indians from the other reservations to come into the Indian Territory. What is the feeling of your people toward these wild Indians the government has attempted to send into the Territory, from time to time, from the States and other Territories? What is the feeling of the civilized Indians, like the Choctaws and Chickasaws, toward these wild Indians coming into the Territory?—A. I can only speak for the Choctaws. So far as they are concerned about that thing, they have no objection. They believe these wild Indians, by being put into the schools, can be civilized as well as the balance.

Q. There is no antipathy between them?—A. None at all.

Q. Does that feeling hold with all the civilized nations?—A. I think it does. I think it does among the Chickasaws. I cannot say positively among the others.

By Mr. GRAFTON:

Q. You spoke about holding a position as a delegate to settle the eastern boundary question. Please examine this paper and state what it is (paper handed to witness.)

The WITNESS. It is an act relating to the eastern boundary line, and is as follows:

AN ACT entitled an act relating to the eastern boundary line.

SECTION 1. *Be it enacted by the General Council of the Choctaw Nation assembled*, That the delegates appointed to go on to Washington City to protest against the Territorial form of government by the act of this council shall be, and the same are hereby, authorized and empowered to take into consideration all matters arising in relation to the running of the eastern boundary line of the Choctaw and Chickasaw Nation,

and determine and agree upon the compensation to be allowed by the Government of the United States in consideration of that portion of the territory of this nation found to be within the limits of the State of Arkansas.

SEC. 2. *Be it further enacted*, That the term of service of the delegates herein mentioned shall expire whenever the said disputed territory is adjusted and settled by Congress of the United States, and the said delegates are required to render a full and just report of their proceedings and progress they are making, from time to time, to the principal chief of this nation.

SEC. 3. *Be it further enacted*, That the said delegates shall be entitled to 18 per cent. of the net proceeds of the disputed territory as a compensation for their services, whenever the same is adjusted and paid.

SEC. 4. *Be it further enacted*, That the said delegates shall be allowed fifteen hundred dollars each, incidental expenses in going and returning from Washington City and in prosecuting the eastern boundary claim and in defending the rights and interests of the Choctaw people arising under treaty stipulations, as provided for in the act of extra session of Choctaw general council, January, 1874.

SEC. 5. *Be it further enacted*, That the sum of forty-five hundred dollars is hereby appropriated out of the funds now held by the national treasurer heretofore appropriated by council for the expenses of the court of claims, and the national auditor is hereby authorized and directed to issue his warrant for the amount as aforesaid, and the treasurer is required to pay the same.

SEC. 6. *Be it further enacted*, That the said delegates shall not in any manner enter into any contract or agreement in the name of the Choctaw Nation, or undertake any other subject other than under the provisions of this act. That this act take effect from and after its passage.

COLEMAN COLE,
Chairman of the Committee.

Passed the Senate February 3, 1874.

WILLIAM ROBUCK,
President Senate.

Passed the House February 3, 1874.

W. W. HAMPTON, *Speaker.*

Approved this 3d of February, 1874.

WILLIAM BRYANT,
P. C. Choctaw Nation.

I hereby certify that the foregoing act are true and correct copy taken from the original now on file in my office.

In testimony whereof I have hereto set my hand and caused the seal of the nation to be affixed, at Chahta Tamaha, this the 5th day of April, 1878.

THOMPSON MCKINNEY,
National Secretary Choctaw Nation.

The WITNESS. It is a true copy of the act passed by the council, directing myself and two others to come to Washington and try to effect a settlement of that claim.

Q. What other duties were you charged with under this act?—A. To contend against all Territorial bills for the separation of the Chickasaws from the Choctaws and for the survey of the land.

Q. What action has been taken by your council since that time in re-

gard to that act?—A. The council, at the regular session in October, 1877, directed us to go and try to settle up the claims.

Q. What other duties were you charged with?—A. To contend against anything that should arise against the interests of the Choctaw Nation.

By the CHAIRMAN:

Q. You mean anything that should arise here?—A. Yes, sir.

By Mr. GRAFTON:

Q. You were directed to oppose a Territorial form of government, were you not?—A. Yes, sir.

Q. Has your delegation ever received any money other than the \$4,500?—A. No, sir.

Q. You are paying your own expenses now?—A. Yes, sir.

Q. Your delegation is to receive a certain per cent. of the value of the lands recovered on the eastern boundary claim?—A. Yes, sir; we were to receive six per cent. each on the amount recovered.

Q. That is 18 per cent. for all?—A. Yes, sir.

By the CHAIRMAN:

Q. If you do not get any settlement from the government for this land, do you expect to be paid this percentage?—A. No, sir; it is a contingent fee.

By Mr. GRAFTON:

Q. I hand you a paper entitled "An act prescribing the duties of national agent," &c. Please examine it and tell the committee what it is.

THE WITNESS. It is a copy of the agency law for the sale of coal and timber, defining my duties as national agent.

The act is as follows:

AN ACT entitled "An act prescribing the duties of national agent and for other purposes."

SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That the principal chief is hereby authorized and directed to appoint one competent person, citizen of said nation, with the advice and consent of the senate, a national agent, to act as agent for the sale of timber, stone, and stone-coal to any railroad company for the construction and repairing of railroad within the limits of this nation.

SEC. 2. *Be it further enacted*, That said national agent shall, before he enters upon the duties of his office, take the oath of office prescribed in the constitution before any judge of a court of record, which oath, thus taken, shall be written and subscribed on his commission, and shall enter into bond with good and sufficient securities, to be approved by the principal chief, in the penal sum of twenty thousand dollars, payable to the Choctaw Nation, conditioned, as hereinafter directed, that he shall well and truly pay over to the treasury of the Choctaw Nation all moneys received by him and due the nation for the sale of timber, stone, and stone-coal, and will make a true and correct report quarter-annually to the principal chief of the amounts of all moneys received from the railroad company or any other company for timber and stone which have been taken and left unsettled for and paid into the national treasury; which bond shall be filed in the national secretary's office, and may be put in suit in the same manner and on the same condition as the national treasurer's bond.

SEC. 3. *Be it further enacted*, That the national agent shall demand

and receive the sum of ten cents for each tie sold, and square timber three cents per foot, running measure, stone at the usual rates in the States, taken from the public domain of the Choctaw Nation.

SEC. 4. *Be it further enacted*, That the national agent shall demand and receive directly from any coal and mining company one-half cent per bushel mined and exported from any mine in this nation, to be used and appropriated specially for school purposes.

SEC. 5. *Be it further enacted*, That the national agent shall hold his office for the term of two years from the date of his commission unless sooner removed for malconduct in office or other disqualifying cause, and shall receive for his services ten per cent. on all moneys collected by virtue of this act and belonging to and due the Choctaw Nation.

SEC. 6. *Be it further enacted*, That the national agent be, and is hereby, authorized to call up the railroad company, and make and have a speedy and just settlement for timbers and stone that have been taken within the limits of the Choctaw Nation for construction of the railroad and other purposes, not settled for, and receive pay for the same, and pay over and report the same as directed in the second section of this act.

SEC. 7. *Be it further enacted*, That the national treasurer of the Choctaw Nation is hereby authorized and required to pay over to the treasurer of the Chickasaw Nation, or to any authorized person of the Chickasaw Nation, the sum of one-fourth of all moneys that may come into his hand under the provisions of this act, and take his receipt for the same.

SEC. 8. *Be it further enacted*, That all acts or parts of acts coming in any manner in conflict with the provisions of this act be, and the same are hereby, repealed, and this act take effect and be in force from and after its passage.

Proposed by Benjamin Smallwood.

Passed the house November 11, 1875.

JONAS WHITE,
Speaker.

Passed the senate November 12, 1875.

J. B. MOORE,
President Senate.

Approved November 12, 1875.

COLEMAN COLE,
Principal Chief, Choctaw Nation.

I hereby certify that the foregoing act is a true and correct copy taken from the original in the secretary's office at Chahta Tamaha.

In testimony whereof I have hereto set my hand and caused the seal of the nation to be affixed at Chahta Tamaha, this the 5th day of April, 1878.

[SEAL.]

THOMPSON McKINNEY,
National Secretary, Choctaw Nation.

Q. I see in the testimony of Dr. Hailey (page 9 of the printed record) there is an extract taken from the *Star Vindicator*, a newspaper published in your country, wherein a purported report is published touching matters appertaining to your office as national agent for collecting royalty on timber and coal. Please state whether any such report was ever made to the council.—A. No, sir; no such report as that was ever made to the council.

Q. What is the condition of that matter?—A. That matter is now before the senate for examination, at the October session, in 1878.

Q. When you shall have closed up your accounts?—A. Yes, sir.

Q. Have you any suits or causes of action against the Missouri, Kansas and Texas Railroad Company for stone, timber, &c., used in the construction of their road?—A. Yes, sir.

Q. I will ask you now if you have ever expended any money in connection with your duties as national agent other than as provided for in the act?—A. No, sir; I have not.

Q. The whole amount of the expenditure has been in prosecuting these claims for timber, stone, &c.?—A. Yes, sir.

Q. And for visits to this city in connection with that business?—A. Yes, sir.

Q. Did you ever visit this city in connection with that business alone?—

A. No, sir. I was here last April on that railroad suit.

Q. For the purpose of obtaining an executive order?—A. Yes, sir.

Q. Did you obtain it?—A. Yes, sir.

Q. Will you read the order and make it part of your testimony?

THE WITNESS. The order reads as follows:

EXECUTIVE MANSION, *April 30, 1877.*

Whereas the eighteenth article of the treaty concluded June 22, 1855, and the sixth article of the treaty concluded April 28, 1866, with the Choctaw and Chickasaw Nations of Indians, make provision for right of way for railroads through their country, and for full compensation to be made for any property taken or destroyed in the construction thereof, the amount to be ascertained and determined in such manner as the President of the United States shall direct: Now, therefore, it is hereby ordered that the following rules be observed in the presentation and determination of all claims for damage to or destruction of property arising under said treaty provisions:

1st. Claimants must file their claims with the United States Indian agent within whose jurisdiction they respectively reside, with a full and specific statement of the nature and amount of damage asserted to have been sustained at the hands of the railroad company or its employés in the construction of said road.

2d. The United States Indian agent with whom such claim or claims shall be filed shall, after giving due notice to the Indian claimants and the proper officer of the railroad company of the time and place of hearing, make a careful examination of the same with a view to ascertaining the justness thereof, and submit his report thereon, together with all the papers in the case, to the Commissioner of Indian Affairs.

3d. The Commissioner of Indian Affairs, upon the receipt of such report and papers, shall advise the Indian claimants and the president or other proper officer of said railroad company of the amount of damage awarded, and shall allow the several parties reasonable time, not exceeding sixty days, to submit any reasons why said award should not be affirmed; and the Commissioner may, if he should think it advisable, after objections have been made, return to the agent for further proof and a supplemental report thereon that portion of his findings to which there are objections.

4th. Upon the receipt of such reasons or supplemental report, or the expiration of said period, the Commissioner of Indian Affairs may, if he deem proper and just, increase or reduce the sum awarded by the said agent, or may approve or disapprove in whole or in part, or in other particulars, the award of said Indian agent, and shall transmit the pa-

pers, with a report of the facts in the case and his opinion thereon, to the Secretary of the Interior, who, in case he shall approve the action of the Commissioner of Indian Affairs, or any portion thereof, shall make demand upon the proper officer of said railroad company for payment of the sum so awarded, and it shall be the duty of said company to pay the amount thereof without unnecessary delay.

R. B. HAYES.

By Mr. GRAFTON:

Q. How much did you pay for attorney's fees in the preparation of that suit?—A. Five hundred dollars.

Q. Is this a copy of the contract under which it was paid? (Hands the contract to witness.)

The WITNESS. It is, and reads as follows:

It is hereby agreed between the Choctaw and Chickasaw Nations, parties of the first part, and Benjamin F. Grafton, attorney at law, of Washington, D. C., party of the second part, as follows:

Said Grafton shall, upon due notice from the parties of the first part, proceed from Washington to the Choctaw and Chickasaw Nations, and attend, as counsel, to the preparation and submission of the cause now pending between the parties of the first part and the Missouri, Kansas and Texas Railroad Company.

The parties of the first part shall defray all the traveling expenses legitimately incurred by said Grafton under this agreement, including transportation and subsistence from Washington to the Choctaw and Chickasaw Nations, also in said nations and back to Washington; and shall also pay said Grafton for said services the sum of five hundred dollars (\$500).

All the service herein stipulated is to be performed between June 1, 1877, and July 15, 1877.

This agreement is signed at Colbert's Station, in the Chickasaw Nation, by D. F. Harkins, national agent of the Choctaw Nation, and J. R. Maupin, national agent of the Chickasaw Nation, on behalf of said parties of the first part, by virtue of authority from their respective executive officers and councils, and by B. F. Grafton, at Washington, D. C., on the 29th day of May, 1877.

B. F. GRAFTON.

DISTRICT OF COLUMBIA, ss:

I, David K. Cartter, chief justice of the supreme court of the District of Columbia, do hereby certify that the foregoing contract was executed in my presence by Benjamin F. Grafton, in person, at Washington, D. C., on this 29th day of May, 1877; that the parties interested in said contract, as stated to me at the time of the execution thereof by said Grafton, are the Choctaw and Chickasaw Nations and the said Grafton; and that only said Grafton was present at the execution of the same.

D. K. CARTTER,

Chief Justice.

I, Samuel Love, chief justice of the supreme court of the Chickasaw Nation, do hereby certify that the foregoing contract was executed in my presence by D. F. Harkins, national agent of the Choctaw Nation, and J. R. Maupin, national agent of the Chickasaw Nation, at Colbert's Station, in the Chickasaw Nation, on the 4th day of June, 1877; that the parties interested in said contract, as stated to me at the time of the execution thereof by said D. F. Harkins and J. R. Maupin, are the Choc-

taw and Chickasaw Nations and the said Grafton; that said D. F. Harkins and J. R. Maupin declared, at the time of the execution of said contract, that they had full authority to make the same from the executive officers and councils of said Choctaw and Chickasaw Nations respectively; and that D. F. Harkins and J. R. Maupin were present at the execution of the same.

D. F. HARKINS,
National Agent Choctaw Nation.

J. R. MAUPIN,
National Agent Chickasaw Nation.

SAMUEL LOVE,
Chief Justice of the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., June 19, 1877.

The within contract is approved.

J. Q. SMITH,
Commissioner.

The within contract is hereby approved.
JUNE 22, 1877.

C. SCHURZ,
Secretary.

Recorded in Contract Book No. 15 (Finance), p. 583.

Q. The expenditure referred to was for the expenses of short-hand reporters inside of the nation?—A. Yes, sir.

Q. And for your expenses to Washington here?—A. Yes, sir.

Q. On what ground did the supreme court of your nation decide that the original agency law of 1872 was unconstitutional?—A. Because it was not adopted by the Chickasaw Nation. The Chickasaws and Choctaws hold their lands in common, and the timber was held to be a part of the realty.

Q. Since that time you have passed another law?—A. Yes, sir.

Q. Have the Chickasaws adopted that?—A. Yes, sir.

Q. There were some contracts introduced by Dr. Haily between the original owners of the coal mines and the Osage Coal and Mining Company (page 83 of the testimony). Now, I ask you to examine the papers I hand you and state what they are.

The WITNESS. One is the contract with D. F. Harkins, national agent Choctaw Nation, to mine coal, dated December 24, 1875. The other is the contract with J. R. Maupin, national agent Chickasaw Nation, to mine coal, dated January 8, 1876. They are as follows:

Know all men by these presents that whereas the Osage Coal and Mining Company of Sedalia, Missouri, did on the 20th day of October, 1875, enter into agreements with William Pusley and others, and on the 3d day of October, 1874, enter into agreements with J. E. Ford and others for the right to mine coal and other materials, and to ship same from their claims near McAlister Station, Toboeksky County, Choctaw Nation, it is hereby agreed and understood that the Osage Coal and Mining Company shall pay to Col. D. F. Harkins, national agent Choctaw Nation, the sum of one-half ($\frac{1}{2}$) cent per bushel for coal taken under agreement with above-mentioned parties; payments to be made monthly to Col. D. F. Harkins direct between the 25th and the 1st of the follow-

ing month, and in case such payments should fail to be made this contract to be declared null and void.

In consideration of the sum thus to be paid, full and free permission is given said Osage Coal and Mining Company to do all and whatever may be necessary on the tracts of land covered by said agreements for the successful mining and shipping of coal; and protection is to be afforded them to the limit of the authority of said national agent against any interference or stoppage, and in the enjoyment of the privileges granted said coal company in the above-mentioned agreements.

Payments on this contract to date from the 12th day of November, 1875, and this contract to remain in force during the term of office of said national agent.

In testimony whereof we have this 24th day of December, 1875, hereto set our names and affixed our seals at Union agency, Indian Territory.

[SEAL.] (Signed)

D. F. HARKINS,

National Agent Choctaw Nation.

[SEAL.]

H. T. LEMIST,

Superintendent Osage Coal and Mining Company.

MUSCOGEE, UNION AGENCY, I. T., December 24, 1875.

I hereby approve the within contract.

(Signed)

G. W. INGALLS,

United States Indian Agent.

Under authority contained in Department of Interior, dated January 29, 1876, and Office of Indian Affairs, dated February 3, 1876, the above contract is approved.

(Signed)

J. J. UPHAM,

Major Fifth Cavalry, United States Indian Agent.

MUSCOGEE, I. T., March 3, 1876.

I do hereby certify that the foregoing is a true and correct copy of original contract now on file in the general office of the Osage Coal and Mining Company.

H. J. LEMIST,

Superintendent.

Sworn and subscribed to before me this 22d day of April, 1878. Commission expires 8th January, 1882.

[SEAL.]

S. W. KNIFFIN,

Notary Public.

Know all men by these presents: That the Osage Coal and Mining Company of Sedalia, Mo., for and in consideration of the right to mine and ship coal from the domain of the Choctaw Nation, have covenanted and agreed with J. R. Maupin, national agent Chickasaw Nation, for the monthly payment of one-quarter of one cent per bushel on coal mined and shipped under their agreements with D. F. Hawkins, national agent Choctaw Nation, and said coal company hereby agrees to furnish a bond in a sum to be determined upon by the United States Indian agents, to be approved by him and deposited in his office. Said bond to be conditioned for the regular and faithful performance of this obligation.

In consideration of the sum thus to be paid full and free permission is given said Osage Coal and Mining Company to do all and whatever may be necessary on the tracts of land covered by their agreements with D. F. Hawkins, national agent Choctaw Nation, for the successful mining and shipping of coal, and protection is to be afforded them to

the limit of the authority of said national agent, J. R. Maupin, one of the parties to this agreement.

This contract shall remain in force until legislative action is had thereon by the Chickasaw legislature. Payments on this contract to date from January 8, 1876, and made direct to said national agent.

In witness whereof we have this 8th day of January, 1876, hereto subscribed our names and affixed our seals at Denison, Tex.

H. T. LEMIST, [SEAL.]

Superintendent Osage Coal and Mining Company.

In presence of—

EDW. J. BROOKS.

J. R. MAUPIN, [SEAL.]

National Agent Chickasaw Nation.

OFFICE UNITED STATES INDIAN AGENT,

Muscogee, Ind. T., March 8, 1876.

Under authority contained in Department of the Interior letter of January 19, 1876, and Office of Indian Affairs, dated February 3, 1876, the within contract is approved.

J. J. UPHAM,

Major Fifth Cavalry, United States Indian Agent.

I do hereby certify that the foregoing is a true and correct copy of original contract, now on file in the general office of the Osage Coal and Mining Company.

H. J. LEMIST,

Superintendent.

Sworn and subscribed to before me this 22d day of April, 1878.

Commission expires 8th January, 1882.

[SEAL.]

S. W. KNIFFIN,

Notary Public.

The WITNESS. Those are copies of the original contract on the part of both nations with the Osage Coal and Mining Company for the shipment of coal beyond the limits of the nation.

By Mr. GRAFTON :

Q. How much royalty does the nation receive for each bushel of coal mined ?—A. The Choctaw Nation receives three-fourths and the Chickasaw Nation one-fourth of a cent.

Q. The owners of the mine, how much ?—A. They receive one-half a cent.

Q. What is the product of those mines per year ?—A. They average from three to five hundred dollars a month royalty.

Q. What disposition is made of that money ?—A. It is appropriated by the council for school purposes.

By Mr. GROVER :

Q. Exclusively for school purposes ?—A. Yes, sir ; appropriated by the council. I turn the money over to the treasurer.

Q. Does that form part of the general expenditure ?—A. It is subject to the order of the council after being received by the treasurer. I turn the money over to him.

By the CHAIRMAN :

Q. Does that form part of the general expenditure, or is it added to

it?—A. No, sir; it is received and receipted for as revenue on the annual royalty coal and timber.

Q. Can you state how much was appropriated for the support of the schools? Is that part of it or is it added to it?—A. No, sir; it is added to it.

Q. Then it is over \$30,000 that is used?—A. Yes, sir; the last estimate brought it over \$34,000.

By Mr. GRAFTON:

Q. Under the law as national agent, were you required to prosecute these suits against the railroad company?—A. Yes, sir.

Q. And you were authorized to make all the necessary expenditures?—A. Yes, sir.

Q. It is only the money that you actually turn over to the treasurer in excess of these legitimate expenditures that is appropriated for school purposes?—A. Yes, sir.

Q. What is the condition of the colored people in your country? I wish you would state all you know about them.—A. The condition of the colored people is that they are doing very well; they are living in peace, cultivating as much land as they wish to, and are not disturbed in any way.

Q. Are they paying taxes?—A. No, sir.

Q. Are they competent witnesses in the courts?—A. Yes, sir.

Q. Are contracts between the colored people and the citizens of your nation enforced by the law of your country?—A. Well, they remain upon the same footing as citizens of the United States; they are upon the same footing, and if any difficulty arises, or anything of that kind, it is determined in the United States court at Fort Smith.

By Mr. GROVER:

Q. They are not determined then by your laws?—A. No, sir.

Q. A citizen of Virginia or Maryland would not be protected unless he became a citizen of the nation?—A. Unless he became a citizen by adoption or marriage. The colored people are upon the same footing as citizens of the United States who are not *bona-fide* citizens of the nation.

By the CHAIRMAN:

Q. How is it with the colored people born there?—A. They are included in the treaty.

Q. You do not allow them to vote?—A. No, sir; the treaty provides that upon the cession of the leased district to the United States, the purchase-money shall be invested by the United States and held in trust 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, heretofore held in slavery among said nations, all the rights, privileges, immunities, including the right of suffrage, of citizens of said nation, &c. And immediately on the enactment of such laws, rules, and regulations, the sum of three hundred thousand dollars shall be paid to the Choctaw and Chickasaw Nations, less such sum as may 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 nations respectively. And should the laws, rules, and regulations not be made by the nations within two years from the ratification of the treaty of 1868, then the sum of three hundred thousand dollars shall cease to be held in trust for the nations, and be held for such persons of African descent as the

United States shall remove from the Territory; *those remaining or returning after having been removed from the nations to have no benefit of said sum, or any part thereof, but shall be upon the same footing as other citizens of the United States in said nations.*

By Mr. GRAFTON:

Q. Have you adopted them?—A. No, sir.

Q. Have they any schools?—A. They have two schools; one at Boggy Depot and one at Fort Arbuckle.

Q. Do you know how they are maintained?—A. They are maintained, as I suppose, by the government, from the interest arising on the \$300,000—the value of the ceded lands—which sum is held in trust by the United States, to be paid to the Choctaws and Chickasaws when they shall adopt the freedmen.

Q. Paid to your nation?—A. Yes, sir; and the Chickasaws.

Q. What is the whole amount of money received by the Choctaw Nation from funds invested by the United States?—A. It averages from \$57,000 to \$64,000, I think.

Q. Does it not depend upon the premium upon gold?—A. It does.

Q. Have you ever known any colored men in your nation to be deprived of their liberty because of their color?—A. I have not.

Q. Have you ever known a colored man to be deprived of his rights in any respect by reason of his color?—A. No, sir.

Q. Have you ever known any of them to be killed or murdered for agitating their rights?—A. No, sir; I have not.

Q. Have they ever been interfered with in any way?—A. No, sir.

Q. Are they not farming and doing as well and getting along as well as many of the Choctaws?—A. Yes, sir; a good many have got good large farms, doing well, and raising stock.

Q. Are not the Choctaws and Chickasaws a stock-raising people rather than an agricultural people?—A. Yes, sir.

Q. Is that not one of the reasons why you prefer to hold your lands in common?—A. Yes, sir.

Q. Can you give an approximate estimate of the number of cattle owned by the people of the nation?—A. No, sir; not exactly.

By the CHAIRMAN:

Q. What would you call a fair average; how much would one person have; a hundred head?—A. Yes, sir; some 1,500, and some 2,000.

Q. Do they average that?—A. No, sir; sometimes they have 25 and some 50 head of cattle.

By Mr. GROVER:

Q. The largest own from fifteen hundred to two thousand head?—A. Yes, sir.

By the CHAIRMAN:

Q. Have the negroes got the same right in regard to taking lands that the Indians have?—A. No, sir; they live there, but really have no right in the soil. Their rights are all defined in the treaty of 1866, as follows:

“ARTICLE 3. 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 the 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 4. 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 further agree that, while the said freedmen, now in the Choctaw and Chickasaw Nations, remain in the 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."

By Mr. GRAFTON :

Q. They are permitted to cultivate all the land they can?—A. Yes, sir; as much as they want to cultivate.

Q. Are citizens of the Choctaw Nation permitted to interfere with their farms?—A. No, sir.

Q. They are protected in all their possessory rights?—A. Yes, sir.

Q. What proportion of your people do you think are able to take care of themselves?—A. About one-third.

Q. Suppose the lands were divided in severalty, what would be the result?—A. A great portion would soon sell their land out or be cheated out of it, and they would be broken up as a people and have no homes.

By the CHAIRMAN:

Q. As it is now, everybody has a home?—A. Yes, sir.

Q. Have you any paupers among your people?—A. No, sir.

By Mr. GRAFTON:

Q. Have you any poor-houses in your nation?—A. No, sir.

By the CHAIRMAN:

Q. Is that the case with all the civilized nations?—A. Well, I think the Cherokees have a provision to take care of the infants and orphans, but I do not know anything about the other nations; I do not know whether they have or not.

By Mr. GRAFTON:

Q. Who publishes the Star Vindicator?—A. A white man by the name of McPherson.

Q. Is he a citizen of your nation?—A. No, sir; not so regarded.

Q. What is his status there?—A. Well, he claimed to have married an alleged Indian woman. He said he was a citizen, but he was notified by the council to appear and prove his citizenship, but he never did do that, and hence he has never been regarded as a citizen of the nation.

Q. What is the effect of the agitation of this question of dividing the lands in severalty, territorializing the country, &c., upon your people?—A. It tends to disturb them very much, and causes a great deal of alarm among them.

Q. Does it interfere with their progress?—A. It causes great uneasiness among them—among the whole people; they do not know what is going to take place.

Q. What is the floating debt of your nation?—A. About \$21,000.

Q. What provisions or facilities are afforded to the children of the Chickasaws who live in your country for education?—A. They are allowed to go to our schools; the Choctaw Nation pays their tuition and the Chickasaw Nation pays their board. That is the way it is managed.

Q. There was introduced in evidence by Dr. Hailey, on page 85 of the printed record, a copy of a writ of arrest issued by the principal chief of the Choctaw Nation, commanding the arrest of certain persons; will you please state to the committee all you know about that matter?—A. All I know is that the district chief, a man by the name of Williams, reported to the principal chief, Coleman Cole, that there had been a petition gotten up and brought to him for his signature, and also other signers throughout the Indian country, to destroy or tear up the coal-switches on the road from the main line out to the coal mines. He submitted that petition to the principal chief, and asked for instructions what to do.

Q. The governor apprehended there would be a breach of the peace, did he not?—A. Yes, sir.

Q. Do you know what his purpose was in issuing that writ?—A. His purpose was to inquire into the matter and suppress it if there was going to be anything of that kind attempted to be done.

Q. Are your laws all published ?—A. Yes, sir. The laws of 1876 and 1877 are being published ; those from 1859 up are ready for the press.

Q. Have you any laws in your country by which an individual Indian can lease his lands ?—A. No, sir ; no lien law.

Q. Has not Doctor Hailey a grievance against your nation, and does not he complain that he ought to have the whole amount of the royalty on that coal ?—A. Yes, sir ; he claims the mines, and claims that the Choctaw and Chickasaw Nations have no right to them.

Q. That is the cause of his grievance ?—A. Yes, sir.

By Mr. GROVER :

Q. Do you say he claims that the nation does not own these lands ?—A. Yes, sir.

Q. Who owns them, according to his view ?—A. According to his view Pusley, himself, and others are the proper owners, but the Choctaw and Chickasaw Nations claim the mines belong to the nation.

Q. Where do they claim they get their title ?—A. The first place, the way Dr. Hailey got a title was by negotiating a trade for James McAllister. He bought out the interest of Pusley for a certain amount, to be paid in money, but they had to take goods for it afterward. He was to receive one-sixth of the royalty that was due the individuals. That was the way he got his claim.

By the CHAIRMAN :

Q. With whom did he make his bargain ?—A. With the Pusleys.

Q. Where did they get their title ?—A. They got their title under the mining laws of our nation.

Q. Will you read the law ?—A. Yes, sir. It is as follows :

"Any citizen of this nation who may find any mine or mines, or mineral waters, shall have exclusive right and privilege to work the same so long as he may choose within one mile in any direction from his works or improvements : Provided, however, he does not interfere with the rights of the former settlement." (Laws of Choctaw Nation, 1869, section 18 of constitution.)

By Mr. GROVER :

Q. The point I was trying to arrive at was whether there was a claim put in by the Choctaws for the mines under their treaties, or whether these other parties claim under the laws of the United States. There are no such claims as that, are there ?—A. No, sir.

Mr. HUBBARD. I think you will find, by the decision of the Supreme Court, that the title is in the United States.

Mr. GROVER. I did not know but that that question had been raised.

Mr. GRAFTON. The case referred to by Mr. Hubbard is that of *Cook vs. The United States*, 19 Wallace, 592. The Menominees were on their ancient ground, and their title was the original Indian title, unqualified by grants or guarantees from the United States. The title of the United States in the lands of these civilized nations is little better than a reversion to take effect at the end of eternity.

Mr. ADAIR. Mr. Hubbard, I think the Supreme Court of the United States has decided that the title to those mineral lands is vested in the United States.

Mr. HUBBARD. Excuse me, but that is not my point. My point was that the fee of the lands being in the United States, the owners of the land had no right to take thereby anything that appertained to the reality from it. There is a case stated by the Supreme Court of the United States to that extent.

Mr. GRAFTON (to Mr. Hubbard). Name the case.

Mr. HUBBARD. The Menominee case. The Indians in that case undertook to cut timber for sale, and they were enjoined by one of the agents interested in it that they could not commit waste.

Mr. ADAIR. You think it right to compare this decision with the decision of the court with regard to the Indian nations of the territory. The committee will find the situation is quite different. These north-western Indians hold merely as the court has decided, to wit, the right of possession; whereas the Indians in the country—notably the five civilized tribes, Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles—not only hold their independent title, or the right of possession, or the Indian title, but also the absolute fee in the lands that they now occupy, because they have bought that from the United States, and have a patent which is of record in the Land Office of the government, and the decision of the Supreme Court will sustain them in that possession. Everybody who is familiar with the comparative standing of the Indians will admit it. In view of the treaties, in view of the patents, and in view of the decisions of the Supreme Court, every well-read lawyer is bound to admit that these civilized Indians own the absolute right to their land; that they not only have the original title, but also the title which the government gave them when the Indians bought it in 1802.

Mr. GRAFTON. In view of what has been said, I would like to introduce the decision of the Secretary of the Interior, under and by virtue of which they do sell timber and coal.

Mr. HUBBARD. I object, unless you will get the letters to which that is a reply.

Mr. GRAFTON. I do not care anything about the letters. If you want them, the clerk of the committee can write a letter to the department and get them.

The decision of the Secretary of the Interior as to the right of the Indians to sell coal and timber, which I desire to introduce, is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 23, 1875.

SIR: I return herewith the letter of Agent Ingalls, which accompanied your report of the 21st instant, relative to the sale of timber, ties, and coal in the Indian Territory.

The Cherokees, Choctaws, and Creeks have patents dated, respectively, December 31, 1838, March 23, 1842, and August 11, 1852, for their land, which contain a condition that it shall revert to the United States if the tribes become extinct.

The condition prescribed in their patents is so remote that it does not, in my opinion, justify any interference with the sale of coal and timber by the Indians referred to, when such sale is made in accordance with their laws and with the approval of the Indian agent.

The views herein expressed will be considered as answering the inquiries of your letters of December 4, 1874, and July 9, 1875, in relation to the rights of the Cherokees, Choctaws, and Creeks to make contracts for the sale of timber and coal.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

NOTE.—The papers referred to by Mr. Hubbard, having been transmitted to the committee by the Secretary of the Interior May 22, 1878, are numbered Exhibits No. 1 to No. 34, inclusive, as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 21, 1878.

SIR: I am in receipt of a letter dated the 10th instant, from Hon. John J. Patterson, chairman Committee on Territories, United States Senate, requesting, for the use of said committee, all papers and documents on file in this office relating to the coal mines in the Indian Territory, and their authority for mining the coal.

In compliance with said request, I have the honor to inclose herewith copies of the following papers, documents, and decisions, relating to the mining of coal in the Indian Territory, viz:

Exhibit No. 1. Letter from C. N. Stanley, esq., New York, May 13, 1870, asking information in regard to claiming mining land.

Exhibit No. 2. Commissioner of Indian Affairs' reply, dated May 16, 1870, to C. N. Stanley, saying that there is no authority for granting permits for mining in Indian Territory.

Exhibit No. 3. Commissioner of Indian Affairs, December 27, 1871, in reply to Hon. F. P. Blair, states that leases for mining on the Chickasaw lands may be granted by the Indians, subject, however, to the approval of the department.

Exhibit No. 4. The honorable Secretary of the Interior, under date of December 1, 1873, directs that all parties with whom contracts have been made for the sale of timber, coal, &c., upon Indian reservations, be notified not to proceed further in their operations thereunder until after investigation of the practice referred to by the assistant attorney-general of the Department of the Interior, and his decision.

Exhibit No. 5. Commissioner of Indian Affairs, December 6, 1878, notifies United States Indian agent, John B. Jones, Tahlequah, Ind. Ter., the same as other agents and superintendents of Indian affairs, in accordance with instructions contained in departmental letter of 1st instant, that all parties with whom contracts for mining, &c., have been made, be directed not to proceed further in their operations thereunder, until otherwise instructed.

Exhibit No. 6. Commissioner of Indian Affairs, December 3, 1874, referring to the decision of the United States Supreme Court in the case of United States *vs.* George Cook, rendered at the October term, 1873, and the theory of this office heretofore, that contracts could be entered into, with the approval of the department, for the sale of timber, coal, &c., from Indian reservations requests instructions by the department.

Exhibit No. 7. R. S. Stevens, general manager Missouri, Kansas, and Texas Railway, December 17, 1874, incloses agreement with D. F. Harkins, national agent appointed by the Choctaws to collect royalty, &c., in regard to payment for coal used in Chotaw country, also other papers in relation thereto, and asking for instructions from this office.

Exhibit No. 8. Telegram from R. S. Stevens, Sedalia, Mo., January 1, 1875, stating that serious troubles are culminating between Chetan and Vinita.

Exhibit No. 9. Telegram from R. S. Stevens, January 2, 1875, stating that excitement still continues about Vinita, and asking military protection.

Exhibit No. 10. R. S. Stevens, January 9, 1875, wants instructions in regard to paying Choctaws and other Indians for material used from their reservation by the Osage Coal and Mining Company, and by the Missouri, Kansas and Texas Railway Company.

Exhibit No. 11. Commissioner of Indian Affairs, February 3, 1875, replies to communication from R. S. Stevens, esq., requesting him to

refrain from paying any further sums of money for timber, coal, &c., procured from the Choctaw and other nations, pending consideration of the case by the Hon. Secretary of the Interior.

Exhibit No. 12. Commissioner of Indian Affairs, February 4, 1875, instructs agent G. W. Ingalls to notify the parties interested in the contracts with the Missouri, Kansas and Texas Railway Company, for mining of coal in Choctaw Nation, that, pending consideration of the case by the Secretary of the Interior, no further payments shall be made by R. S. Stevens until his decision has been given.

Exhibit No. 13. Commissioner of Indian Affairs, July 9, 1875, calls attention of the Secretary of the Interior to office letter of December 3, 1874, referring to the decision of the United States Supreme Court in the case of *The United States vs. George Cook*, and desires instructions by the department.

Exhibit No. 14. United States Indian agent, George W. Ingalls, Union agency, Indian Territory, July 14, 1875, reports in relation to cutting and shipping of timber and coal in his agency.

Exhibit No. 15. Commissioner of Indian Affairs, July 21, 1875, incloses letter of Agent Ingalls, of July 14, 1875, to the Secretary of the Interior, and requests instructions.

Exhibit No. 16. The Hon. Secretary of the Interior, July 23, 1875, returns letter of G. W. Ingalls, and expresses the opinion that the Cherokees, &c., of Indian Territory have the right to cut and ship timber, coal, &c.

Exhibit No. 17. Commissioner of Indian Affairs, July 30, 1875, informs Agent Ingalls of the opinion of the department given in above-mentioned letter of the 23d of July, 1875.

Exhibit No. 18. Coleman Cole, chief Choctaw Nation, October 27, 1875, incloses, in a letter to the Hon. Secretary of the Interior, a copy of "An act declaring and defining the status of the soil and its natural appurtenances within limits of the Choctaw Nation, &c.," passed by Choctaw council October 26, 1875.

Exhibit No. 19. Commissioner of Indian Affairs, November 6, 1875, submits report on letter from Coleman Cole, of October 27, 1875, with inclosures, and recommends that the United States Indian agent at the Union agency be instructed to cause a suspension of all sale of timber or coal in the Choctaw and Chickasaw Nations until certain legislation recommended can be had by the tribes respectively.

Exhibit No. 20. The Hon. Secretary of the Interior, December 10, 1875, acknowledging report of 6th ultimo, upon application of Principal Chief Coleman Cole for the interposition of the department to prevent mining and shipment of coal, and manufacture of lumber and sale thereof from lands of Choctaw Nation, and decides "that the contracts made by individual members of said nation for sale of coal mined on said lands, or lumber manufactured from the timber growing thereon, are void and give no rights to the purchasers," and gives directions to prevent the further removal of any lumber or coal, under such contracts, until the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures.

Exhibit No. 21. Commissioner of Indian Affairs, December 14, 1875, to Coleman Cole, C. C. N., informing him of the decision of the Secretary of the Interior of December 10, 1875.

Exhibit No. 22. Commissioner of Indian Affairs, December 14, 1875, to Agent Ingalls, informing him of the decision of the Secretary of the

Interior of December 10, 1875, and instructing him to prevent further removal of lumber or coal under contracts made by Choctaw Indians.

Exhibit No. 23. Agent G. W. Ingalls, Union agency, Indian Territory, December 24, 1875, referring to office letter of 14th instant, submits contracts of Choctaw national coal and timber agent with non-residents, and statement of Osage Coal and Mining Company of Missouri, dated November 16, 1875.

Exhibit No. 24. Commissioner of Indian Affairs, December 31, 1875, in reply to Agent Ingalls' letter of 24th instant, submitting a new contract between the Choctaw national coal and timber agent and the superintendent of the Osage Coal and Mining Company, approved by him that day, declares his action unauthorized, and says that it cannot be sustained by this office.

Exhibit No. 25. Maj. J. J. Upham, United States Army, acting agent at Union agency, Indian Territory, January 10, 1876, in relation to mining and shipment of coal from Choctaw Nation, submits letter dated January 8, 1876, from Governor B. F. Overton, Chickasaw Nation, to Hon. C. E. Gooding, directing the national agent of the Chickasaw Nation, Mr. Maupin, to make a contract with the Osage Coal and Mining Company, also copy of contract between J. R. Maupin, national agent Chickasaw Nation, and H. T. Lemist, superintendent Osage Coal and Mining Company, dated January 8, 1876, and copy of letter dated January 6, 1876, from the general superintendent Missouri, Kansas and Texas Railroad, setting forth the disasters which would result from an enforcement of the order for the suspension of coal-mining in the Choctaw and Chickasaw Nations.

Exhibit No. 26. Copy of telegram from Major Upham, January 13, 1876, requesting to delay decision on letter of 10th instant, relative to Osage Coal and Mining Company, until receipt of copy of Chickasaw act of January 8, 1875.

Exhibit No. 27. Maj. J. J. Upham, acting Indian agent Union agency, January 13, 1876, incloses copy of Chickasaw law regulating sale of coal, &c.

Exhibit No. 28. Commissioner of Indian Affairs, January 22, 1876, recommends that the department decision of the 10th ultimo be so far amended as to allow the Osage Coal and Mining Company to continue their operations until certain legislation by the Chickasaw national legislature shall have been effected.

Exhibit No. 29. The honorable Secretary of the Interior returns with his decision papers submitted with report of 22d instant, relative to the cutting of timber and mining of coal upon lands of Choctaw Nation.

Exhibit No. 30. Commissioner of Indian Affairs, February 3, 1876, transmits to Major Upham copy of the decision of the Secretary of the Interior, dated January 29, 1876, relative to the operations of the Osage Coal and Mining Company in mining coal in the Choctaw country, that from an examination of the facts in the case, the rule of the department, as set forth in decision of the 10th of December last, does not seem to apply to said company, which is now operating under the authority of both the Choctaw and Chickasaw Nations, and directing him to advise the proper officers of the mining company of this decision.

Exhibit No. 31. John Grey-Eyes, chief of Wyandottes, Indian Territory, August 24, 1877, incloses for approval a mineral lease between Isaiah Walker and wife, D. E. Cornell, and E. A. Berry.

Exhibit No. 32. Commissioner of Indian Affairs, September 4, 1877, returns to Charles W. Blair, esq., the mineral lease from John Gray-Eyes without approval.

Exhibit No. 33. Commissioner of Indian Affairs, January 24, 1878, submits report to the Secretary of the Interior relative to the title of Senecas and Wyandottes in Indian Territory to certain lands and their right to lease any portion of the same for mining purposes, and requests opinion of the department.

Exhibit No. 34. Honorable Secretary of the Interior, February 12, 1878, in reply to last-named letter, informs this office that it is contrary to the established ruling of this department to sanction any letting or granting of said lands by the Indians to other parties for mining purposes.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The honorable the SECRETARY OF THE INTERIOR.

EXHIBIT No. 1.

NEW YORK, *May 13, 1870.*

DEAR SIR: I am informed that in the Indian reservation between Arkansas and Northwestern Texas, where white men cannot now remain, if a man by taking his own risk finds, or in the past has found, mining lands, he can get a right or permit of some kind from the government to hold a first claim to such location until such reasonable time as he can safely occupy and work it.

What I now wish, if such is the fact, is to have *this letter* handed to the party who attends to such business, have him send me a line, so that I may be put in correspondence with him, and know what I must do to get such permit.

Yours, truly,

C. N. STANLEY,
42 Beach Street, New York City.

Hon. J. D. Cox,
Secretary of the Interior.

EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 16, 1870.

SIR: I have received, by reference from the honorable Secretary of the Interior, your letter of the 13th instant, desiring to be informed how you can procure a permit to hold a first claim to mining lands on an Indian reservation between Arkansas and Northwestern Texas.

In reply, you are informed that, as it is presumed the land you refer to is within the Indian Territory, there is no authority, by treaty stipulations or otherwise, for the granting of such permits.

Very respectfully, your obedient servant,

E. P. PARKER,
Commissioner.

C. N. STANLEY, Esq.,
42 Beach Street, New York.

EXHIBIT No. 3.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 27, 1871.

SIR: Referring to your indorsement upon communication addressed to you on the 18th instant by S. G. Kitchen, esq., asking if the Chickasaw Indians can grant leases for mining on their lands, I have to advise you that such leases may be granted by the Indians, subject, however, to the approval of this department.

Mr. Kitchen's letter is returned herewith.

Very respectfully, your obedient servant,

F. A. WALKER,
Commissioner.

Hon. F. P. BLAIR,
Saint Louis, Mo.

EXHIBIT No. 4.

DEPARTMENT OF THE INTERIOR,
December 1, 1873.

SIR: Referring to certain contracts for the sale of timber and other valuable material upon Indian reservations, made by the Indian Office, you are informed that the power of Indians upon reservations, or of Indian agents, to make such contracts with the sanction of the Indian Office, in pursuance of a practice which I understand has hitherto prevailed, has been questioned and the subject is now being investigated by the Assistant Attorney-General for this department, and after his opinion has been rendered it will be referred to the honorable Attorney-General for his advice.

You are, therefore, directed to notify all parties with whom such contracts have been made not to proceed further in their operations thereunder until further instructions from this department.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

EXHIBIT No. 5.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 6, 1873.

SIR: Under date of the 1st instant, the honorable Secretary of the Interior, referring to certain contracts for the sale of timber and other valuable material upon Indian reservations, made by authority of this office, states that the power of the Indians upon reservations, or of Indian agents, to make such contracts with the sanction of the Indian Office, in pursuance of a practice which is understood to have hitherto prevailed, has been questioned; that the subject is now being investigated by the Assistant Attorney-General for this department; and that after his opinion has been rendered, it will be referred to the honorable Attorney-General for his advice.

The honorable Secretary therefore directs that all parties with whom such contracts have been made be notified not to proceed further in their operations thereunder until otherwise instructed by this department.

You will govern yourself accordingly.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

JOHN B. JONES, Esq.,
United States Indian Agent, Tahlequah, Ind. T.

EXHIBIT No. 6.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 3, 1874.

SIR: I have the honor to invite your attention to the consideration of a decision of the Supreme Court of the United States, rendered at the October term, 1873, in the case of the United States *vs.* George Cook.

This case involves the question of the right of the Indians to cut and sell for their own benefit timber upon their tribal reservation, and the court decides that such right does not exist, except to the extent of such timber as may be cut with a view to the clearing up and improvement of the land or better adapting it to convenient occupation; in other words, the improvement must be the principal thing and the cutting the incident only.

It has been the theory of this office heretofore that contracts could be entered, into with the approval of the department, for the sale of timber, coal, stone, and other materials from Indian reservations, and the proceeds applied for the sole use and benefit of the Indians. Many such contracts have been heretofore approved, some of which have not yet expired by limitation. Frequent applications are also being made for the authorization of new contracts.

Under date of December 1, 1873, the department decided to suspend all operations under existing contracts, and to authorize no new contracts of the character named until the opinion of the honorable Attorney-General could be had upon their legality, and instructions to this effect were, under date of December 6, 1873, addressed to the different superintendents and Indian agents within whose jurisdiction contracts of this character had been authorized.

No opinion of the Attorney-General has been received; but, in the mean time, the suspension in several instances has, for sufficient reasons, been removed by the department, and the parties allowed to proceed under their contracts.

In view of these facts and of the decision of the Supreme Court above referred to, I have the honor to request that this office be furnished with specific instructions, which shall be of general application in the government of its action in all cases involving the disposition of timber, coal, and stone, or other materials, on Indian reservations.

In this connection I would also respectfully present the question whether the decision of the Supreme Court referred to will be construed to cover the case of the Cherokees, Creeks, and Choctaws who have received patents for the lands comprised within their respective reservations, subject, however, to the condition, in substance, that if said tribes

should become extinct, or abandon the same, the lands should revert to the United States?

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

EXHIBIT No. 7.

Circuit court, December term, 1874.

CHOCTAW NATION, *County of Tobucksey:*

To the Osage Coal and Mining Company, Sedalia, Mo.:

By virtue of a suit brought in the circuit court of the county and nation aforesaid, by Margaret Pusley *et al.*, for the recovery of moneys due them on account of coal taken out of their coal-banks near McAlister Station, in county and nation aforesaid, by your company, under contract made with Joshua Pusley in his life-time and continued at his death by his wife, the said Margaret Pusley, *et al.*, which moneys was being drawn by one D. F. Harkins, appointed national agent contrary to the provisions of said act, the moneys being so drawn being an infringement of contract made between your company and the said Margaret Pusley *et al.* long before the passage of the act creating said office of national agent, which is adjudged and decreed by the court to be in violation of the constitution and the act creating said national agent:

You are ordered by this court to turn over to the agents and attorneys of Margaret Pusley *et al.*, J. F. Ford, and Jackson Loving all the moneys due the said Margaret Pusley *et al.* on account of coal taken from their mine, near McAlister Station, Toboxey County, Choctaw Nation, as specified by original contract with Joshua Pusley, the said mines being private property and not subject to interference by said agent.

But this order is not to be so construed as to interfere with the collection by said agent of moneys due to the national agent for any stone, timber, or ties used or that may be used by the Missouri, Kansas and Texas Railroad Company and taken from the public domain.

JEREMIAH WARD,
Judge First Judicial Circuit Court.

Attest:

D. H. HAILEY,
Circuit Clerk Tobucksey County, Choctaw Nation.

I certify that this is a true copy of the original as filed in my office this the 12th day of December, 1874.

D. M. HAILEY,
Circuit Clerk of Tobucksey County, Choctaw Nation.

Circuit court, June term, 1874.

CHOCTAW NATION, *County of Toboxsey:*

To the Sheriff of Toboxsey County, greeting:

You are hereby commanded, by virtue of a writ of injunction filed in the circuit court of said county and nation, at the June term thereof, by Margaret Pusley *et al.* against D. F. Harkins, national agent, and this day

granted by the circuit court, to notify the Missouri, Kansas and Texas Railroad and Osage Coal and Mining Company to make no further payments of tax on stone-coal in the said county and nation, but to hold the same in their hands subject to the order of this court; and also order the said D. F. Harkins to make no further collections or demands for the same in the said county and nation until a decision of the Supreme Court may be had at the October term, 1874.

Herein fail not; and make due return to this court of the within writ.

Given under my hand and private seal, there being no public one, this the 7th day of June, 1874.

D. M. HAILEY,

Circuit Clerk, Toboksey County, Choctaw Nation.

I hereby certify that this is a correct copy of the original on file in my office.

T. C. WALKER,

Sheriff, Toboksey County.

AN ACT entitled "An act authorizing the appointment of a national agent, defining his duties, and fixing his pay."

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the principal chief is hereby authorized and directed to appoint one competent person, citizen of said nation, a national agent, to act as agent for the sale of timber, stone, and stone-coal to any railroad company for the construction and repairing of railroads within the limits of this nation.

SEC. 3. *Be it further enacted,* That the national agent shall demand and receive the sum of ten cents for each tie sold, and square timber three cents per foot running measure; stone at the usual rates in the States.

SEC. 4. *Be it further enacted,* That the national agent shall, after securing the nation in one-half cent per bushel for all stone-coal sold, pay over to the individual or individuals claiming the mine from which the stone-coal was taken the remainder of funds in his hands realized from the sale of stone-coal from their respective mine or mines: *Provided,* The national agent shall not sell any stone-coal on any citizen claim except by the consent of such citizen.

SEC. 5. *Be it further enacted,* That the national agent shall not sell any timber or stone on any citizen claim except by the consent of such citizen, and the said citizen shall be entitled to one-half of the proceeds realized from the sale of timber or stone on his claim.

SEC. 8. *Be it further enacted,* That the national agent shall, for all damages done to stock by the M., K. and T. Railway running through the Choctaw Nation, shall ask and demand full indemnity for the same, and turn over said amount to the party or parties so injured or damaged, and shall be entitled to and receive ten per cent. out of the amount so collected.

SEC. 9. *Be it further enacted,* That all acts or part of acts, heretofore passed, coming in any manner in conflict with the provisions of this act, be, and the same are hereby, repealed; and that this act take effect and be in force from and after its passage.

Approved October 24, A. D. 1873.

I hereby certify that the foregoing act is a true copy of the original on file, except sections omitted.

Given under my hand this 31st October, 1873.

JNO. P. TRUMBULL,
National Secretary.

This agreement, made and entered into this thirteenth day of December, A. D. 1873, by and between Margaret Pusley, and Margaret Pusley, her infant child, representing two interests; William Pusley and Lizzie Pusley, his wife, representing one interest; and Osborn Pusley and Sarah Pusley, his wife, representing one interest, of the county of Toboksey, in the Choctaw Nation, as parties of the first part, and the Missouri, Kansas and Texas Railway Company, as party of the second part, witnesseth:

That the said parties of the first part, for their heirs, executors, administrators, or assigns, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for other valuable considerations hereinafter specified, have this day contracted, set over, and assigned, and by these presents do hereby contract, set over, and assign, unto the said party of the second part, their heirs, executors, administrators, or assigns, for the full term of two years from the date hereof, the exclusive right of mining, boring, operating, and otherwise prospecting for coal on the following described tracts or parcels of land, to wit: Commencing at the point of original discovery of coal on the claim of Joshua Pusley, and extending from thence one mile in every direction, and of taking out and working the same, together with the right of way and surface use of such land as may be necessary for the economical and efficient working of the same, together with such timber as may be necessary for the use of the mine.

It is further understood and agreed that the said party of the second part, their heirs, executors, administrators, or assigns, will pay the following royalty, to wit, for coal one-half ($\frac{1}{2}$) of one cent per bushel of eighty-five pounds, except for all coal from the shaft, slopes, entries, turnouts, air-courses, and coal used at the works, which is to be free from rental or royalty.

It is further understood and agreed that the said party of the second part, their heirs, executors, administrators, or assigns, may, at such time as they may deem best, move or cause to be moved any buildings, machinery, or materials which he or they may have put upon the above described lands, without due form or process of law.

It is further understood and agreed that the parties of the second part have the refusal of this lease and the privileges herein contained for a period of ten (10) years.

In witness whereof we have this thirteenth day of December, 1873, hereto subscribed our names and affixed our seals.

MARGARET PUSLEY, her x mark.	[SEAL.]
WILLIAM PUSLEY, his x mark.	[SEAL.]
ELIZA PUSLEY, her x mark.	[SEAL.]
OSBORNE PUSLEY.	[SEAL.]
SARAH PUSLEY.	[SEAL.]

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,

By R. S. STEVENS, *General Manager.*

Witnesses:

T. C. WALKER.
RUFUS FOLSOM.

DECEMBER 17, 1873.

I hereby approve of and confirm the within and foregoing agreement in all its terms and provisions.

Attest:

H. T. LEMIST.
CHAS. H. SCHILLING.

D. F. HARKINS,
National Agent Choctaw Nation.

Know all men by these presents :

That whereas the Missouri, Kansas and Texas Railway Company did, on the 13th day of December, 1873, enter into agreements with Margaret Pusley and others and William Pusley, for the right to mine coal and other materials in Choctaw Territory, it is hereby agreed and understood that said railway company shall pay to D. F. Harkins, national agent for Choctaw Indians, for use of said Indians, one-half cent ($\frac{1}{2}$ cent) per bushel for all coal taken under agreements with said Margaret Pusley and others and William Pusley so long as the law creating the office of said national agent and all its provisions remain in force, and during continuance of said agreements.

In consideration of the sum thus to be paid, free and full permission is hereby given to said railway company, its agents or assigns, to do in said Choctaw Territory all and whatever may be necessary for the successful mining and shipping of said coal.

Payments to be made monthly on the 20th of each month.

In witness whereof we have this 17th day of December, 1873, hereto subscribed our names and affixed our seals.

[SEAL.]

D. F. HARKINS,

National Agent Choctaw Nation.

[SEAL.] THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
By R. S. STEVENS, *General Manager.*

MISSOURI, KANSAS AND TEXAS RAILWAY,
OFFICE OF GENERAL MANAGER,
Sedalia, Mo., December 17, 1874.

SIR: Soon after completing our line of railway a deposit of coal was found in the Choctaw Indian country, some two and a half miles from McAlister station. A family named "Pusley" were occupying and holding land on which this coal was found under "Choctaw law." With this family a contract was made and a royalty of one cent per bushel regularly paid each month.

At session of Choctaw legislature in 1873 a law was passed providing for appointment of national agent to collect royalty, &c. (Copy of act inclosed herewith.)

D. F. Harkins was appointed, and for some months received one-half cent per bushel royalty from coal mined on Pusley claim. At June term, 1874, of circuit court of Toboksy County, Choctaw Nation, an injunction prohibiting the payment of any portion of this royalty to national agent was issued. (Copy inclosed.) At December (1874) term of same court a decision was had declaring said act unconstitutional, and directing the payment of *all* moneys due, or to become due, under original contract with Pusley, to be made to Ford & Loving, agents of Pusley estate. Whether said agents intend to insist on repayment to them of all money paid national agent before injunction issued, or only the accumulation since then, does not yet appear (last-named order also inclosed); if the latter, there is some \$1,200 due, and we are ready and willing to pay, but, as monthly payments will be quite large, we are anxious for some protection from any subsequent legislation.

I therefore respectfully ask from your department such instructions as you may think proper to give in the premises; particularly as to

whether the doctrine laid down by United States Supreme Court in case of *United States of America vs. George Cook* (No. 161), October term, 1873, will be held to apply to Choctaw Nation.

Very respectfully,

R. S. STEVENS,
General Manager

To Hon. E. P. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

(Copy of telegram.)

EXHIBIT No. 8.

SEDALIA, Mo., January 1, 1875.

INGALLS,

*United States Indian Agent, care Commissioner Indian Affairs,
Washington, D. C.:*

Serious troubles are rapidly culminating between Chetan and Vinita. Our train was surrounded by some one hundred men who thought some of opposite faction were on board. Trouble is anticipated at Vinita to-night. Cannot you have telegraphic orders sent at once to officer at Fort Gibson, directing him to at least protect our passenger trains and United States mails from interference? Some action must be taken if to-night's reports are true.

R. S. STEVENS.

(Copy of telegram.)

EXHIBIT No. 9.

SEDALIA, Mo., January 2, 1875.

G. W. INGALLS,

*United States Agent, care Commissioner Indian Affairs,
Washington, D. C.:*

Excitement still continues, and seems strongest centering in Vinita. At least one full company should be at Fort Gibson. Will not the government promptly assert its authority, and that before lawlessness takes possession of that entire people?

R. S. STEVENS.

EXHIBIT No. 10.

MISSOURI, KANSAS AND TEXAS RAILWAY,
OFFICE OF GENERAL MANAGER,
Sedalia, Mo., January 9, 1875.

SIR: As president of the Osage Coal and Mining Company a letter, of which the inclosed is a copy, has this day been handed me.

Will you have the kindness to instruct me what the wishes, desires, and instructions of the department are in reference to the matters referred to in this letter?

The Osage Coal and Mining Company have contracts with several individual Indians for mining coal on lands occupied by them severally. In addition to this, under a law passed something over a year since, the government of the Choctaw Nation appointed a "national agent" em-

powered by said law to collect all moneys due or to become due either to the nation or to individual Indians on account of timber, stone, or coal taken from the public domain or from the lands of individual Indians. This agent duly ratified the contracts made with individuals, and for several months the stipulated royalty was paid to him, he paying to the individual Indians one-half thereof. Some time last spring an injunction was issued by one of their circuit courts forbidding the payment of any of this royalty to the national agent, which injunction has recently been made perpetual, and an order of the court made to pay it to the individual Indians or their attorney. Some question having arisen among themselves in regard to the payment, I have directed the money to be paid into the hands of the court making the order. The court not having been yet found, the money is held subject to its order.

The condition of affairs throughout that entire country is getting so terribly mixed and becoming so uncertain in its character that it is almost impossible for us to pay any one and be certain that said payment is satisfactory and approved by all concerned, and we not be subjected to a second payment thereof.

If we do not pay, then the Indians naturally become incensed, and are very ready to make complaint. What we would desire, both on the part of the railway and coal companies, is to pay the Indians in some way for whatever of their property we take.

Some of the parties called on me a few days since, and I remarked that I was willing and anxious to pay the money, but at the same time desirous to pay to the proper parties, and in such a way, when there was no dispute in regard to the correctness of the amount, that any other party could not come forward and set up claim, and in any way become entitled thereto; adding, "I was in hopes the Commissioner of Indian Affairs or the Secretary of the Interior would take some action in reference thereto." To this the honorable Choctaw (much learned in the law) replied that "Neither of the officials referred to or the Congress of the United States had aught to do or say in reference to their affairs;" that "they were as much independent of the Federal Government as was the Dominion of Canada."

This is new law to me; but having been laid down by such authority, I hardly dared question it.

Will you have the kindness, therefore, to give me some information or instructions at the earliest day consistent with your other duties, and rest assured that I am more than anxious to conform strictly to whatever rules or regulations may be laid down and adopted by proper authority.

Very respectfully, yours,

R. S. STEVENS,

President Osage Coal and Mining Company.

Hon. E. P. SMITH,

Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 11.

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

Washington, February 3, 1878.

SIR: Your several communications asking instructions in regard to paying Choctaw and other Indians for coal and other material procured from their country for the Missouri, Kansas and Texas Railway Company, and the Osage Coal and Mining Company, were duly received.

In a recent decision of the United States Supreme Court in the case of the United States *vs.* George Cook, involving the question of the right of Indians to cut and sell for their own benefit timber upon their tribal reservations, the court was of opinion that such right does not exist, except to the extent of such timber as may be cut with a view to the clearing up and improvement of the land, or adapting it to convenient occupation. In other words, the improvement must be the principal thing, and the cutting the incident only.

The attention of the honorable Secretary of the Interior was invited to this decision in a report from this office under date of the 3d of December last, and the question was presented for his decision, whether the ruling of the Supreme Court referred to would be construed to cover the case of the Cherokees, Creeks, and Choctaws, who have received patents for the lands comprised within their respective reservations, subject, however, to the condition, in substance, that if said tribes should become extinct, or abandon the same, the lands should revert to the United States.

The honorable Secretary has not yet passed upon the question submitted, and pending his consideration of the same you are requested to refrain from paying any further sums of money for timber, ties, coal, or other material procured from the reservations of the tribes in question, to any person or persons whomsoever.

Agent Ingalls will be instructed in accordance herewith, and directed to notify D. F. Harkins, the agent appointed by the Choctaw Nation, and other parties interested.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

ROBERT S. STEVENS, Esq.,
*General Manager Missouri, Kansas and Texas
Railroad Company, Arlington Hotel, Washington, D. C.*

EXHIBIT No. 12.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 4, 1875.

SIR: In a recent decision of the United States Supreme Court, in the case of the United States *vs.* George Cook, involving the question of the right of Indians to cut and sell for their own benefit timber upon their tribal reservations, the court was of the opinion that such right does not exist, except to the extent of such timber as may be cut with a view to the clearing up and improvement of the land or adapting it to convenient occupation. In other words, the improvement must be the principal thing, and the cutting the incident only.

The attention of the honorable Secretary of the Interior was invited to this decision in a report from this office, under date of the 3d of December last, and the question was presented for his decision, whether the ruling of the Supreme Court referred to would be construed to cover the case of the Cherokees, Creeks, and Choctaws who have received patents for the lands comprised within their respective reservations, subject, however, to the condition, in substance, that if said tribes should become extinct or abandon the same, the lands should revert to the United States.

The Missouri, Kansas and Texas Railway Company, and the Osage Coal and Mining Company, have from time to time procured from the reservation of the Choctaws timber, ties, coal, and perhaps other material, and a dispute has arisen—at least so far as the coal is concerned—between the individual Indians, Margaret Pusley *et al.*, claiming to own the land upon which the coal mine is located, and the agent, D. F. Harkins, appointed by the Choctaw tribe for the purpose, as to which is properly entitled to receive the royalty tax of one-half cent per bushel, charged against said company for the coal mined by them.

Pending the decision of the honorable Secretary of the Interior upon the question above referred to, I have, under date of the 3d instant, addressed a letter to Robert S. Stevens, esq., president of the Osage Coal and Mining Company, and general manager of the Missouri, Kansas and Texas Railway Company, requesting him to refrain from paying to any person whomsoever any further sums of money on account of timber, ties, coal, or other material procured for said companies from the reservations of the Cherokees, Creeks, or Choctaws.

You will please communicate this fact to Mr. Harkins, Margaret Pusley, and all other parties interested in the matter, at your earliest convenience.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

G. W. INGALLS, Esq.,
United States Indian Agent, present.

EXHIBIT No. 13.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 9, 1875.

SIR: I have the honor to acknowledge the receipt, by reference from the department, of a letter dated Muscogee, Indian Territory, June 30, 1875, addressed to the Hon. Secretary of the Interior, by L. D. Durbin, esq., stating that a large quantity of walnut timber is being cut on the Verdigris and Arkansas Rivers, Indian Territory, and being shipped out of the Territory by rail.

This office has no information in regard to this matter beyond that contained in this letter.

I would in this connection respectfully call the attention of the department to report from this office, dated December 3, 1874, in which the attention of the department was invited to the decision of the Supreme Court of the United States rendered at the October term, 1873, in the case of the United States *vs.* George Cook. In this report, a brief history was given in regard to the disposition of timber, coal, and other material on Indian reservations, and in that connection the question was presented whether the decision of the Supreme Court referred to would be construed to cover the case of the Cherokees, Creeks, and Choctaws, who have received patents for the lands comprised within their respective reservations, subject, however, to the conditions in substance, that if said tribe should become extinct, or abandon the same, the lands should revert to the United States.

I infer from the letter of Mr. Durbin that the timber of which he speaks of being cut and removed is within the Cherokee country. The

Cherokees claim the right to cut and sell timber and other material without restriction; I therefore deem it essential, before further action is taken in regard to this matter by this office, that the question as to whether the decision of the Supreme Court referred to applies to the Cherokee country should be decided.

I await further instructions in the premises.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

EXHIBIT No. 14.

OFFICE UNITED STATES INDIAN AGENT,
UNION AGENCY, INDIAN TERRITORY,
Muscogee, July 14, 1875.

DEAR SIR: I have the honor to refer to the matter of cutting and shipping of timber and coal in this agency.

There are parties in the Creek and Choctaw Nations making contracts with citizens of the United States for sale of coal, timber, and ties—the latter to the railroad, the coal and timber to other parties for shipment.

There is one firm of responsible men, consisting of Mr. Shepherd, of Kansas, Simonson, of Illinois, Captain Hyatt, of this Territory, who have a subcontract with a Creek citizen, who is one of the judges of the Creek courts.

This contract is authorized, I am informed, by Creek laws, and secures a revenue to the nation for each tree cut, and furnishes employment for a good many very poor negroes and Indians, cutting logs, and others in hauling the same to the railroad, many Indians earning as much as \$6 per day.

Such has been the *extreme suffering* among the Creek and Choctaw Indians, and that now exists among many of them, I considered the opportunity a God-send, and saw no impropriety; but as some jealous non-resident ones have raised the question of right to cut and sell timber here, I thought I would submit the whole matter to the department to see if these Indians did not possess the right to cut and sell timber, and especially as so much good is being derived from the transaction.

Some evil-minded persons have said that the agent of the Union agency or his clerk have an interest in the timber business; but this is not the fact; for the agent or clerk have no interest (pecuniary) in timber, coal, or cattle business of any kind; but, as for the agent, I can say I would like very much a chance to engage in all these branches, and if it did not embarrass my official position, I would, provided it was proper or legal.

Hoping to learn soon in regard to the right to sell timber and coal to United States citizens by Indians, I remain, with high esteem,

Very respectfully, your obedient servant.

G. W. INGALLS,
United States Indian Agent.

Hon. E. P. SMITH,

Commissioner of Indian Affairs, Washington, D. C.

P. S.—I may add that, for many years past, saw-mills have been in operation, and timber has been sold and shipped to other than railroad parties.

EXHIBIT No. 15.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 21, 1875.

SIR: Referring to office report of the 9th instant, on the cutting and shipping of walnut timber from the Verdigris and Arkansas Rivers, Indian Territory, I have the honor to inclose herewith a letter to this office from G. W. Ingalls, esq., United States Indian agent, dated Muscogee, July 14, 1875, in relation to sale of coal, timber, and ties by the Creek and Choctaw Indians of his agency.

The letter of Agent Ingalls is respectfully forwarded for your information, and I await your instructions in the premises.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

The honorable SECRETARY OF THE INTERIOR.

EXHIBIT No. 16.

DEPARTMENT OF THE INTERIOR,
Washington, July 23, 1875.

SIR: I return herewith the letter of Agent Ingalls, which accompanied your report of the 21st instant, relative to the sale of timber, ties, and coal in the Indian Territory.

The Cherokees, Choctaws, and Creeks have patents, dated respectively December 31, 1838, March 23, 1842, and August 11, 1852, for their land, which contain a condition that it shall revert to the United States if the tribes become extinct.

The condition prescribed in their patents is so remote that it does not, in my opinion, justify any interference with the sale of coal and timber by the Indians referred to, when such sale is made in accordance with their laws and with the approval of the Indian agent.

The views herein expressed will be considered as answering the inquiries of your letters of December 4, 1874, and July 9, 1875, in relation to the rights of the Cherokees, Choctaws, and Creeks to make contracts for the sale of timber and coal.

Very respectfully, your obedient servant,

O. DELANO,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

EXHIBIT No. 17.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 30, 1875.

SIR: In reply to the inquiry submitted in your letter of the 14th instant, relative to the right of the Choctaw and Creek Indians to sell coal, and to cut and sell timber from their lands in Indian Territory, you are advised that the honorable Secretary of the Interior, in a letter

dated the 23d instant, copy herewith, decides that the condition prescribed in the patents for the lands to the Cherokees, Choctaws, and Creeks, dated, respectively, December 31, 1838, March 23, 1842, and August 11, 1852, viz, that these lands shall revert to the United States if the tribes become extinct, is so remote that it does not justify any interference with the sale of coal and timber when such sale is made in accordance with the laws of these Indians and with the approval of the Indian agent.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

GEORGE W. INGALLS, Esq.,
United States Indian Agent, Muscogee, Ind. T.

EXHIBIT No. 18.

A resolution requesting the principal chief to call upon the Secretary of the Interior to prevent the further working of coal-mines and manufacture of lumber temporarily within the limits of the Choctaw Nation.

Resolved by the general council of the Choctaw Nation assembled, That the principal chief is hereby requested to demand of the Secretary of the Interior that the further working of coal-mines and sale and shipment of coal or other mineral, and manufacture of lumber and sale and shipment of the same within the limits of the said nation by citizens of the United States be stopped at once, and continue to be stopped until such time as the Choctaw and Chickasaw legislatures can as speedily as possible agree upon a law jointly, known as a national agency law.

Resolved further, That the principal chief is requested to recite to the honorable Secretary of the Interior the causes which impel him to make this demand.

Resolved further, That the principal chief is requested to forward a certified copy of this resolution, and also a certified copy of an act entitled an act declaring and defining the status of the soil and its natural appurtenances within the limits of the Choctaw Nation, along with the demand upon the Secretary of the Interior.

Resolved further, That this act take effect and be in force from and after its passage.

Proposed by Alfred Wright, chairman committee chief's message.

AN ACT entitled "An act declaring and defining the status of the soil and its natural appurtenances within the limits of the Choctaw Nation."

Whereas under a patent made by the United States Government, dated March 23, 1842, granting to the Choctaw Nation a title in fee-simple to lands west of the Mississippi River, particularly described in said patent, to be held in common;

And whereas under the treaty of June 22, 1855, the Chickasaw tribe of Indians have been secured, by agreement of the Choctaws, in an undivided interest in the lands granted to the Choctaw Nation under said patent in fee-simple, to be held in common by said Choctaws and Chickasaws, mutually and jointly; and

Whereas everything within the soil or not, pertaining to the soil, must go with it in an unqualified alienation of it: Therefore,

SECTION 1. *Be it enacted by the grand council of the Choctaw Nation assembled,* That all timber or wood growing out of the soil, except such

as has been planted and fostered by the hand of man; and all stone, and minerals, or ore, or medicinal water existing in its native state, which has been or may be hereafter discovered within the limits of the Choctaw Nation, is the property of the Choctaw and Chickasaw people, and subject to the control of their national council.

SEC. 2. *Be it further enacted*, That all acts or parts of acts heretofore passed coming in any manner in conflict with the provisions of this act, are hereby repealed; and this act shall take effect and be in force from and after its passage.

Proposed by—

ALFRED WRIGHT,
Chairman Committee on Chief's Message.

Passed the senate October 26, 1875.

J. B. MOORE, *President.*

Passed the house October 26, 1875.

Z. WHITE, *Speaker.*

Approved October 26, 1875.

COLEMAN COLE,
Principal Chief Choctaw Nation.

I do hereby certify that the foregoing act is a true and correct transcript of the original act on file in this office.

October 27, 1875.

[SEAL.]

A. R. DURANT,
National Secretary Choctaw Nation.

EXECUTIVE OFFICE,
CHOHTA TAMAHA, CHOCTAW NATION,
October 27, 1875.

SIR: Herewith inclosed please find a certified copy of an act entitled "An act declaring and defining the status of the soil and its natural appurtenances within the limits of the Choctaw Nation"; also a certified copy of a "resolution requesting the principal chief to call upon the Secretary of the Interior to prevent the further working of coal-mines and manufacture of lumber, temporarily, within the limits of the Choctaw Nation."

By examination of the provisions of the resolution of the Choctaw general council inclosed, you will find the principal chief is requested to recite to the Hon. Secretary of the Interior the causes which impel the Choctaw Nation to make the demand to have the working of her coal-mines and the manufacture of lumber stopped within her borders for a time the Choctaw and Chickasaw legislatures can take joint action upon this matter.

The peculiar title to the soil makes it necessary before valid contracts can be made by either nation in relation thereto.

It is a subject which has only recently been brought to the consideration of these people, and they lacked that experience necessary to meet the emergency. Laws of the kind have been passed by both nations, but joint action nor approval of one another's acts have never been had upon this particular subject, and, at the last session (October 4, 1875) of the Choctaw supreme court, a case of injunction was brought up from an inferior court against the national agent of the Choctaw Nation contesting his rights to collect royalty on coal under a law which had been enacted in 1872. The supreme court decided that the national

agent had no such right, inasmuch as the Chickasaw legislative authorities had never approved the Choctaw law, and hence it was held to be not in accord with the treaties of 1855 and 1866, with the United States Government.

This decision leaves us for a time without a law and without a national agent, and, consequently, without protection against a class of United States citizens who are using every means to deprive our people of as much coal, lumber, &c., as they can without paying the nation for them, on the ground of having contracts with private citizens of the nation, all of which is contrary to United States Revised Statutes, section 2103 to 2108.

Our people are using strenuous efforts to release themselves of this embarrassment and hope the honorable Secretary of the Interior will come squarely to the rescue and interpose his authority in our behalf and stop the mining, sale, and shipment of coal, and the manufacture and sale of lumber, until the Choctaws and Chickasaws can provide themselves with a joint law to meet their wants and necessities.

Hoping your honor will give his earliest attention to a matter which is so embarrassing and detrimental to the interests, both financial and political, of the Choctaw people, I have the honor to be,

Very respectfully, your obedient servant,

COLEMAN COLE,

Principal Chief Choctaw Nation.

To the HON. SECRETARY OF THE INTERIOR,

Washington City.

EXHIBIT No. 19.

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

Washington, November 6, 1875.

SIR: I have the honor to acknowledge the receipt by reference from the department, for my consideration and suggestions, of a letter dated the 27th ultimo, from Coleman Cole, principal chief Choctaw Nation, inclosing copy of an act of the Choctaw national legislature "declaring and defining the status of the soil and its natural appurtenances within the limits of the Choctaw Nation."

This act declares all timber or wood growing out of the soil, except such as has been planted and fostered by the hand of man, and all stone and minerals or ore or medicinal water existing in its natural state within the limits of the Choctaw Nation to be the property of the Choctaw and Chickasaw people, and subject to the control of their national councils.

Chief Cole in his letter asks that the authority of this department be interposed to put a stop to the mining, sale, and shipment of coal and the manufacture and sale of lumber by private individuals until the Choctaws and Chickasaws can provide themselves with a joint law to meet the wants and necessities of the case.

The department, in communication to this office on the 23d of July last, relative to the sale of timber and coal in the Indian Territory, remarks as follows: "The Cherokees, Choctaws, and Creeks have patents dated, respectively, December 31, 1838, March 23, 1842, and August 11, 1852, for their land, which contain a condition that it shall revert to the United States if the tribes become extinct."

"The condition prescribed in their patents is so remote that it does not, in my opinion, justify any interference with the sale of coal and timber by the Indians referred to, when such sale is made in accordance with their laws and with the approval of the Indian agent."

In view of this decision, it is inferred that interference with sales would be proper when such sales are not made in accordance with the laws of such tribes and with the approval of the Indian agent; therefore, if this decision is adhered to, I respectfully suggest that the United States agent for the Union agency in the Indian Territory be instructed to cause a suspension of all sale of timber or coal in the Choctaw and Chickasaw country until appropriate legislation can be had by the tribes respectively, unless, in his judgment, material injury will be done by such a course to the parties concerned, both to the purchaser and the Indians who are engaged in the sale of coal or timber for the lands occupied by them in accordance with the laws of the Choctaw Nation, in which case he should report the facts to this office and await further instructions.

In the mean time, I think the Choctaw and Chickasaw authorities, respectively, should be requested to call their councils together to provide the proposed necessary legislation at an early day, and should also be informed that they will be expected to enact such provisions of law with penalties as will render it practicable for their own officers to enforce the prohibitions as against the action of members of the Choctaw and Chickasaw Nations, without calling upon the department for its interference.

The Chickasaw country is a portion of the territory embraced in the patent to the Choctaws of March 22, 1842, and is held by the same tenure.

The letter of Chief Cole is herewith returned.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

EXHIBIT No. 20.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 10, 1875.

SIR: Referring to your report of the 6th ultimo, upon the application of Coleman Cole, principal chief of the Choctaw Nation, for the interposition of this department to prevent the mining and shipment of coal and the manufacture and sale of lumber from the lands of the Choctaw Nation, until the legislature thereof shall have enacted suitable regulations governing the subject, it is very clear that the contracts made by individual members of the Choctaw Nation for sale of coal mined on said lands, or lumber manufactured from the timber growing thereon, are void and give no rights to the purchaser. You will therefore direct the agent to prevent the further removal of any lumber or coal, under such contracts, until the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures.

You will also inform Chief Cole of this order, and of the expectation of this department that such action will be taken by the legislative

authority of the two nations without delay as will render its further intervention in the premises unnecessary.

Very respectfully, your obedient servant,

Z. CHANDLER,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

EXHIBIT No. 21.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 14, 1875.

Referring to your letter of the 27th October last to the department, and referred to this office for report, making application for the interposition of this department to prevent the mining and shipment of coal and the manufacture and sale of lumber from the lands of the Choctaw Nation, until the legislature thereof shall have enacted suitable regulations governing the subject, you are advised that, in the judgment of the department, it is very clear that the contracts made by individual members of the Choctaw Nation for the sale of coal mined on said lands, or lumber manufactured from the timber growing thereon, are void and give no rights to the purchaser.

I am instructed by the honorable Secretary of the Interior, under date of the 10th instant, to inform you that United States Indian Agent G. W. Ingalls has this day been directed to prevent the further removal of any lumber or coal under such contracts until the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures.

It is expected by the department that such action will be taken by the legislative authority of the two nations, without delay, as will render its further intervention in the premises unnecessary.

Very respectfully, your obedient servant,

J. G. SMITH,
Commissioner.

COLEMAN COLE,
*Principal Chief of the Choctaw Nation,
Care of Agent Ingalls.*

EXHIBIT No. 22.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 14, 1875.

SIR: I am instructed by the honorable Secretary of the Interior, under date of the 10th instant, to direct you to prevent the further removal of any lumber or coal, under contracts made by individual members of the Choctaw Nation for the sale of coal mined on the lands of said nation, or lumber manufactured from the timber growing thereon, until

the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures.

A copy of the honorable Secretary's letter is inclosed herewith for your information.

Very respectfully, your obedient servant,

J. Q. SMITH,
Commissioner.

GEO. W. INGALLS, Esq.,
U. S. Indian Agent, Muscogee, Indian Territory.

EXHIBIT No. 23.

Lease.

This agreement, made and entered into this 20th day of October, A. D. 1875, by and between William Pusley, administrator, T. C. Walker, D. M. Hailey, and Rebecca McAlester, of the county of Tobox, Choctaw Nation, as parties of the first part, and the Osage Coal and Mining Company, of Missouri, as party of the second part, witnesseth, that the said parties of the first part, for their heirs, executors, administrators, or assigns, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for other valuable considerations hereinafter specified, have this day leased, set over, and assigned, and by these presents do hereby lease, set over, and assign unto the said party of the second part, its successors or assigns, for the full term of one year from the date hereof, the exclusive right of mining, boring, operating, and otherwise prospecting for coal, salt, iron, or other valuable substances on the following-described tracts or parcels of land, to wit:

Commencing at the point of original discovery of coal on the claim of Joshua Pusley, deceased, and extending from thence one mile in every direction, the western boundary of said claim being a line running north and south, distant from mine No. 9, center of slope, two hundred and seventy-eight (278) feet; and of taking out and working the same, together with the right of way and surface use of such land as may, by said party of the second part, be deemed necessary for the economical and efficient working of the same, and upon which to erect such buildings and inclosures as may be needed and desired by said party of the second part in working said lands, together with such timber as may be necessary for the use of mine.

It is further understood and agreed that the said party of the second part, its successors or assigns, will pay the following royalty, to wit: For coal one-half ($\frac{1}{2}$) cent per bushel of eighty-five pounds, except for all coal from the shaft, slopes, entries, turnouts, air-courses, and coal used at the works, which is to be free from rental or royalty.

It is further understood and agreed that the said party of the second part, its successors or assigns, may, at such time as they deem best, move or cause to be moved any buildings, machinery, or materials which he or they may have put upon the above-described lands, without due form or process of law.

It is further understood and agreed that the said party of the second part, its successors or assigns, are to have from the said party of the first part, their heirs, executors, administrators, or assigns, the refusal

of the coal privileges contained in said lease for a period of fifteen (15) years.

It is further understood and agreed that should work be stopped for a period of sixty (60) days this lease is null and void.

In witness whereof we have this 20th day of October, 1875, hereto subscribed our names and affixed our seals.

Witness:

WILLIAM PUSLEY, ADMR.

T. C. WALKER.

D. M. HAILEY.

R. McALLSTER.

OSAGE COAL AND MINING COMPANY,

By H. T. LEMIST, SUPT.

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

STATE OF _____,

County of _____, ss:

Be it remembered that _____, who _____ personally known to the undersigned, a _____ within and for the said county, to be the person whose name _____ subscribed to the foregoing lease as part _____ thereto, this day appeared before me and acknowledged that _____ executed and delivered the same as _____ voluntary act and deed for the uses and purposes therein contained.

Given under my hand at _____ this _____ day of _____, 187—.

THE CHOCTAW NATION:

To the Sheriff and his deputies of Tobucksy County, Choctaw Nation:

You are hereby commanded to proceed forthwith and order the Osage Coal Mining Company to stop mining and shipping coal from the coal banks at or near McAlester Station on the M., K. & T. R. R., for this reason: James J. McAlester, D. M. Hailey, T. C. Walker, and Wm. Pusley entered into contract without authority, consequently the Osage Coal Mining Company will lay themselves liable to an action in the United States court as trespassers on public domain to keep on mining under the contract entered into by them with said James J. McAlester, D. M. Hailey, T. C. Walker, and Wm. Pusley (see Revised Statutes of the United States, 1872, 1875, page 372, sec. 2116-2118), and stop shipping coal until their action can be had on by the council authorizing such mining, &c.

In testimony whereof I have hereunto set my hand and caused the seal of the Choctaw Nation to be affixed. Done at Chata Tamaha, executive office, October 23, 1875.

COLEMAN COLE,

Principal Chief Choctaw Nation.

Attest: A. R. DURANT,

National Secretary.

D. F. HARKINS, NAT. AGT., }

vs.

MARGARET PUSLEY ET AL. }

In the supreme court, Oct. term, 1875.

This cause having been brought from the circuit court of Tobucksy County, C. N., by a writ of certiorari to this court for a final hearing and adjudication, and a question being raised as to a former decision rendered by the supreme court at the April term of said court, 1872, on

an act of general council of the Choctaw Nation, approved November 1st, 1871, creating a national agent, the court is of the opinion that this case, being similar, the decision rendered April, 1872, covers the case.

J. L. GARVIN,
Chief Justice.

J. W. EVERIDGE,
Assistant Justice.

G. W. SCOTT,
Assistant Justice pro tem.

Attest: T. E. OAKES,
Clerk Supreme Court, C. N.

I do hereby certify that the above copy to be a true and correct copy of the original one on file in my office.

This the 8th October, 1875.

T. E. OAKES,
Clerk Supreme Court, C. N.

In supreme court, April term, 1872.

A question was submitted to the court by G. W. Harkins, in regard to an act passed at the general council of the Choctaw Nation. The court proceeds to give their opinion in the following words:

The court, after examining the petition of G. W. Harkins *et al.* submitting the constitutionality of a question of an act entitled "An act providing protection for timber and stone in the Choctaw Nation, and for other purposes," passed and approved November 1st, 1871, have the same under consideration, and it is the opinion of the court that the act is not in accordance with the constitution of the Choctaw Nation and treaty of 1866 between Choctaw and Chickasaw tribes of Indians and the United States.

It is the opinion and decision of this court that the act entitled "An act providing protection for timber and stone in the Choctaw Nation, and for other purposes," is unconstitutional.

J. L. GARVIN,
Chief Justice.

J. W. EVERIDGE,
Assistant Justice.

Attest:

GREEN W. GARDINER, *Clerk.*

I do hereby certify that the above copy to be a true and correct copy of the original one on file in my office.

T. E. OAKES,
Clerk Supreme Court, Choctaw Nation.

Circuit court, December term, 1874.

CHOCTAW NATION,
County of Tobucksy:

To the Osage Coal and Mining Company of Sedalia, Mo.:

By virtue of a suit brought in the circuit court of the county and nation aforesaid, by Margaret Pusley *et al.*, for the recovery of moneys due them on account of coal taken out of their coal-banks near McAles-ter Station, in county and nation aforesaid, by your company, under

contract made with Joshua Pusley in his life-time, and continued at his death by his wife, the said Margaret Pusley, *et al.*, which moneys was being drawn by one D. F. Harkins, appointed national agent contrary to the provisions of said act, the moneys being so drawn being an infringement of contract made between your company and the said Margaret Pusley *et al.* long before the passage of the act creating said office of national agent, which is adjudged and decreed by the court to be in violation of the constitution and the act creating said national agent:

You are ordered by this court to turn over to the agents and attorneys of Margaret Pusley *et al.*, J. F. Ford and Jackson Loving, all the moneys due the said Margaret Pusley *et al.* on account of coal taken from their mines near McAlester Station, Tobucksy County, Choctaw Nation, as specified by original contract with Joshua Pusley, the said mines being private property and not subject to interference by said agents. But this order is not to be so construed as to interfere with the collection by said agent of moneys due or that may become due to the national agent for any stone, timber, or ties used or that may be used by the M., K. & T. Railroad Company and taken from the public domain.

JEREMIAH WARD,
Judge 1st Judicial Circuit, C. N.

Attest:

D. M. HAILEY,
Circuit Clerk, Tobucksey Co., C. N.

I certify that this is a true copy of the original as filed in my office this 12th day of December, 1874.

[SEAL.]

D. M. HAILEY,
Circuit Clerk of Tobucksey County, Choctaw Nation.

Circuit court, December term, 1874.

CHOCTAW NATION,
County of Toboxo:

To the Osage Coal and Mining Company of Sedalia, Mo.:

By virtue of a suit brought in the circuit of nation and county aforesaid, by Margaret Pusley *et al.*, for the recovery of moneys due them on account of coal taken out of their coal-banks near McAlister Station, in county and nation aforesaid, by your company, under contract made with Joshua Pusley in his life-time, and continued at his death by his wife, the said Margaret Pusley, *et al.*, which money was being drawn by one D. F. Harkins, appointed national agent contrary to the provisions of such act, the moneys being so drawn being an infringement of contract made between your company and said Margaret Pusley *et al.* long before the passage of the act creating said office of national agent, which is adjudged and decreed by the court to be in violation of the constitution and the act creating said national agent, you are ordered by this court to turn over to the agent and attorneys of Margaret Pusley *et al.*, J. F. Ford and Jackson Loving, all the moneys due said Margaret Pusley *et al.* on account of coal taken from their banks near McAlister Station, Toboxo County, Choctaw Nation, as specified by original contract with Joshua Pusley, the said mine being private property, and not subject to interference by said agent. But this order is not to be construed as to interfere with the collection of

said agent of money due or may become due to the national agent for any stone, timber, or ties used, or that may be used, by the Missouri, Kansas and Texas Railroad Company and taken from the public domain.

JEREMIAH WARD,

Judge First Judicial District, Choctaw Nation.

Attest:

D. M. HAILEY,

Circuit Clerk, Tobaoy County, Choctaw Nation.

I certify that this is a true copy of original as on file in my office this the 12th day of December, 1874.

[SEAL.]

D. M. HAILEY,

Circuit Clerk, Tobaoy County, Choctaw Nation.

AN ACT entitled "An act authorizing the appointment of a national agent, defining his duties, and fixing his pay."

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That the principal chief is hereby authorized and directed to appoint one competent person, citizen of said nation, a national agent, to act as agent for the sale of timber, stone, and stone-coal to any railroad company for the construction and repairing of railroads within the limits of the nation.

SEC. 3. *Be it further enacted*, That the national agent shall demand and receive the sum of ten cents for each tie sold; and square timber three cents per foot, running measure; stone at the usual rates in the States.

SEC. 4. *Be it further enacted*, That the national agent shall, after securing the nation in one-half cent per bushel for all stone-coal sold, pay over to the individual or individuals claiming the mine from which the stone-coal was taken the remainder of funds in his hands realized from the sale of stone-coal from their respective mine or mines: *Provided*, The national agent shall not sell any stone-coal on any citizen's claim except by the consent of such citizen.

SEC. 5. *Be it further enacted*, That the national agent shall not sell any timber or stone on any citizen's claim except by the consent of such citizen, and the said citizen shall be entitled to one-half of the proceeds realized from the sale of the timber or stone on his claim.

SEC. 8. *Be it further enacted*, That the national agent shall, for all damages done to stock on the M. K. & T. Railroad running through the Choctaw Nation, shall ask and demand full indemnity for the same, and turn over said amount to the party or parties so injured or damaged, and shall be entitled to and receive ten per cent. out of the amount so collected.

SEC. 9. *Be it further enacted*, That all acts or parts of acts heretofore passed coming in any manner in conflict with the provisions of this act be, and the same are hereby, repealed, and that this act take effect and be in force from and after its passage.

Approved October 24, 1873.

I hereby certify that the foregoing act is a true copy of the original on file, except sections omitted.

Given under my hand this 31st October, 1873.

JNO. P. TURNBULL,

National Secretary.

LEASE.

This agreement, made and entered into this 12th day of June, A. D. 1872, by and between Joshua Pusley, of the county of Toboxoy and Chactaw Nation, I. T., as party of the first part, and the Osage Coal and Mining Company of Missouri, as party of the second part, witnesseth: That the said party of the first part, for his heirs, executors, administrators, or assigns, for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for other valuable considerations herein-after specified, has this day leased, set over, and assigned, and by these presents do hereby lease, set over, and assign, unto the said party of the second part, its successors or assigns, for the full term of one year from the date hereof, the exclusive right of mining, boring, operating, and otherwise prospecting for coal, salt, iron, or other valuable substances, on the following described tracts or parcels of land, to wit: all the south-west side of the branch commencing from where we commenced work, and of taking out and working the same, together with the right of way and surface use of such land as may, by said party of the second part, be deemed necessary for the economical and efficient working of the same, and upon which to erect such buildings and inclosures as may be needed and desired by said party of the second part in working said lands, together with such timber as may be necessary for use of the mine.

It is further understood and agreed that the said party of the second part, its successors or assigns, will pay the following royalty, to wit: For coal, one cent per bushel of eighty-five pounds, except for all coal from the shaft, slopes, entries, turnouts, air-courses, and coal used at the works, which is to be free from rental or royalty.

The royalty of one cent per bushel shall be paid monthly.

It is further understood and agreed that the said party of the second part, its successors or assigns, may, at such time as they deem best, move or cause to be moved any building, machinery, or materials which he or they may have put upon the above-described lands without due form or process of law.

And further agree that if the work be abandoned ninety days (90) the lease shall be null and void, and the party of the second part, it is hereby understood, has the refusal of said coal privileges from year to year for the term of ten years.

In witness whereof we have this 12th day of June, 1872, hereto subscribed our names and affixed our seals.

JOSHUA PUSLEY,

MARGARET PUSLEY.

OSAGE COAL AND MINING COMPANY,

By S. G. WILLIFORD.

[SEAL.]

[SEAL.] X.

[SEAL.]

[SEAL.]

Witness:

JAS. E. REYNOLDS.

STATE OF CHOCTAW NATION,

County of ———, ss:

Be it remembered that Joshua Pusley and Margaret Pusley, who are personally known to the undersigned, a United States Indian agent within and for said county, to be the person whose names are subscribed to the foregoing lease as parties thereto, this day appeared before me

and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained.

Given under my hand at Boggy Depot this 20th day of June, 1872.

T. D. GRIFFITHS,
United States Indian Agent.

OSAGE COAL AND MINING COMPANY OF MISSOURI,
Sedalia, Mo., November 16, 1875.

DEAR SIR: I have the honor to submit herewith, for your consideration, the following statement and accompanying papers, regarding our relations with certain Indians of the Choctaw Nation, and would respectfully request your instructions concerning same:

As you are aware, this company has for more than three years been mining coal near McAlister Station in the Choctaw Nation, on the line of the Missouri, Kansas and Texas Railway, under a lease executed with Joshua Pusley (copy hereto attached, marked "Exhibit A"), a Choctaw Indian, on the 12th day of June, 1872, for a term of ten years, at a royalty of one cent per bushel, with the approval of Mr. T. D. Griffiths, then United States Indian agent.

In October, 1873, the Choctaw general council passed an act (copy attached, marked "Exhibit B"), appointing a national agent and authorizing him to collect the royalty due on coal, and to reserve one-half of same for the benefit of the nation, and to pay over the remaining one-half to the individuals on whose claims our mines were located.

Joshua Pusley having died some time prior to the passage of this act, his homestead and claim passed into the hands of his widow, Margaret Pusley, and of his children, and they disposed of a portion of their interest to other Indians living near McAlister Station.

All these parties brought suit soon after the passage of the act against the national agent, Col. D. F. Harkins, claiming that under section 18, article 7, of their constitution, the nation had no right to appropriate any part of their royalty, and also that his appointment was invalid and contrary to their constitution.

They also obtained an injunction from a judge of their supreme court restraining us from making any further payments of royalty to the national agent until the suit could be decided.

Suit was brought in the circuit court of Toxox County, and Judge Ward decided that as our contract made with Joshua Pusley, and continued by his heirs, was drawn prior to the passage of the act appointing a national agent, and that as the mine was private property, the national agent had no right to interfere with it, and ordered the royalty which had been held back to be paid to the individual claimants (copy of his decision attached, marked "Exhibit C").

The national agent appealed from this decision to the supreme court of the Choctaw Nation, which in October term, 1875, decided that by a decision in April term, 1872, making unconstitutional the passage of an act in 1871, authorizing the appointment of a national agent, that the passage of such an act in 1873 was equally unconstitutional, and so dismissed the case (copies of decisions attached, marked "D" and "E").

On this decision, the royalty, which had been held back by us during the continuance of the suit, was paid over to the individual claimants.

On October 23, 1875, Governor Cole, chief of the Choctaw Nation, issued an order (copy attached, marked "Exhibit F") to the sheriff of Toxox County, ordering him to have the work at our mines stopped, claiming that we were trespassers on public domain, and that the indi-

vidual claimants had no right to contract with us. A few days later, in an interview with the governor, he said he would take no action until your return, but he has since done so by writing the sheriff to enforce his order.

We have since the decision of the supreme court executed a new lease with the individual claimants (copy attached, marked "Exhibit G"), for a period of fifteen years, at a reduced royalty, they consenting to a reduction in consideration of our still further enlarging and developing our mines.

We do not wish to deprive the nation of any benefit which they might receive from royalty from these mines, and are desirous of obeying their local laws and regulations, subject to your approval and instructions; but at the present time it would seem, from their supreme court decision, that there is no law authorizing the collection of a royalty for their benefit.

We do not wish to take sides, either with the individual claimants or with the nation, but desire to prosecute our work and leave this disputed question to be settled between themselves.

We have a large amount of capital invested in the mines, and a great number of miners and workmen employed, and it would entail a heavy loss to us to have the work stopped, as it would also to the railroad companies, who are dependent upon us for coal.

The Houston and Texas Central, the Galveston, Houston and Henderson, and two divisions of the Missouri, Kansas and Texas Railway, are entirely dependent upon these mines for their daily supply of fuel, and, owing to the prevailing scarcity of coal this fall, none of these roads have over forty-eight hours' surplus supply to fall back upon in case of a stoppage, and owing to their location they would be unable to obtain a supply from any other source.

These roads all carry the United States mails and large quantities of government supplies and freight, and to stop the mines for three days would result in a discontinuance of trains and a great embarrassment to their carrying business.

I trust you will regard these considerations as important, and will afford us your protection and approval; likewise furnish us instructions to regulate our future dealings with these parties.

As early a reply as your convenience will permit will very much oblige, very respectfully, yours,

H. T. LEMIST,

Superintendent Osage Coal and Mining Company.

Maj. G. W. INGALLS,

United States Indian Agent, Muscogee, C. N.

NATIONAL AGENCY ACT.

AN ACT entitled "An act prescribing the duties of national agent, and for other purposes."

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled,* That the principal chief is hereby authorized and directed to appoint one competent person, citizen of said nation, with the advice and consent of the senate, a national agent to act as agent for the sale of timber, stone, and stone-coal, to any railroad company for the construction and repairing of said railroad within the limits of the nation.

SEC. 2. *Be it further enacted*, That said national agent shall, before he enters upon the duties of his office, take the oath of office prescribed in the constitution, before any judge of a court of record, which oath thus taken shall be written and subscribed on his commission, and shall enter into bond with good and sufficient securities, to be approved by the principal chief, in the penal sum of twenty thousand dollars, payable to the Choctaw Nation, conditioned as hereinafter directed: that he shall well and truly pay over to the treasury of the Choctaw Nation all moneys received by him, and due the nation, for the sale of timber, stone, and stone-coal, and will make a true and correct report quarterly to the principal chief, of the amount of all moneys received, together with all moneys he may receive from the railroad companies or any other company for timber and stone which have been taken and left unsettled for and paid into the national treasury, which bond shall be filed in the office of the national secretary, and may be put in suit in the same manner and on the same condition as the national treasurer's bond.

SEC. 3. *Be it further enacted*, That the national agent shall demand and receive the sum of ten cents for each tie sold, and square timber three cents per foot, running measure; stone at the usual rates in the States, taken from the public domain of the Choctaw Nation.

SEC. 4. *Be it further enacted*, That the national agent shall demand and receive directly from any coal-mining company one-half cent per bushel mined and exported from any mine in this nation, to be used and appropriated specially for school purposes.

SEC. 5. *Be it further enacted*, That the national agent shall hold his office for the term of two years from the date of his commission, unless sooner removed for misconduct in office, or other disqualifying causes, and shall receive for his services ten per cent. on all moneys collected by virtue of the act, and belonging to and due the Choctaw Nation.

SEC. 6. *Be it further enacted*, That the national agent be, and is hereby, authorized to call upon the railroad company and make and have a speedy and just settlement for timber and stone that have been taken within the limits of the Choctaw Nation for construction of railroad and other purposes, not settled for, and receive pay for the same, and pay over and report the same, as directed in the second section of this act.

SEC. 7. *Be it further enacted*, That the national treasurer of the Choctaw Nation is hereby authorized and required to pay over to the treasurer of the Chickasaw Nation, or to any authorized person of the Chickasaw Nation, the sum of one-fourth of all moneys that may come into his hands under the provisions of this act, and take his receipt for the same.

SEC. 8. *Be it further enacted*, That all acts or parts of acts, coming in any manner in conflict with the provisions of this act, be, and the same are hereby, repealed, and this act take effect and be in force from and after its passage.

Proposed by Benjamin Smallwood.

I hereby certify that the foregoing is a correct transcript of the original act now on file in my office, November 12, 1875.

A. R. DURANT,
National Secretary.

EXECUTIVE OFFICE, CHOCTAW NATION,

December 1, 1875.

Know all men by these presents, that I, Coleman Cole, principal chief of the Choctaw Nation, by virtue of the authority in me vested by the constitution and laws of the Choctaw Nation, and under a late act of the general council of November 12, 1875, I do hereby authorize D. F. Harkins, national agent of the Choctaw Nation, to prosecute the Osage Coal and Mining Company for the royalty due the Choctaw Nation on coal mined at the McAlister Coal Mines, and for royalty on all coke burned and shipped, and all damages due the Choctaw Nation by the general manager of the Missouri, Kansas and Texas Railway, in the year 1874, by building a branch road from McAlister station, Choctaw Nation, east to the mines known as the Pusley Coal Mines, in direct violation of the treaty of the 28th day of April, 1866, thereby violating the provisions of the bond of the Missouri, Kansas and Texas Railway Company, by committing waste on Indian lands, without authority of the general council of the Choctaw Nation; and the said national agent, if he should deem it necessary, is hereby fully authorized to prosecute, in behalf of the Choctaw Nation, the said Osage Coal and Mining Company and the Missouri, Kansas and Texas Railway Company, before the Secretary of the Interior, and, if necessary to employ counsel, he is authorized to do so, and to pay said counsel a reasonable fee out of any moneys recovered by the nation, to be approved by the principal chief; and until all royalty and damages due the nation, up to November 12, 1875, are amicably settled, you are hereby notified to not enter into any contract with the Osage Coal and Mining Company for the mining and shipping of coal:

Now, therefore, the said D. F. Harkins, national agent of the Choctaw Nation, is hereby authorized to prosecute the Osage Coal and Mining Company and the Missouri, Kansas and Texas Railway Company for all claims against the aforementioned companies.

In testimony whereof I have hereto set my hand and seal this the 1st day of December, 1875.

Done at the executive office, Choctaw Nation.

COLEMAN COLE,

Principal Chief Choctaw Nation.

OFFICE UNITED STATES INDIAN AGENT,

UNION AGENCY, INDIAN TERRITORY,

Muscogee, December 24, 1875.

DEAR SIR: Referring to department letter of December 14, relating to the coal and timber interests of the Choctaw Nation, with directions to me "to prevent the further removal of any lumber or coal under contract made by individual members of the Choctaw Nation until the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures," I inclose herewith the statement of the Osage Coal and Mining Company, which has control of most of the mining interests of the Choctaw and Chickasaw Nations.

Owing to a misunderstanding on the part of individual members of the nation as to their rights to make contracts with non-citizens, and a belief on the part of the directors of the Osage Mining and Coal Company there was no legal obstacle in the way, contracts were made as indicated in the inclosed papers.

I have visited the Choctaw Nation several times since the recent issue between the Choctaw national authorities and this company, and have succeeded in securing a more perfect understanding between them.

Previous to the receipt of department letter of 14th instant; the Choctaw legislative authorities passed an act to which the letter of department refers as necessary before further shipment of coal could be made.

I was present to-day and witnessed the signing of a new contract by the national coal and timber agent and the superintendent of the Osage Coal and Mining Company, and, agreeably to department letter of July 30, 1875, have approved of the same.

Very respectfully, your obedient servant,

G. W. INGALLS,
United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 24.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 31, 1875.

Sir: I am in receipt of your letter of the 24th instant, acknowledging the receipt of office letter of the 14th instant, advising you of department decision relative to the mining and shipment of coal and the manufacture and sale of lumber from the lands of the Choctaw Nation by individual members of the nation.

You were instructed, in pursuance of this decision, to prevent the further removal of any lumber or coal under such contracts until the subject shall have been regulated by the Choctaw and Chickasaw Nations by appropriate enactments of their respective legislatures.

The Choctaw national legislature has already passed an act supplying, so far as that nation or tribe is concerned, the desired legislation on the subject, but this office is not advised that any concurrent legislation relative to the matter has yet been effected by the legislature of the Chickasaws.

Inasmuch as the region of country occupied by the Choctaws and Chickasaws, respectively, is the common property of both nations or tribes, any contract for the sale of minerals or timber, to be taken therefrom, must be made in pursuance of the authority of the legislatures of both tribes.

Your action, therefore, in approving a new contract, under date of the 24th instant, between the Choctaw national coal and timber agent, and the superintendent of the Osage Coal and Mining Co., was unauthorized, and cannot be sustained by this office.

Very respectfully,

J. Q. SMITH,
Commissioner.

GEO. W. INGALLS, Esq.,
United States Indian Agent, Muscogee, Ind. T.

EXHIBIT No. 25.

MISSOURI, KANSAS AND TEXAS RAILWAY,
OFFICE OF GENERAL SUPERINTENDENT,
Sedalia, Mo., January 6, 1876.

DEAR SIR: The Missouri, Kansas and Texas Railway crosses the Indian Territory in a general north and south direction for a distance of about 250 miles.

It received its right of way, immunities, and privileges from the Congress of the United States, sanctioned by the proper executive officers of the government, and authorized and approved by the chiefs of the respective tribes through whose territory the road passes. It is a national domain, a highway over which crosses, it is not too extravagant to assert, at least one-half of the supplies for the territory west of the Mississippi and adjoining the Gulf, and is one of the two systems of communication between the Mississippi, the northern lakes, and the Gulf.

For the fuel for the movement of its trains over that portion of the road the railway is dependent upon the coal-mines now operated near McAlister, Ind. T., by the Osage Coal and Mining Company, under lease from the Territorial authorities. This has been the only source of supply for the railway for years. No other coal-fields are contiguous to this Territory, excepting those known as the Fort Scott Fields, in Southeastern Kansas. Upon the product of that region Southwest Missouri, all of the Kansas, and the entire Missouri Valley north of Kansas City, is dependent. The demand at certain seasons, especially during the winter, is so great as to entirely exceed the capacity of the region to supply; hence this railway has never been able to look to that source for a supply for the movement of its trains south of Parsons, in Kansas.

Mr. H. T. Lemist, superintendent of the Osage Coal and Mining Company, notifies me to-day that he has received notice from you that by virtue of instructions received from the honorable Secretary of the Interior, you are about to direct that operations at the McAlister mines be suspended until some certain arrangements, presumed to be necessary, are made with the Chickasaw Nation regarding the royalty.

Should this order take effect, its result will be of so disastrous a character, that I cannot believe the honorable Secretary of the Interior has been suitably informed of the condition of affairs in that section of the country.

As the representative of interests of this railway, and whose operations are so largely dependent upon the coal supplied by those mines, I beg leave to request that you will suspend the execution of that order until such time as proper representations can be prepared and submitted to the honorable Secretary of the Interior for his consideration.

I cannot see that we will be able to make arrangements for the supply of fuel for the operations of the road through the Territory in time to prevent interruption to our trains, except by great expenditure of money and inconvenience in the movement of our cars and trains.

Should we not succeed in negotiations for a sufficient quantity of fuel, it would necessitate an interruption to the general movement of freight and passengers, and to the transportation of government mails, commissary, and quartermaster's stores.

Furthermore, I will beg leave to call your attention to the fact that the Houston and Texas Central Railway, and the Galveston, Houston and Henderson Railway, formerly a continuous line with ours between

Saint Louis and Galveston, will be affected to a greater extent than will the Missouri, Kansas and Texas Railway, for the simple reason that they have no other source of supply than the mines at McAlister, while we may, after a time, arrange for our supplies from the Missouri River Valley, or elsewhere.

It is for these reasons that I hope you will feel that you have sufficient authority in the matter to suspend the execution of the honorable Secretary of the Interior's instructions until you can make these representations to him, or until they can be brought to his attention through other channels.

Yours, truly,

H. B. GARNET,
General Superintendent.

J. J. UPHAM,
*Major Fifth United States Cavalry,
and Acting Indian Agent, Muscogee, Ind. T.*

Know all men by these presents :

That the Osage Coal and Mining Company, of Sedalia, Mo., for and in consideration of the right to mine and ship coal from the domain of the Choctaw Nation, have covenanted and agreed with J. R. Maupin, national agent Chickasaw Nation, for the monthly payment of one quarter of one per cent. per bushel on coal mined and shipped under their agreements with D. F. Harkins, national agent Choctaw Nation, and said coal company hereby agrees to furnish a bond in a sum to be determined upon by the United States Indian agent, to be approved by him and deposited in his office, said bond to be conditioned for the regular and faithful performance of this obligation.

In consideration of the sum thus to be paid, full and free permission is given said Osage Coal and Mining Company to do all and whatever may be necessary on the tracts of land covered by their agreements with D. F. Harkins, national agent Choctaw Nation, for the successful mining and shipping of coal; and protection is to be afforded them to the limit of the authority of said national agent, J. R. Maupin, one of the parties to this agreement.

This contract shall remain in force until legislative action is had thereon by the Chickasaw legislature.

Payments on this contract to date from January 8, 1876, and made direct to said national agent.

In witness whereof we have this 8th day of January, 1876, hereto subscribed our names and affixed our seals, at Denison, Tex.

[SEAL.]

H. T. LEMIST,
Superintendent Osage Coal and Mining Company.

[SEAL.]

J. R. MAUPIN,
National Agent Chickasaw Nation.

In presence of—

EDW. J. BROOKS.

CHICKASAW NATION, EXECUTIVE DEPARTMENT,

January 8, 1876.

Hon. C. E. GOODING :

SIR: You will inform Mr. Maupin, our national agent, that he will enter into contract with Osage Coal and Mining Company at the rate of one quarter per cent. on one bushel of coal shipped from Choctaw Nation, said contract to cease at any time the legislature may change the same.

The parties will be required to give bond, approved by the United States Indian agent, to the effect that they will fully comply and discharge the obligation of said contract, &c.

Yours, truly,
[SEAL OF THE CHICKASAW NATION.]

B. F. OVERTON,
Governor.

Witness:
EDW. J. BROOKS.

OFFICE UNITED STATES INDIAN AGENT,
UNION AGENCY, INDIAN TERRITORY,
Muscogee, January 10, 1876.

SIR: I have the honor to acknowledge the receipt of your communication of the 31st ultimo, in reference to the mining and shipment of coal in the Choctaw Nation. The superintendent of the coal company was duly notified, and, I am informed, suspended shipments immediately upon receipt of the order.

Since then the superintendent of the Osage Coal and Mining Company has entered into contract with the national agent of the Chickasaw Nation (copy herewith inclosed, marked "B"), by and under the direction of his excellency B. F. Overton, governor, copy of whose letter to the national secretary, Hon. C. E. Gooding, is also inclosed, marked "A."

This office has no copy of the Chickasaw laws, and I am not advised as to the extent and scope of the authority of the executive and national agent. I judge from the actions of both, however, that the act creating the national agency covers the case. So far as I am at present informed, this coal company has now fully complied with the requirements of both nations as far as is possible at the present time, and I respectfully submit the question of the sufficiency of the authority to the honorable Commissioner of Indian Affairs.

The letter of A. B. Garnet, general superintendent Missouri, Kansas and Texas Railroad, is forwarded for the purpose of calling attention to the magnitude of the interests involved, should the supply of coal upon which the roads now depend suddenly cease. Inclosed, marked "C."

The contracts with both nations are entirely satisfactory to the respective authorities, and it seems to me the company have endeavored, as far as within their power, to comply with the existing law of both nations.

The proportion of the royalty paid to the Choctaw Nation, I am informed by the superintendent of the coal company, will amount to between \$1,800 and \$2,000 per annum, which is by the fourth section of the national agency act specially appropriated to school purposes. The Chickasaw proportion about \$1,200 per annum.

The coal company has invested in works and machinery at their mines, including a track from the Missouri, Kansas and Texas Railroad to the mines, nearly or quite \$60,000. They have about 175 men, nearly all with families, numbering, perhaps, 300 souls, in their employ and residing in the nation, under permit from the Choctaw authorities. The company has been located in the territory for more than three years, at first operating under leases, executed in presence of the United States Indian agent, with individual claimants, and since then by contracts under the national agency act of the Choctaw Nation, without interference or protest, and presuming that the laws of the nation and requirements of the Interior Department had been strictly complied with. In view of

these facts, I respectfully recommend that I be authorized to delay the enforcement of the order directing the immediate suspension of mining operations of this company until the session of the Chickasaw legislature, which the governor thinks will be within two months, or as soon as the committee now in charge of the revision of the Chickasaw laws is ready to report.

Very respectfully, your obedient servant,

J. J. UPHAM,
Major Fifth Cavalry, United States Indian Agent.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

EXHIBIT No. 26.

Hon. J. Q. SMITH,
Commissioner of Indian Affairs, Washington, D. C. :

MUSCOGEE, IND. T., *January 13, 1876.*

Delay decision on my letter of January 10th, in regard to the Osage Coal Mining Company, until receive copy of Chickasaw act of January 8, 1875, mailed to-day.

J. J. UPHAM,
Major Fifth Cavalry, Indian Agent.

EXHIBIT No. 27.

AN ACT to appoint an agent to collect money from the Missouri, Kansas and Texas Railroad Company, or other persons, for ties, &c.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation,* That there shall be appointed by the governor of the Chickasaw Nation an agent, whose duty it shall be to collect money from the Missouri, Kansas and Texas Railroad Company, or any proper authorized person of said company, and of any person or persons, for ties, timber, wood, stone, or stone-coal, or any other material for the use or construction of said road in the Chickasaw or Choctaw Nations, and pay over the same to the treasurer of the Chickasaw Nation once every six months, taking his receipt for the same, and shall make out his report to the governor every six months, the amount of money received by him of said railroad company, or other person or persons, as aforesaid.

SEC. 2. *Be it further enacted,* That the said agent shall, before he enters upon the duties of his office, give a bond, with two or more sufficient securities to be approved by the governor, in a sum of one thousand dollars, payable to the governor of the Chickasaw Nation, or his successor in office, conditioned that he will account for, and pay over to the treasurer of the Chickasaw Nation, all moneys received by him of said railroad company, or other persons, and make out his report to the governor, as aforesaid required.

SEC. 3. *Be it further enacted,* That the said agent shall receive as his compensation ten per cent. upon all moneys he may collect of said railroad

company, or other persons, and that this act take effect and be in force from and after its passage.

Approved January 8, 1875.

By B. F. OVERTON, *Governor.*

Attest:

CHAS. E. GOODING,
National Secretary.

I hereby certify that the above act is a true and correct copy of an act passed at the called session of the Chickasaw legislature, January, 1875.

CHAS. E. GOODING,
National Secretary.

OFFICE UNITED STATES INDIAN AGENT,
UNION AGENCY, INDIAN TERRITORY,
Muscogee, January 13, 1876.

SIR: I have the honor to inclose herewith copy of the Chickasaw act authorizing the appointment of an agent by the governor to collect royalty from coal-mining and other companies, &c., referred to in my telegram of this date, and to request the same to be filed with the inclosures with my communication on this subject of January 10, pending the decision and action of the department in the case.

I am, very respectfully, your obedient servant,

J. J. UPHAM,
Major Fifth Cavalry, Indian Agent.

Hon. J. Q. SMITH,
Commissioner Indian Affairs, Washington, D. C.

EXHIBIT No. 28.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 22, 1876.

SIR: Under date of the 10th ultimo, the department decided that in the absence of proper legislative enactment by the Choctaw and Chickasaw Nations, contracts for the sale of coal, timber, and other material from the Choctaw country were void and give no rights to the purchaser.

In pursuance of this decision, United States Indian Agent G. W. Ingalls was, on the 31st ultimo, instructed that his action in approving a contract for the mining of coal, entered into by the Choctaw "national coal and timber agent," with the "superintendent of the Osage Coal and Mining Company," was unauthorized and could not be sustained by this office, the necessary legislation upon the subject not having been effected by the Chickasaws.

I am now in receipt of two letters and a telegram, dated respectively the 10th, 13th, and 13th instants, and which are herewith submitted, from Major J. J. Upham, acting United States Indian agent, recommending that in view of the important public as well as private interests that would suffer in case of a suspension of operations by the mining company in question, that he be authorized to delay the enforcement of the order directing such suspension, until the next session of

the Chickasaw legislature. This legislature is expected to meet within two months, and will probably supply the necessary legislation.

Major Upham incloses a letter from the general superintendent of the Missouri, Kansas and Texas Railway Company, representing the disasters likely to result from an immediate enforcement of the department decision and directions. Also a copy of an act of the Chickasaw legislature providing for the appointment of a national agent to collect money for ties, timber, wood, stone, coal, or any other material used in the construction of said Missouri, Kansas and Texas Railway in the Chickasaw or Choctaw Nation, and copy of an agreement between said national agent and the superintendent of the Osage Coal and Mining Company, whereby the latter company covenant to pay to said Chickasaw national agent a royalty of one-fourth cent per bushel on coal mined and shipped under their agreement with the national agent of the Choctaws.

Inasmuch as the existing arrangement seems to be satisfactory to both Choctaws and Chickasaws, and the immediate enforcement of department decision would probably result in serious embarrassment and delay in the transportation of United States mails and Army supplies, through the inability of the railroad companies interested to procure at once an adequate supply of fuel elsewhere, I respectfully recommend that the department decision of the 10th ultimo be so far annulled as to allow said Osage Coal and Mining Company to continue their operations under the present arrangements, until the Chickasaw national legislature shall have an opportunity to effect legislation concurrent with that already enacted by the Choctaws, authorizing the mining of coal, &c., for purposes more general than those indicated in their existing law.

I have the honor to be, very respectfully, your obedient servant,
 J. Q. SMITH,
Commissioner.

EXHIBIT No. 29.

DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SECRETARY,
 Washington, D. C., January 29, 1876.

SIR: I am in receipt of your communication of 22d instant, recommending that the department decision of the 10th ultimo, upon the question of authority necessary to legalize contracts for the cutting of timber and mining of coal upon the lands of the Choctaw Nation, be so far amended as to allow the Osage Coal and Mining Company to continue their operations under the present arrangement, &c.

From an examination of the facts in the case, the rule of the department does not seem to apply to the Osage Coal and Mining Company, which is now operating under the authority of both the Choctaw and Chickasaw Nations; and you will please instruct the acting Indian agent, Major J. J. Upham, accordingly.

The papers which accompanied your communication above noted are herewith returned.

Very respectfully, your obedient servant,

Z. CHANDLER,
Secretary.

EXHIBIT No. 30.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 3, 1876.

SIR: Referring to your letters of the 10th and 13th ultimo, and telegram of the latter date, relative to the operations of the Osage Coal and Mining Company in mining coal in the Choctaw country, I now send herewith, for your information, a copy of a decision of the honorable Secretary of the Interior, dated the 29th ultimo, advising this office that from an examination of the facts in the case, the rule of the department, as set forth in decision of the 10th of December last, does not seem to apply to said company, which is now operating under the authority of both the Choctaw and Chickasaw Nations.

You will advise the proper officers of the mining company of this decision.

Very respectfully,

J. Q. SMITH,
Commissioner.

Major J. J. UPHAM,
*Acting United States Indian Agent,
Muskogee, Indian Territory.*

EXHIBIT No. 31.

WYANDOTTE RESERVE, INDIAN TERRITORY,
August 24, 1877.

SIR: Our people, of the Wyandotte tribe of Indians, are very poor, and are anxious to avail something off their reserve to avail them of interest and be more benefited than common farming. There is common impression amongst the leading men in our tribe that there is plenty of lead on our reserve, as well as other minerals, and we are too poor even to develop it so as to cause beneficial to us all.

Mr. D. E. Cornell and Mr. E. A. Berry, from Wyandotte and Kansas City, who are pretty well known to me as upright and honorable men to deal with, they have late procured a lease from Mr. Isaiah Walker, secretary of the Wyandotte council and member of the tribe; the lease is to be approved by you.

I ask your approval, and pray that you may grant the same.

JOHN W. GREY EYES,
Member of the Council, and Chief of the Wyandotte Indians.

To the Hon. SECRETARY OF THE INTERIOR.

EXHIBIT No. 32.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 4, 1877.

SIR: Referring to the letter, dated the 29th ultimo, from John Grey-Eyes to the honorable Secretary of the Interior, inclosing mineral lease

for approval, and referred to this office for action, and to your personal call in connection therewith, I have to say:

The instrument in question was executed by Isaiah Walker and wife, members of the Wyandotte tribe of Indians, to D. E. Cornell and E. A. Berry, of Jackson County, Missouri, for what is described therein as "the claim of one Isaiah Walker and family, in northeast corner of the Wyandotte reservation," and gives the right of mining therein for the term of ten years.

The treaty of February 23, 1867 (15 Stats., 513), declares that the United States will set apart the reservation in question as the future home of said tribe, to be owned by them in common, and no subsequent treaty or agreement has been made varying this provision. There is, consequently, no allotment of land in severalty upon said reservation, and no separate ownership therein known to the government, and it follows that no incumbrance of a part by an individual can be recognized on approval.

Again, the title of said Indians to their reservation seems to be the ordinary one of occupancy, conferring the right to such beneficial use of the land as pertains to the estate of a tenant for life, but not authorizing the opening and working of mines in general, much less the granting of such a privilege to others for a profit.

But, irrespective of the precise character of the title of the Wyandottes to their reservation, it is now the settled doctrine of the department, resulting from long and varied experience, that the introduction of a foreign and antagonistic element into the Indian country is detrimental to the peace and well-being of the tribes, and must be repressed rather than encouraged.

For these cogent reasons the lease in question cannot be approved, and is herewith transmitted to you as requested for delivery to the person entitled to receive it.

Very respectfully,

J. Q. SMITH,
Commissioner.

CHARLES W. BLAIR, Esq.,
Fort Scott, Kans.

EXHIBIT No. 33.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 24, 1878.

SIR: Hon. C. H. Morgan having made verbal request at this office that he be informed whether the Seneca and Wyandotte Indians had the right to work or lease mines on their lands in the Indian Territory, I have the honor to submit the following:

Article 2, treaty of February 28, 1831, 7 Stats., 348, is as follows, to wit: "In consideration of the cessions stipulated in the foregoing article, the United States agree to cause the said tribe of Senecas, consisting of about four hundred souls, to be removed in a convenient and suitable manner to the western side of the Mississippi River, and will grant them by patent in fee-simple, as long as they shall exist as a nation and remain on the same, a tract of land situate on and adjacent to the northern boundary of the lands heretofore granted to the Chero-

kee Nation of Indians, and adjoining the boundary of the State of Missouri; which tract shall extend fifteen miles from east to west and seven miles from north to south, containing about sixty-seven thousand acres, be the same more or less, for which the President of the United States shall cause letters-patent to be issued in due form of law, agreeably to the act of the last session of Congress."

The act referred to, 4 Stats., 411, was approved May 28, 1830, and entitled "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi."

Article 2, of treaty of July 20, 1831, with the Wyandottes, Senecas, and Shawnees residing at and around Lewiston, Logan County, Ohio, 7 Stats., 351, was as follows: "In consideration of the cessions stipulated in the foregoing article, the United States agree to cause the said band of Senecas and Shawnees, consisting of about three hundred souls, to be removed in a convenient and suitable manner to the western side of the Mississippi River, and will grant by patent in fee-simple to them and their heirs forever, as long as they shall exist as a nation and remain on the same, a tract of land to contain sixty thousand acres, to be located under the direction of the President of the United States, contiguous to the lands granted to the Senecas of Sandusky by the treaty made with them at the city of Washington on the 28th of February, 1831, and the Cherokee settlements. The east line of said tract shall be within two miles of the west line of the lands granted to the Senecas of Sandusky, and the south line shall be within two miles of the north line of the lands held by the Cherokees; and said two miles between the aforesaid lines shall serve as a common passway between the before-mentioned tribes to prevent them from intruding upon the lands of each other."

Articles 1 and 2, treaty of December 29, 1832, 7 Stats., 411, are as follows:

"ARTICLE 1. The united tribes of Seneca and Shawnee Indians do hereby cede, relinquish, and forever quitclaim to the United States, all the land granted to them on the west side of Neosho or Grand River, by treaties made respectively with the Senecas, of Sandusky, and the mixed band of Senecas and Shawnees, of Lewiston, Ohio, on the 20th day of July, 1831, and on the 28th day of February, 1831.

"ARTICLE 2. In consideration of said lands, described and ceded as aforesaid, the United States will grant by letters patent to the tribe or nation of Indians aforesaid, in manner as hereinafter mentioned, the following tract of land lying on the east of the Neosho or Grand River, viz: Bounded on the east by the west line of the State of Missouri; south, by the present established line of the Cherokee Indians; west, by Neosho or Grand River; and north, by a line running parallel with said south line, and extending so far from the present north line of the Seneca Indians, from Sandusky, as to contain sixty thousand acres exclusive of the land now owned by said Seneca Indians, which said boundaries include, however, all the land heretofore granted said Senecas, of Sandusky, on the east side of Grand River. And the United States will grant said tract of land, by two letters-patent; the north half in quantity, to be granted to the mixed band of Senecas and Shawnees, of Ohio, and the south half to the Senecas from Sandusky, aforesaid; the whole to be occupied in common, so long as the tribes or bands shall desire the same. The said patents shall be granted in fee-simple, but the lands shall not be sold or ceded without the consent of the United States."

It thus appears that the Senecas paid the full consideration for their lands, and became entitled to patent therefor; they went into possession, and thus had an apparently perfect equitable title, and no restriction or qualification appears, except that the lands cannot be sold or ceded without the consent of the United States.

I am therefore of the opinion that the Senecas have the right to open mines or to lease them, provided there is nothing in their own laws which prevents.

By the treaty of February 23, 1867, vol. 15, p. 515, the Senecas ceded a portion of said land to the United States, and by the same treaty such ceded portion was set apart for the future homes of the Wyandottes. The title of the Wyandottes is merely that of occupancy, and they have no right to mine on the same.

It is proper to state that Mr. Morgan represented there were valuable lead mines on said lands.

I have the honor to request your opinion on the question presented.

I have the honor to be, very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

The Hon. the SECRETARY OF THE INTERIOR.

EXHIBIT No. 34.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., February 12, 1878.

SIR: In reply to your letter of inquiry of the 24th ultimo, as to whether the tribes of Seneca and Wyandotte Indians have the right to lease any portion of the lands included in their reservations, located in the Indian Territory, for mining purposes, I would respectfully inform you that it is contrary to the established ruling of this department to sanction any letting or granting of said lands by the Indians to other parties for purposes of this character.

Very respectfully, &c.,

C. SCHURZ,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

MR. GROVER. I desire to ask a question of the witness as to the preservation of peace, the protection of life and property in the Choctaw Nation. What can you say of the condition of the people in that respect?

THE WITNESS. I can say they are a law-abiding people; that peace is preserved well; that the laws are well executed.

Q. You think they are capable of self-government?—A. Yes, sir; I think they are.

Q. And the kind of government they have now is a good one?—A. Yes, sir.

By Mr. BOUDINOT:

Q. From your observation, how many white men are citizens of that nation by marriage?—A. Well, I could not tell exactly how many there are.

Q. Give us your best estimate.—A. Well, I suppose about one thousand.

Q. About how many Choctaw Indians are mixed-bloods?—A. Well, I expect about one-fourth are mixed-bloods.

Q. Do they mostly talk English?—A. A great many do.

Q. Do not a good many full-bloods talk and write English?—A. Yes, sir; a great many of them.

Q. About how many full-bloods talk English?—A. I could not tell exactly.

Q. Can you give an estimate?—A. I cannot say positively, for I do not know.

Q. How many negroes in your nation?—A. I think about 3,000 in the Choctaw Nation.

Q. Mostly former slaves of your nation, were they not?—A. Yes, sir; those who were held as slaves before the war.

Q. You say they stand upon the same basis as citizens of the United States; do not citizens of the United States, not members of your nation, have to obtain a permit to reside there in the nation?—A. Yes, sir; the white persons not citizens do; the freedmen are provided for under the treaty; the treaty provides they shall remain there.

Q. What is the sum which white men are compelled to pay for a permit to farm?—A. The amount is five dollars a year for farming and fifteen dollars a year for mechanics.

Q. Are there any other taxes?—A. No other taxes whatever.

By Mr. GROVER:

Q. Is that the law now?—A. Yes, sir; it is the law now.

Mr. GRAFTON. They have such a law. The question of its validity was raised, and it was referred to the Secretary of the Interior. The Indian Commissioner, Mr. Smith, delivered an opinion that the law was valid, but subsequently it was brought before the Secretary of the Interior, and he decided that they had no right to make such a law, and directed the Indian agent to see to it that it is not enforced. The matter is now before the Judiciary Committee, by resolution of the Senate, and we maintain that it is the law; that the Indians have the right to make and execute such a law.

By Mr. CHAFFEE:

Q. You stated the population was about 16,000—the negroes 3,000. The whites not residents of the nation, 1,000; does that 16,000 include those.

The WITNESS. No, sir; I stated about a thousand who are citizens adopted by marriage.

Q. Sixteen thousand is the population of the Choctaw nation; does it include the 3,000 colored people?—A. No, sir.

Q. You mean of the 16,000 Choctaws only the 1,000 who are adopted are a part of that?—A. Yes, sir.

Q. The 3,000 negroes are not counted?—A. No, sir.

Q. Nor construed to be Indians?—A. No, sir.

Q. Then, counting the 3,000 negroes, there are 19,000 altogether?—A. The negroes are not citizens; they are there under the treaty.

By Mr. HUBBARD:

Q. You stated the more ignorant class would not be able to take care of themselves?—A. Yes, sir.

Q. Do you think they would be swindled out of their lands?—A. Yes, sir, by unscrupulous white men on the border.

By Mr. BOUDINOT:

Q. You think there is about one-third of the Choctaw Nation that

would be benefited by a division of the lands in severalty?—A. I did not say that; I said that a majority was opposed to it.

Q. Speaking of the negroes, you say they have the right to cultivate all the land they can?—A. Yes, sir.

Q. That they are witnesses in the courts—have the right to sit on juries?—A. No, sir.

Q. Have they the right to testify in your courts?—A. No, sir.

Q. Is there any local law which protects them?—A. They are protected by the United States Government in the United States courts at Fort Smith, Arkansas.

Q. There is no other tribunal save the court at Fort Smith in which they can be tried?—A. No, sir.

Q. What is the distance from the seat of your government to that court at Fort Smith, Arkansas?—A. One hundred and fifty miles.

Q. You say all your people are opposed to a territorial form of government for the Indian Territory; are your people willing to abide by the treaty of 1866?—A. Yes, sir.

Q. That is, they would be in favor of it if it did not interfere with your tribal organizations?—A. Congress has a right to do anything provided for in the treaty, but we do not acknowledge that they have the right to abolish our laws, customs, and privileges.

Q. They are in favor of a territorial form of government provided it does not interfere with their tribal organizations, as provided for in the treaty?—A. In favor of doing anything that the council has provided for under the treaty.

Q. Your treaty provides that you can have a Delegate in Congress; you have no objection to that, if Congress sees fit to give you one?—A. I do not want any change.

By Mr. HUBBARD:

Q. Did you say you wanted a Delegate in Congress?—A. I did not say it.

Q. Well, do you or do you not?—A. I can answer that the people do not want any change in their government.

By the CHAIRMAN:

Q. The question was whether the people wanted a Delegate in Congress, if Congress allowed it?—A. I have never heard any expression of opinion upon that question at all.

By Mr. BOUDINOT:

Q. Your treaty provides for the United States courts. Are you in favor of that?—A. I have no objections to a court, provided it does not interfere with our tribal rights.

Q. You are in favor of the United States courts and this legislative assembly. Now, did I understand you to say that the Choctaw council had adopted a resolution agreeing to a division of the lands in severalty?—A. No, sir; I did not say any such thing. I said they submitted that question to a vote of the people.

By Mr. GRAFTON:

Q. Did it provide for a division of the land in severalty?—A. The question submitted to a vote of the people was for the survey or no survey.

Q. That was the only question submitted to the people?—A. Yes, sir.

By Mr. HUBBARD:

Q. What was the vote?—A. Ten to one against it.

By Mr. SAUNDERS :

Q. You stated there were 3,000 colored people in your country not protected by the laws of your tribe ?—A. They are subject to the United States intercourse law.

Q. You say the nearest court is 150 miles distant from your seat of government ?—A. Yes, sir.

Q. So that any case that may arise among the colored people themselves, or between them and an Indian, they could have no redress in the courts short of 150 miles ?—A. No, sir ; that is the nearest court. The matter is reported, and they are brought up for trial in the United States court.

By the CHAIRMAN :

Q. Then you would not say that the negroes have the same right that the Indians have ?—A. They have the right to cultivate the soil.

Q. But we are talking about protection ?—A. Well, I will say there is as much protection there as anywhere. If the necessity should arise, in that case the Choctaw laws would give them protection. In case of any disturbance or breach of the peace they would be protected.

Q. How would they do it ?—A. By complaining to our chief, who would suppress it by law.

Q. You say the negro has no rights under your laws ?—A. They have the right of protection, but are subject to the jurisdiction of the United States court at Fort Smith.

Q. The Indians could apply to your own courts ?—A. Yes, sir.

Q. The negroes could not ?—A. No, sir.

Q. Then there is not very much protection for the negro ?—A. I do not see that they are interfered with.

By Mr. SAUNDERS :

Q. Suppose a difficulty arises about the ownership of stock between an Indian and the colored people, have they still no rights, no protection, or anything of that kind under your laws, but must they go to the United States courts ?—A. No, sir ; none at all. They must go to the United States courts.

Q. Then the smallest case would have to go 150 miles to be tried ?—A. Yes, sir.

By Mr. GRAFTON :

Q. I will ask you if you know of any case of that kind arising, and whether your people are inclined to respect the rights and property of these negroes or not ?—A. They do respect their property rights ; never interfere with them in any shape or form.

Q. Are they a law-abiding and well-disposed people ?—A. Yes, sir ; they are.

By Mr. HUBBARD :

Q. You stated there was a general uneasiness among your people ?

The WITNESS. Do you speak in regard to the land-grants of the railroads ?

Mr. HUBBARD. No. What is that uneasiness owing to ?

A. It is owing to the attempt of the railroads to take our lands from us, and the people fear that they will be robbed of their lands, and that is the cause of their uneasiness.

By the CHAIRMAN :

Q. They feared this would come by having a territorial form of government ?—A. Yes, sir.

By Mr. HUBBARD:

Q. Are your people advancing in civilization?—A. Yes, sir; advancing very well.

Q. As rapidly as all the other nations?—A. I think they are. We have got some good schools, and everything moves along very well.

Q. Do you suppose they will be ready to be received as a State some day?—A. I think in course of time they will.

Q. That is, they will be gradually prepared for it?—A. I think so, after a while, after educating more of the children.

By Mr. GRAFTON:

Q. Are not the Indians entirely satisfied with their present title to their lands?—A. Yes, sir; they are.

Q. Has it not been held out to them by every one engaged in railroad enterprises who has been to your councils for privileges, &c., that the title is insecure, and if you had it in severalty it would be more secure?—A. Yes, sir; that has been their argument all the time.

By Mr. HUBBARD:

Q. Is that true?—A. I think it is.

By Mr. ADAIR:

Q. Mr. Boudinot asked you some questions about a legislative assembly provided for in the Choctaw treaties; has not that been construed by the Indian nation to mean a general Indian council or Indian legislative assembly?—A. Yes, sir.

Q. Was not that council organized about the year 1869?—A. Yes, sir.

Q. About how many tribes are represented in that council?—A. I believe there are about twenty-five.

Q. Were there not thirty-two tribes represented in the last council?—A. Well, I do not know exactly; I think about twenty-five.

Q. As to the jurisdiction of that council, it may legislate on all matters provided for in the treaties, may it not?—A. Yes, sir.

Q. After those acts are passed and they shall be approved by the Secretary of the Interior, will they not then be in the light of compacts between the Government of the United States and the Indians?—A. Yes, sir.

Q. As such compacts, would not the United States court, already organized at Fort Smith, or that might be organized in the Indian country, have authority to execute these compacts the same as executing treaties?—A. Yes, sir.

FRIDAY, May 3, 1878.

LEONIDAS DOBSON sworn.

By Mr. ADAIR:

Question. How long have you been residing in the Cherokee Nation?—Answer. I went to the Cherokee Nation in 1861. Left there in 1862 and returned in 1869, and have made that country my home since that time.

Q. Do you make that your home now?—A. That is my home now.

Q. Are you a citizen of that country?—A. Yes; I am a citizen by marriage.

Q. Whom did you marry?—A. I married the youngest daughter of John Ross, who was for many years principal chief of the Cherokee Nation.

Q. What has been your occupation, from time to time, since you have been living in the country as a citizen of the nation?—A. I went there as a minister of the gospel.

Q. As such minister, have you traveled over the country?—A. I have traveled over quite a large portion of the country.

Q. Preaching to different denominations as well as your own?—A. I was so employed most of the time while living in that country.

By Mr. CHAFFEE:

Q. To what sect do you belong?—A. I am a Presbyterian minister.

By Mr. ADAIR:

Q. From the best information you have acquired of the sentiment of those people, what is your opinion as to a change of government over that country?—A. I think they are opposed to any change.

Q. How many can you call to mind in that country who are in favor of a territorial government being established over that country?—A. In all my acquaintance I cannot name one. I have heard of a few, but I have never conversed with a man who so expressed himself.

Q. Has not that question been submitted to the people generally as to whether or not they wanted a change of government?—A. I think it has.

Q. Have they not unanimously objected to it?—A. So far as I know, unanimously.

Q. Have they not since the war, all classes of people, objected to the establishment of a territorial government over that country?—A. They have.

Q. Do you remember that William P. Boudinot was chairman of a meeting one time?—A. I was not present, but understood he was.

Q. Then you cannot recollect one individual that you know who is in favor of a change of government?—A. I cannot. I am acquainted with a good many Cherokees, and I have never conversed with a Cherokee who was in favor of a change of government.

Q. How many religious denominations are there in the nation?—A. There are four denominations: The Baptist, Methodists, Presbyterians, and Moravians.

Q. How many Baptists are there?—A. I think about 1,200 Baptists.

Q. How many Presbyterians?—A. About 100 Presbyterians, including the two branches of the church; the North and South Presbyterians.

Q. How many Methodists?—A. I think there are about 800.

By the CHAIRMAN:

Q. You mean there are 100 of the Presbyterians taken together?—A. Yes; both branches of the church, North and South.

By Mr. GROVER:

Q. Of those, how many are communicants—all?—A. All these are regarded as communicants.

By Mr. ADAIR:

Q. From your observation are not the members full-blooded Cherokees?—A. Yes; taking all the denominations together a majority of the members are full-bloods.

Q. In the Baptist and Methodist churches also, are not the majority full-blooded Cherokees?—A. I believe they are; taking all the denominations together, I think a majority of the membership are full-bloods.

Q. Have not they got churches paid for and established at convenient points?—A. Yes; they have a number of comfortable and conven-

ient churches—the finest of which is at Park Hill, Cherokee Nation. It cost, I think, about \$3,500.

Q. The different denominations have preaching all over that country?—A. Yes, sir; all over the country.

Q. Do they preach to the full-bloods as well as the half-breeds?—A. Yes; the full-bloods are pretty well supplied with the gospel.

Q. When they preach to the full-blooded Cherokees, they preach through interpreters?—A. Yes; generally through interpreters.

Q. Have they not a reasonable number of native preachers?—A. Yes, sir; they have.

Q. Are not the Old and New Testaments printed both in English and Cherokee, and scattered broadcast over that country?—A. Yes, sir; the New Testament is translated and a large portion of the Old Testament.

Q. But the most of them have been scattered over the country?—A. Yes; they have been distributed free to the people throughout the country.

By Mr. CHAFFEE :

Q. Does it tend to make them any better?—A. Well, it is to be hoped it does. I trust that the ability to get at the Bible is an advantage to any people.

By Mr. ADAIR :

Q. From your observation in taking a comparative view between the people of the States and the people in that country, do you not think there are quite as many Bible-reading people in that country as you find in any other community.—A. I do.

Q. In view of the fact that they have not got many books to read, don't you think there are more people who read the Bible than there are elsewhere?—A. I believe there are. And I also find they are anxious to hear the gospel preached. If I make an appointment they all turn out; they are a church-going people.

By Mr. GROVER :

Q. Can they understand your preaching?—A. Those who understand English do.

Q. Those who do not understand English, how is it?—A. I preach to them through an interpreter.

By the CHAIRMAN :

Q. What proportion understand English?—A. Of the full-bloods I think about one-third understand English.

Q. How many of the half-breeds understand English?—A. All, or nearly all, of the half-breeds understand English.

By Mr. ADAIR :

Q. Will you please tell the committee about our common schools? There are about eighty-five provided for by law, are there not?—A. I was at one time one of the school commissioners in one of the school districts. The nation is divided into three districts. The first district embraces Coowiscoowee, Delaware, and Saline; the second, Tahlequah, Going-Snake, and Flint; the third, Sequoyah, Illinois, and Canadian. It was my business then to examine into the progress of the schools committed to my care, and I generally found them prosperous—doing well.

Q. Therefore, having been one of the school commissioners, you had

a fine opportunity of discovering the educational condition of the country?—A. Yes; a very good opportunity.

Q. And you have had a fine opportunity of learning all about the education of the people since?—A. Yes; I have had an opportunity of learning a good deal of the educational interests of the country.

Q. Now, how are those people doing generally in regard to the matter of education?—A. They seem to appreciate education. I found the schools well attended when I visited them. The Cherokee children learn very rapidly. I made a report at that time, and I believe the average was about 30 to each school. The present report also shows the school average to be about thirty scholars to each school. At the time I was on the board we had about seventy schools. I believe there have been ten additional schools provided for since that time. These schools now number about 2,400 pupils; that is, there are about that number attending the common schools.

By Mr. GROVER:

Q. What kind of teachers have you; native teachers or white men?—A. White men come there to teach, because they are paid better for teaching school in our country than in the adjoining States.

Q. Have you some native teachers also?—A. Yes, sir; quite a number of native teachers.

Q. Where have they been teaching; in the common schools and seminaries?—A. Yes, sir; the native teachers are employed both in the seminaries and common schools throughout the country.

Q. Do the natives acquire knowledge as rapidly as the whites?—A. I believe they do.

By Mr. ADAIR:

Q. Before teachers are assigned to teach, they have to pass an examination; state about that.—A. Yes, sir; in the ordinary branches of education.

Q. And if found sufficiently proficient, they have certificates issued to them?—A. Yes; that is the course pursued.

Q. They have to be vouched for as being men of good moral character also?—A. Teachers are required to be persons of good moral character.

Q. From your observation in that regard, do you not think the Cherokees are particularly solicitous to get teachers well qualified as teachers, as well as teachers having a good moral character?—A. Yes, sir; the first thing we sought to find out when I was a member of the board of education was the moral character of the teacher. We inquired first of all into that matter.

Q. The present board of education is composed of three men, is it not?—A. Yes; I think it is.

Q. Are you acquainted with them?—A. I am.

Q. Are they men of good education?—A. Yes; they are men of good education and standing.

By Mr. GROVER:

Q. Are they all Cherokees?—A. Yes, sir; it is composed of William P. Ross, John L. Adair, and William H. Davis.

By Mr. ADAIR:

Q. In addition to these common schools have we not some higher schools?—A. Yes, sir.

Q. How are they progressing?—A. Very finely. I was a teacher in

the male seminary for ten months, and have, therefore, had an opportunity of judging as to that matter.

Q. The teachers are generally examined, and go through the ordeal as competently as anywhere else?—A. Yes; all are required to be examined. I have passed through as strict examinations there as I ever did anywhere.

Q. No one can be a teacher unless vouched for as having a good moral character?—A. Satisfactory testimonials as to moral character are required.

Q. Are not those high schools well attended?—A. They are very well attended.

Q. Do they not have physicians to take care of the Indian children?—A. Our high schools are furnished with an excellent physician.

Q. Have we not also an institution for the orphan children in our country?—A. We have an orphan asylum located on Grand River, forty-five miles from Tahlequah.

Q. Have the people there been well furnished with teachers and everything else necessary for the comfort of these orphans?—A. The orphans have competent teachers. They are well cared for. They have a comfortable building, with a large farm attached, on which there is a large orchard and many other improvements and conveniences.

Q. Is not that a kind of manual-labor school as well as a home for the orphans?—A. I so regard it.

Q. Is not that kept up by orphan funds raised in the Cherokee Nation?—A. I believe it is sustained out of the orphan fund.

Q. What is your opinion of that institution?—A. I think the school is doing a good work. The orphans in the country are not only taken care of, but are receiving good educations.

Q. All, full-bloods as well as half-breeds; no discrimination made, is there?—A. There is no discrimination made.

Q. There is general satisfaction throughout the nation in regard to the management of those institutions?—A. I think so. The people are generally pleased with the management of the institutions, so far as I know.

Q. Tell the committee about our asylum for the deaf, dumb, and blind, &c.?—A. The inmates of that home are well cared for. The asylum is a fine building, and is well supplied with every convenience necessary for institutions of that kind.

Q. Cost several thousand dollars?—A. Yes, sir; cost several thousand dollars.

Q. Are the inmates well cared for?—A. Well cared for, so far as I know.

Q. Have a physician?—A. They have an excellent physician.

Q. The institution is free to all?—A. It is free to all blind and infirm persons of the country who are helpless and unable to care for themselves. The law provides or specifies the classes of individuals for whom the institution was founded.

Q. This institution compares favorably with any other of the kind you have ever seen in the States?—A. I think this institution would do credit to any State in the Union.

Q. About how long have the Cherokees had written laws?—A. I think since the present century.

Q. Have they not a constitution similar to that of the United States?—A. Yes; it is similar to that of the United States. A pretty fair model, I think.

Q. Composed of three departments of government?—A. Yes, sir.

Q. They have a supreme court; a legislative assembly, composed of an upper and lower house, and an executive branch?—A. They have.

Q. How long do the chiefs hold?—A. Four years, and are elected by the people.

Q. General elections of the people are held as in the States?—A. Yes, sir.

Q. You think the system quite as good as in the States?—A. In some respects, I think better.

Q. Have they any difficulties at elections?—A. Their elections are generally very orderly and quiet.

Q. How do they vote?—A. They vote by giving the name—calling the name of the candidate for whom they vote.

Q. He states personally the name of the person voted for?—A. Yes, sir.

Twelve o'clock m. adjourned.

MONDAY, May 5, 1878.

The committee, pursuant to the adjournment on the 3d inst., met at 10.30 a. m.

Senators present: The chairman, Mr. Garland, and Mr. Grover.

Delegates and counsel all present.

LEONIDAS DOBSON recalled and examined.

By Mr. ADAIR:

Question. I believe you stated how long you had lived in the Cherokee Nation?—Answer. Yes, sir; I stated that I first went to the Cherokee Nation in 1861.

Q. Has our school system been increasing generally?—A. I believe it has been steadily growing.

Q. Also the number of schools?—A. I think the number of schools has been steadily increasing, more or less, every year.

Q. At the close of the war we had about thirty. Now, how many have we? Have we not provided for about eighty-five?—A. About eighty-five, I think. The last council provided for ten new schools.

Q. We had seventy-five, and the council provided for ten new schools, did it?—A. Yes; that was my understanding.

Q. Have our school funds been increased a great deal since the war?—A. The school funds have been largely increased since the war by the sale of Cherokee lands, &c.

Q. Have you read the statement made by our Cherokee delegation to this committee on that subject?—A. I have.

Q. Have you read it carefully?—A. I have.

Q. If you have it will you please produce it and state to the committee whether it is substantially correct or not?—A. I would state that I have carefully read the official statement of the Cherokee delegation in regard to the expenditure of Cherokee funds and the financial condition of the Cherokee Nation, and that I believe it to be correct.

Q. D. W. Busheyhead, who signs as treasurer, is the treasurer of the Cherokee Nation, is he not?—A. He is.

Q. John L. Adair, who signs as secretary board of education, is such officer, is he not?—A. He is.

Mr. ADAIR. Now, Mr. Chairman, I submit the official statement of

the Cherokee delegation in regard to the expenditure of Cherokee funds, &c., and ask it be made part of the record.

The CHAIRMAN. Hand the statement to the stenographer, and it will go in.

The statement is as follows:

"OFFICIAL STATEMENT OF THE CHEROKEE DELEGATION IN REGARD TO THE EXPENDITURE OF CHEROKEE FUNDS AND THE FINANCIAL CONDITION OF THE CHEROKEE NATION, AND IN RELATION TO THE EDUCATIONAL SITUATION OF SAID NATION.

*"To the honorable the Committee on Territories,
Senate of the United States:*

"GENTLEMEN: In pursuance of the call of your honorable committee in its pending investigation as to the expenditure of the Cherokee Nation of its own funds, and as to the educational condition and interests of the 'national,' 'school,' and 'orphan' funds of said nation, the undersigned, a duly constituted and accredited delegation of said nation, have the honor of filing before you exhibits, marked 'A' and 'B,' respectively, the one being an official statement of the treasurer of said nation (Hon. D. W. Busheyhead), covering the last four years, respecting the receipts and disbursements of the funds of the nation, and the other being an official showing of the secretary of the board of education of the nation (Hon. John L. Adair) as to the educational affairs of the nation. Our treasurer is the officer of our nation elected by it, under the 10th article of the Cherokee treaty of 1835-'36 (Revision Ind. Treaties, p. 71), to receive the Cherokee funds from the United States, and to pass the receipt for the same in behalf of the nation, which the treaty stipulates 'shall be a full discharge' for the amount receipted for. Our said treasurer is under a bond of about one hundred and fifty thousand dollars, conditioned upon the faithful discharge of his official duties; and he is required by law to make a full report of his receipts and disbursements of Cherokee funds to each annual session of the national council, which he has never failed to do to the satisfaction of the council. In pursuance of the treaty provisions referred to, the Cherokee funds are placed annually in the United States subtreasury at Saint Louis, Mo., and receipted for by our treasurer; and the said funds are accordingly placed to his credit in behalf of the nation, and by him are drawn semi-annually, according to the 23d article of our treaty of 1866 (Revised Indian Treaties, p. 95), on the "order" or laws of the Cherokee national council; and the amounts thus received and receipted for by him are paid by him on drafts or "warrants" issued by our principal chief, in accordance with acts of appropriation made by our national council, which is in accord with section 23, Article IV, of the constitution of the Cherokee Nation (Cherokee Code of Laws, p. 18). The receipts referred to and the disbursements made of the funds named in the Exhibit A (the report of the treasurer) have been made strictly in accordance with the treaties and laws alluded to and are correct. The duties of our treasurer are prescribed by our constitution and laws, as embraced in the Cherokee code already submitted to your honorable committee; and his authority to receive and receipt for the Cherokee funds has never been questioned by the Government of the United States. The "loan" referred to by him in Exhibit A as having been authorized temporarily by the council from the school to the general fund to meet the current expenses of our councilors has been from the surplus of the school fund, and has invariably been refunded in a month or so from

the general fund; and in no instance have our schools been embarrassed in the slightest degree, and not one dollar of these school funds has ever been expended on our delegations. As a proof that no embarrassment has occurred to our school fund, we respectfully invite your attention to the fact that Exhibit A correctly shows that there is now on hand in our school fund a surplus of \$54,167.39. The same exhibit also shows that there is now a surplus on hand in the other departments of the nation as follows:

"In the orphan fund, \$6,682.19; in the asylum fund, \$10,761.20; in the fund for the institution for indigent Cherokees, \$16,235.42; in the asylum fund for the deaf, dumb, and blind, \$1,697.97; in the fund for the purpose of buildings for the orphan asylum, \$2,023.

"It is proper to remark, in this connection, that the general fund (which, under the treaties, is applied by our council to general purposes of the nation) is owing an outstanding debt of about \$170,000, consisting generally of Cherokee "warrants," issued by our principal chief in pursuance of appropriation acts of our council. But, as before shown, the school, orphan, and other funds have each a surplus on hand. The amount of funds received annually for our general fund, to meet the general expenses of the nation, is about \$85,530.73, which will be more than sufficient to meet the current expenses of the nation, while, in order to meet the payment of the debt of \$170,000 referred to, without interfering with this fund, our delegation, during the Forty-fourth Congress, procured the passage of an act, approved February 28, 1877 (U. S. Stat., vol. 19, p. 265), disposing of the unsold portion, about 230,000 acres) of the Cherokee "strip" lands in Kansas, and placing its proceeds subject to the disposition of the Cherokee council. In accordance with this act of Congress, the Cherokee council, at its last regular session, passed an act (Exhibit C) applying the proceeds of said lands to the payment of said outstanding debt, and which was approved by the Indian Department on the 25th of last January; so that ample arrangements have been made whereby this debt will be paid promptly, without interfering with any of the existing funds of the nation.

"In this connection it may be proper to state that this debt has been caused chiefly by the liberality of the general fund to the school and other funds, in the erection of buildings, &c., and in the establishment of a national prison and a printing and newspaper press and office, as well as for the erection of other public buildings, which have been estimated in the late report of the Indian Bureau at a value of \$261,000. (See report Commissioner Indian Affairs, 1877, p. 109.) The funds referred to in Exhibit A as being on hand do not embrace the funds to be paid this year to the Cherokees, consisting of—to the general fund, \$85,530.73; to the school fund, \$49,877.04; to the orphan fund, \$22,420.92; and to the asylum fund, \$4,060.52; making a total of \$161,889.21 due every year as interest on the Cherokee funds in the custody of the government, amounting to \$2,909,113.89.

"As a further evidence that the Cherokee funds have not been squandered, we respectfully invite the honorable committee to a comparative view of these funds as they stood at the close of the war of the rebellion, twelve years ago, and as they now stand; from which it will be seen that these funds have increased from three to four hundred per cent. during the last twelve years. To illustrate: at the close of the war of the rebellion, under the treaties of 1835-36 (Revision Indian Treaties, pp. 71, 72), the Cherokees had on hand, belonging to their general fund, after deducting therefrom \$83,000 abstracted by the government officials, \$417,000; to their school fund, \$200,000; to their orphan fund, \$50,000;

aggregating the sum of \$667,000. By the report of our treasurer of 1874, herewith submitted, and the records of the Indian Bureau, the Cherokee Nation now has to its credit in the custody of the government in its general fund \$1,534,476.77, showing an increase in that fund of \$1,117,476.77 during the last twelve years; in its school fund, \$901,408.25, showing an increase in that fund for the same period of \$701,408.25; in its orphan fund, \$405,553.60, showing an increase of that fund during the same time of \$355,553.60. In addition to the increase named in our funds, the sum of \$67,675.27 has been appropriated since the war of the rebellion for an asylum for the deaf and dumb and blind, &c., referred to in Exhibit A. The aggregate increase of our funds of \$2,242,113.89, thus shown, has been chiefly due to the efforts of the Cherokee delegates before the Government in the disposition of: 1st, the Cherokee "neutral" lands in Kansas, in 1868, for \$944,750.07; 2d, of a part of the Cherokee "strip" of lands in Kansas in 1872-73 for \$168,704.69; 3d, in the disposition of Cherokee lands to the Osages in 1873 for \$1,096,748.80; 4th, in the treaty of 1867 with the Delawares for \$279,424.28; 5th, in the treaty of 1869 with the Shawnees for \$150,000. Out of the different sums named there has been, from time to time, as the records of the Indian Bureau will show, deducted the sum of \$150,000 to pay the outstanding debt of the nation, due at the close of the war of the rebellion, as well as other sums, to meet the expense of the sale and survey, &c., of the lands disposed of, so that the *net increase* of the funds aggregates, as shown above, the sum of \$2,242,113.89.

"As regards the management of the educational interests of the Cherokee Nation, we would respectfully refer your honorable committee to the laws of said nation on the subject to be found in the Cherokee code submitted to you, and to Exhibit B, which embraces a report in regard to our schools, which is in the main correct as it relates to the present terms of the schools. From this report it will be seen that the Cherokee Nation has 75 primary free schools, 2 seminaries, free, one male and one female, one orphan asylum school, free, aggregating the number of pupils in *actual* attendance at the time at 2,640, with a daily average at the primary schools of 30 pupils and 442 boarders at the seminaries and orphan asylum. Besides these 75 common schools our National Council at its late session made provision for 10 more such schools. The appropriations to meet the expenses of all of these educational institutions, including the salaries of teachers, are made annually by the National Council of the nation. It will be seen by this report, as well as by the report of our treasurer (Exhibit A), that the school system and educational interests of the Cherokee Nation are not at all embarrassed, and are in a very flourishing and flattering condition. The hopeful condition of the educational facilities of the Cherokee Nation will illustrate itself to your honorable committee by a comparison of that nation in that regard with the educational appliances of its neighboring States, Arkansas, Missouri, Kansas, and Texas, in the centennial year (1876), as per official data in the Bureau of Education of this city. From this data it appears that the Cherokee Nation in that year had a population of 19,000 souls, with a total school population, as per report of superintendent of schools, of 4,041; enrolled in public schools, total, 2,800; percentage of enrollment, 69; duration of schools (in days) per annum, 200; number of teachers, 93; average monthly wages of teachers, \$42.80; expenditure for education, \$110,110; value of school-sites, buildings, &c., \$165,000; ex-

pended *per capita* on school population, \$24.78; expended *per capita* on pupils enrolled, \$35.76.

"*The State of Arkansas.*—School population, 189,130; pupils enrolled in public schools, 15,890; per cent. of enrollment, 7; duration of schools in days, not reported; days of teachers, 461; average pay of teachers, not reported; total expenditure for schools, \$119,403; value of school-sites, buildings, &c., \$366,435; expended *per capita* for total school population, 67 cents; expended *per capita* on the number enrolled, \$7.45.

"*The State of Missouri.*—Total school population, 725,728; number enrolled in public schools, 394,848; percentage of enrollment, 54; duration of schools in days, 60; days of teachers, 9,651; average pay of teachers per month, \$30; total expenditure for schools, \$2,374,960; value of school-sites and buildings, not reported; expended for public schools *per capita* of total school population, not reported; expended *per capita* on number enrolled, not reported.

"*The State of Kansas.*—Whole school population, 212,977; enrolled in public schools, 147,224; per cent. of enrollment, 69; duration of schools, in days, —; days of teachers, 5,576; average pay of teachers, for men, \$33.66, for women, \$27.00; total expenditures for schools, \$1,198,437; value of school-sites, buildings, &c., \$4,600,259; expenditures for public schools, *per capita* of the total school population, \$5.69; expenditures, *per capita* of the number enrolled, \$8.28.

"*The State of Texas.*—Total school population, 313,061; number of pupils enrolled in public schools, 184,705; duration of schools, in days, 78; days of teachers, estimated, 4,030; average pay of teachers, \$53; total expenditure for schools, \$726,236; value of school-sites, buildings, &c., not reported; expenditures for public schools, *per capita* of the total school population, not reported; expenditures, *per capita* of the number enrolled, not reported.

"From the data above it appears that the Cherokee Nation is doing vastly more comparatively for education than her neighboring States; that the percentage of her enrollment in her entire school population is 69, while that of Arkansas is but 7, or that 10 Cherokee children are enjoying the inestimable boon of a liberal education as compared with 1 enjoying the same advantages in the State of Arkansas; and that while the Cherokee Nation expended *per capita* on her whole school population \$24.78, the State of Arkansas expended 67 cents *per capita*; that while the Cherokee Nation expended \$35.76 *per capita*, on pupils enrolled, the State of Arkansas expended for like purposes only \$7.45 *per capita*, or five times less on actual enrollment than the Cherokee Nation. And this comparison will in a measure hold good as between the Cherokee Nation and States of Missouri, Kansas, and Texas.

"In conclusion, the undersigned, in response to the investigation as to whether the Cherokee people are advancing in civilization, under their application made of their own funds, would respectfully refer your honorable committee to the report of the Indian Bureau for 1877, pp. 108, 109, which states that: 'The Cherokees are well advanced in civilization, and are an intelligent, temperate, and industrious people, who live by the honest fruits of their labor and are ambitious to advance, both as to the development of their lands and the conveniences of their homes. In their council may be found men of learning and ability, and it is doubtful if their rapid progress from a state of wild barbarism to that of civilization and enlightenment has any parallel in the history of the world. What required five hundred years for the Britons to accomplish in this direction they have accomplished in one hundred years. They have ample provisions for the education of all their children to a

degree of advancement equal to that furnished by an ordinary college in the States. They have 75 common day-schools, kept open 10 months in the year, in the different settlements of the nation. Then, for the higher education of their young men and women they have two commodious and well-furnished seminaries, one for each sex, and in addition to those already mentioned they have a manual-labor school and an orphan asylum. All these buildings used for school purposes are after the best style of architecture and are equipped with furniture and fixtures of the latest and best manufacture. * * They have 24 stores, 22 mills, and 65 smith shops, owned and conducted by their own citizens. Their constitution and laws are published in book form; and from their printing-house goes forth among the people, in their own language and also in English, the *Cherokee Advocate*, a weekly paper, which is edited with taste and ability by native Cherokees.

"We have the honor to be, with great respect, your obedient servants,

"W. P. ADAIR,

"D. H. ROSS,

"*Cherokee Delegation.*"

A.—*Tabular statement of (Cherokee) national funds received and disbursed by D. W. Bushey-head, treasurer of the Cherokee Nation, during the four years commencing October 1, 1873, and ending September 30, 1877.*

General fund:

On hand October 1, 1873.....	\$4 20
Received from the United States, 1874.....	62,087 15
" " " " " 1875.....	112,028 40
" " " " " 1876.....	69,101 71
" " " " " 1877.....	76,068 65
Total	319,290 11

Disbursed in accordance with appropriation acts of the national council, as follows:

During the fiscal year 1874.....	\$62,064 13
" " " " 1875.....	111,072 74
" " " " 1876.....	67,608 05
" " " " 1877.....	77,984 53
Total disbursed	318,729 45
Balance on hand September 30, 1877.....	560 66

School fund:

On hand October 1, 1876.....	\$38,863 95
Received from the United States 1874.....	55,424 66
" " " " " 1875.....	71,557 75
" " " " " 1876.....	52,816 39
" " " " " 1877.....	50,234 08
Total.....	268,896 83

Disbursed as follows, for school purposes only:

During the year 1874.....	\$32,809 47
" " " 1875.....	43,787 45
" " " 1876.....	63,848 64
" " " 1877.....	74,283 88
Total disbursed	214,729 44
Balance on hand September 30, 1877.....	54,167 39

Orphan fund :					
On hand October 1, 1873.....					\$1,574 12
Received from the United States 1874.....					21,716 98
“ “ “ “ “ 1875.....					30,947 83
“ “ “ “ “ 1876.....					22,126 70
“ “ “ “ “ 1877.....					21,155 50

Total 97,521 13

Disbursed as follows :

During the year 1874.....	\$16,586 38
“ “ “ 1875.....	20,867 00
“ “ “ 1876.....	36,378 22
“ “ “ 1877.....	17,007 34

Total disbursed 90,838 94

Balance on hand September 30, 1877 6,682 19

Asylum fund :

Received from the United States, 1874.....	\$2,262 47
“ “ “ “ “ 1875.....	6,883 85
“ “ “ “ “ 1876.....	4,555 37
“ “ “ “ “ 1877.....	4,284 63

Total 17,986 32

Disbursed as follows :

During the year 1874.....	\$2,262 47
“ “ “ 1877.....	4,962 65

Total disbursed 7,225 12

Balance on hand September 30, 1877..... 10,761 20

Institution for indigent Cherokees, &c. :

Received from the United States, 1874..... \$75,000 00

Disbursed as follows :

During the year 1874.....	\$1,175 00
“ “ “ 1875.....	36,122 00
“ “ “ 1876.....	18,423 78
“ “ “ 1877.....	3,043 80

Total disbursed 58,764 58

Balance on hand September 30, 1877..... 16,235 42

Proceeds sale of lands in Kansas :

Received from the United States, 1874.....	\$32,350 65
“ “ “ “ “ 1875.....	33,093 93
“ “ “ “ “ 1877.....	11,516 44

Total 76,961 02

Disbursed as follows :

During the year 1874.....	\$23,726 27
“ “ “ 1875.....	25,839 90
“ “ “ 1876.....	7,718 25
“ “ “ 1877.....	10,505 50

Total disbursed 75,789 92

Balance on hand September 30, 1877..... 1,171 10

Purchase of buildings, &c., for orphan asylum :

Received from the United States, 1874..... \$20,000 00

Disbursed as follows :

During the year 1874.....	\$8,500 00
" " " 1875.....	5,250 00
" " " 1876.....	4,227 00
Total disbursed.....	<u>\$17,977 00</u>
Balance on hand September 30, 1877.....	<u>2,023 00</u>
Asylum fund for deaf, dumb, and blind, &c.:	
Received from the United States, 1874.....	\$25,000 00
Disbursed as follows :	
During the year 1874.....	\$1,700 00
" " " 1875.....	7,273 00
" " " 1876.....	14,329 03
Total disbursed.....	<u>23,302 03</u>
Balance on hand September 30, 1877.....	<u>1,697 97</u>

NOTE.—At each regular session of the National Council an act has been passed directing the treasurer to borrow from the surplus school or other fund enough money to pay the members of said council and officers of the nation and to *refund* the same out of the first moneys received belonging to the general fund, which has been done invariably before the end of the fiscal year in which such loans were made.

D. W. BUSHEYHEAD,
Treasurer Cherokee Nation.

This is to certify that the next above signature is in the handwriting of D. W. Busheyhead, national treasurer of the Cherokee Nation, and that he is entitled to full credit as such officer in his official capacity.

In testimony whereof I have hereunto set my hand and the seal of the Cherokee Nation, at Tahlequah, on this the 7th day of February, A. D. 1878.

[L. S.]

CHARLES THOMPSON,
Principal Chief of the Cherokee Nation.

WM. F. RASMUS,
Executive Secretary.

DISTRICT OF COLUMBIA, *County of Washington, ss :*

I hereby certify that I have carefully compared the foregoing with the original tabular statement, etc., signed by D. W. Busheyhead, treasurer Cherokee Nation, with the certificate of Charles Thompson, Principal Chief Cherokee Nation, attached, and that it is a true copy of it in every particular.

Witness my hand and notarial seal this 1st day of April, 1878, at Washington, D. C.

[L. S.]

CHAS. S. LUSK,
Notary Public.

B.

OFFICE BOARD OF EDUCATION,
Tahlequah, C. N., March 5, 1878.

His Excellency CHARLES THOMPSON,
Principal Chief :

SIR : That correct statistics of the high and primary schools might be obtained, the statement required of them some time since by the Executive Department has been delayed until the present time.

There are now in operation 75 primary schools; 3 of these have 2 teachers each, making the number of teachers 78; 26 of these schools are designated as "first grade"; 41 as "second," and 11 as "third."

The salary of teaching each in the order of their mentioning is \$500, \$400, and \$300. For this number there was appropriated by the last council \$32,700; and for text-books, \$1,000.

The number of students attending the primary schools is 2,198, making an average of a fraction less than 30.

Of the high schools (the male and female seminaries, including the orphan asylum), the following is a correct statement:

Male seminary (students)	150
Female seminary (students)	152
Orphan asylum (students)	140
Total	442

The total number of children now being educated is 2,640.

The appropriation for the male seminary is as follows:

Current expenses	\$12,000 00
Salaries of teachers, superintendent, and matrons	4,550 00
Text-books	250 00
Repairs for cistern	500 00
Contingent expenses	1,000 00
Total	\$18,300 00

Female seminary:

Current expenses	10,154 00
Salaries of teachers, superintendent, and matrons	4,550 00
Text-books	250 00
Repairs	300 00
Contingent expenses	1,000 00
Total	16,254 00
Salaries of the board of education	2,200 00
Incidental expenses of same	100 00
Total	2,300 00
Three extra teachers, at \$400 each	1,200 00
Total amount of appropriation	70,754 00
General repairs for male seminary (omitted)	300 00
True total for educational purposes	71,054 00

In connection with the male and female seminaries, it may be necessary to mention the primary or indigent department; into which are received, supported, and educated, the poor children of the country at the expense of the school fund.

It will be seen that the appropriation is in excess of the school annuity, as it has been for several years. This excess is upon a surplus that accumulated before the male and female seminaries went into operation; and the number of primary schools were not as great as at present.

I have the honor to be, very respectfully, your obedient servant,
JOHN L. ADAIR,
Secretary Board of Education.

This is to certify that the next above signed John L. Adair is a member and the secretary of the present board of education of this nation,

and that he is entitled to full credit as such officer in the presentation of facts as set forth in the foregoing statement in relation to school matters in the Cherokee Nation.

In testimony whereof I have hereunto set my hand and the seal of the Cherokee Nation, at Tahlequah, on this the 5th day of March, A. D. 1878.

[L. S.]

CHARLES THOMPSON,
Principal Chief.

WM. F. RASMUS, *Exec. Sec.*

DISTRICT OF COLUMBIA,
County of Washington, ss:

This is to certify that I have carefully compared the foregoing with the original report of John L. Adair, secretary board of education, with the Principal Chief's certificate attached, and that it is a true copy of the same.

Witness my hand and notarial seal this 1st day of April, 1878.

At Washington, D. C.

[L. S.]

CHAS. S. LUSK,
Notary Public.

C.

"AN ACT providing for the sale of certain (Cherokee) lands in Kansas.

"Whereas, at the last session of the United States Congress, an act was passed entitled, 'An act to provide for the sale of certain lands in Kansas'; and whereas, the bill provides for the sale of said lands to settlers at the rate of one dollar and twenty-five cents per acre, and that all of said land remaining unsold after one year from the date at which they were so offered shall be sold by the Secretary of the Interior for cash, at not less than one dollar per acre, and that the proceeds of said lands shall be paid into the Treasury of the United States and placed to the credit of the Cherokee Nation: Therefore,

"SECTION 1. *Be it enacted by the national council,* That the conditions of the above quoted act of Congress be, and they are hereby, accepted; and that the proceeds of the sale of said lands be applied to the payment of our (the Cherokee) outstanding indebtedness as shown in the treasurer's report for the last fiscal year ending September 30, 1877.

"SEC. 2. *Be it further enacted,* That the proceeds of the said lands sold under the provisions of this act, and of the act of Congress on the subject, shall, after having been paid into the Treasury of the United States, and placed to the credit of the Cherokee Nation, be paid to the treasurer of the Cherokee Nation.

"Tahlequah, C. N., December 1, 1877.

"Approved:

"CHARLES THOMPSON,
"Principal Chief.

"This is to certify that the foregoing act of the national council of the Cherokee Nation, entitled 'An act providing for the sale of certain lands in Kansas,' approved December 1, 1878, is a true copy of the original as on file in this office.

"In testimony whereof I have hereunto set my hand and the seal of the Cherokee Nation, at Tahlequah, Cherokee Nation, on this the 15th day of January, A. D. 1878.

[L. S.]

"WM. F. RASMUS,
"Executive Secretary."

By Mr. ADAIR:

Q. Have not the material prosperity of the Cherokees increased very rapidly since the war, especially in the manner of agricultural and stock-raising pursuits?—A. O, yes; they went back to their homes finding nothing after the war, and they have steadily grown in wealth and prosperity since that time.

Q. The people in that country are chiefly a grazing people as well as farmers?—A. They are.

Q. They could not live if they wanted to by hunting and fishing?—A. I think they could not. I do not see how it would be possible.

Q. Do not a large portion of them hunt game as the whites do?—A. I do not think they depend at all on the game they kill for a support, or that they now, in their advanced condition, manifest a desire to follow the chase for a livelihood.

Q. Your duties have caused you to travel about pretty much over the whole country; from your observation, does not the head of every family cultivate some ground?—A. I think so.

Q. You do not think there is a family but that cultivates some land?—A. I do not think there is. I know of no family that does not cultivate more or less land.

Q. We have no annuity funds distributed among our people?—A. None at all.

Q. Their chief means of support is upon their own resources?—A. Upon their own resources.

Q. They raise hogs, cattle, horses for sale from year to year?—A. They do.

Q. Do not some of our people cultivate as much as two and three hundred acres?—A. There are some very large farms in the Cherokee country. You have one, and there are many others.

Q. They raise corn, wheat, oats, and everything that will grow in that climate?—A. That is a fine farming country and generally an abundance of everything is raised.

By the CHAIRMAN:

Q. Do they raise cotton?—A. In the Canadian district they raise cotton; also in the districts of Sequoyah, Illinois, and Saline.

Q. At the close of the war the population of the Cherokee Nation, as taken, was then about 13,000, was it not?—A. I believe it was.

Q. At the beginning of the war they numbered about 20,000?—A. I think they did.

Q. So that they depreciated about one-third?—A. About one-third. I believe that was the estimated loss in population.

Q. Did not the Cherokees, previous to the war, have sheep and a great number of beef-cattle?—A. That is my understanding. Some of the citizens owned large herds of cattle. I think Mr. Joseph Vann, Mr. Lewis Ross, and John Ross were among the largest owners of cattle in that country at the time of the breaking out of the rebellion.

Q. Did not some of the leading men engaged in farming, &c., mark about six hundred calves every spring, and others in proportion?—A. I have heard they did.

Q. That is your general information?—A. That is my general information.

Q. The people generally, when the war commenced, were doing well and prospering?—A. They were. I was there before the war and the people appeared happy and prosperous; and many had amassed considerable wealth.

Q. Did they not, according to your observation, have as many fine horses in the Indian Territory as any other class of people you ever saw?—A. According to the population, I think so.

Q. Were they not reputed to have the finest turf-horses?—A. They had, I believe, quite a number of fine horses.

Q. Did not our people have an abundance of hogs and sheep?—A. A great many, I believe.

Q. Upon the whole, did not you regard the Indian community one of the richest communities on earth?—A. I did.

Q. They had every resource of wealth, &c.?—A. Yes; almost every resource common to any country.

Q. Please tell the committee how the war left those people.—A. As I have already stated, it was a battle-ground for both armies. The country was devastated, cattle driven off, farms destroyed, and the people, when the war was over, found themselves poor indeed.

Q. Do you believe ten head of cattle could have been found in that country?—A. I do not believe, from all accounts, that many could have been found in that country after peace was declared.

By Mr. GROVER:

Q. Did they give to the support of the armies on both sides?—A. Yes; I believe most of them were disposed of in that way.

By Mr. ADAIR:

Q. That country was a battle-field for both parties?—A. It was.

Q. Both armies alternated through it; when one did not have it the other did?—A. I have heard that that was the case.

Q. The Northern Army was in the northern portion and the Southern army in the southern portion of the country?—A. Yes, sir.

Q. Both parties drove off the stock?—A. Yes, sir.

Q. Were not all the hogs, cattle, sheep, and everything else driven or taken away?—A. It was so reported by everybody in that country and I presume it was true.

Q. Was it not your understanding that the people were on the side of the Union?—A. I would say that I think at least one-half or two-thirds of the people went with the Union cause. I think the full-bloods largely predominated in that cause.

Q. Did not every man capable of bearing arms go into the Union Army?—A. I believe all the Union men, especially the full-bloods, capable of bearing arms, went into the Army. That was my impression at the time.

Q. They had three regiments organized, and known as the Indian Home Guards, did they not?—A. They had.

Q. Is it not your understanding that they furnished their horses, cattle, stock, and whatever else was necessary, to the support of the Union Army?—A. I believe they did.

Q. Did not the Union and Confederate armies squander and cause all that property to be lost and destroyed?—A. That is my understanding.

Q. State to the committee whether these Union Cherokees, or Union Indians, have ever been paid one cent for that property?—A. I have never heard of their receiving anything whatever.

Q. Not even for property furnished the Army?—A. No, sir.

Q. Is it not your understanding that the government is in arrears about \$400,000 on account of pensions and bounties due the Indians on account of their services in the Union Army during the war of the rebellion?—A. That is my understanding.

Q. Have not those poor Indian soldiers' widows and orphans been kept out of their dues by the acts of the departments in suspending their claims?—A. They have.

Q. Never have got it?—A. Never to my knowledge.

Q. There was a law passed in regard to pensions, limiting the time of their presentation. That expired in April, two years ago, and the Indians could not get their money owing to an investigation then being made into the matter. And pending this investigation, which was before the courts of the country as well as before Congress, they suspended the payment in the department, and their payment was suspended and held in that condition until the time expired. Since that time we have been trying to have the act so amended as to relieve these Indians. Is not that the case?—A. Yes, sir; that is the case. I called in regard to an individual case, and they plead at the department the limitation act. So I was compelled to let the matter drop.

Q. You have stated that the material wealth since the war has increased. Are not the people as they are self-sustaining, and have they not become self-sustaining by their own efforts?—A. They have. I know of no assistance they have received from any quarter. They depend upon themselves.

Q. All farming, raising stock, &c.?—A. All farming and prospering.

Q. They send their children to school?—A. Send their children to school.

Q. A larger per cent. than in the adjoining States?—A. I think so.

Q. You have a pretty good knowledge of those border States. From your knowledge do you not think the Cherokees and the other Indian nations are doing quite as well, if not better than the people in the neighboring States?—A. I think they are, especially in portions of the neighboring States. They provide school facilities for a larger per cent. of their children than in the neighboring States.

Q. You stated the Cherokees and tribes similarly situated lost on account of the war about one-third of their population, because the government failed to protect them. Has not the population rapidly increased since the war?—A. Rapidly increased up to the present, and number now about twenty thousand.

Q. Increased to about twenty thousand?—A. Twenty thousand now; yes, sir.

Q. Now as to the Christian—the religious element. Has not that element, within your own experience, increased vastly?—A. It has.

Q. If you have any statistics bearing upon that subject please present them.—Yes, sir; I have the American Baptist Year Book. This shows the progress in that denomination since 1770 to 1876. In 1851 there were 2,680 members.

By the CHAIRMAN:

Q. Where do you mean?—A. In the whole Indian Territory.

Q. The Baptist denomination alone exclusively; didn't it include the others?—A. O, no; in 1875 we have here reported 4,262; in 1851 there were 2,680, showing the increase to be large, and the country has advanced in other respects in that proportion.

Q. What date does that run up to in regard to the Baptists?—A. Up to 1875.

Q. What does the estimate of that year show there?—A. Four thousand two hundred and sixty-two. There were 2,680 in 1851 and 4,262 in 1875, which shows the progress made.

By Mr. ADAIR:

Q. Now, then, what church do you belong to?—The Presbyterian Church.

Q. Have you any statistics in regard to that church?—A. I have the minutes of the general assembly of the northern church. I should state there are two churches in that Territory—that is, the northern and southern branches. I am myself a member of the Northern Presbyterian Church, which is the smaller in numbers. The following statement shows what it was in 1877, in the Cherokee Nation:

Presbyterian Church, North, Cherokee Nation.	Number of mem- bers.	S. S. members.
Tahlequah, Cherokee Nation.....	25	75
Fort Gibson, Cherokee Nation.....	19	30

Q. Now, during the war there was a period of four years when everything in that country was paralyzed?—A. Yes, sir.

Q. The churches were broken up and not held?—A. They were broken up.

Q. Some of them burned and destroyed?—A. Yes, sir.

Q. The whole church system was interfered with?—A. There was no Sabbath or preaching in that country during the war.

Q. After the war one of the first acts passed by our council was one inviting these religious denominations back into the country?—A. There was an act passed to that effect.

Q. The treaty provided for the reoccupation of the country and granted a certain amount of land to each, did it not?—A. One hundred and sixty acres, I believe.

Q. After the churches got back again, after having been invited by law and the treaty of 1866, they began to increase again?—A. Yes, sir.

Q. And increased as you have stated?—A. I think so.

Q. The cause of their decrease in 1861 was on account of the war?—A. I think it was on account of the war.

Q. The same cause that destroyed one-third of our people?—A. Yes, sir; during the war there was no church work. The demoralizing influences of the war were felt there as elsewhere. The people have been raised from this influence and are gathering strength.

Q. Did not the Cherokees, in the treaty of 1866, offer a premium for religion in that country?—A. They did. They gave to each religious denomination 160 acres of land.

Q. In pursuance with the provisions of that treaty, had not the council passed a number of laws, inviting all those religious denominations to come back into our country and resume their labors?—A. Yes, sir.

Q. They have come back again from time to time?—A. They have.

Q. Have we not one of the most stringent laws among our laws for the protection of religion (art. 22, page 138, Laws of the Cherokee Nation)?—A. The laws are very good, I believe, in the protection of people in their religious worship.

Q. Have they not a law subjecting a man to arrest for disturbing a religious assembly?—A. I believe they have.

Q. Is it not made the duty of the sheriff to prosecute such offenders?—
A. I think so.

Q. It is regarded as a high misdemeanor to disturb a religious meeting in that country, is it not?—A. It is.

Q. The statement you have made in reference to the Cherokee country is true of the other tribes, also? Are not the other tribes similarly situated as the Cherokees?—A. They are similarly situated, I believe. But I have not the church statistics of all the other tribes in the Territory setting forth the exact membership of all the other tribes. There are two mission schools in the Creek Nation doing well, and I also understand that their common schools are prospering. I find from the minutes of the general assembly of the Presbyterian Church that there are about seventy members of that denomination there, which is exclusive of the southern branch of the church. I believe that branch of the church is very much larger in the Creek Nation than the northern branch.

Q. You are pretty familiar with the religious sentiment in that country?—A. Yes, sir.

Q. You have stated they were doing well. Now, from your general knowledge of the religious associations in that country, what is your opinion of that sentiment in regard to territorializing that country?—
A. They are opposed to it, so far as I know.

Q. Have you ever seen a protest of the Baptist Church as directed to Congress?—A. I have.

Q. If you have it present it, and let it become a part of the record here.—A. I hold in my hand the minutes of the fourth meeting, since the war, of the Muscogee Indian Baptist Association, and here is a memorial protesting against any interference with the tribal organizations of that nation, or their laws, &c. I submit it, as follows:

“MEMORIAL TO THE CONGRESS OF THE UNITED STATES.

“The committee on memorial to the Congress of the United States reported:

“Your committee, to whom was referred your memorial to the Congress of the United States for examination and report, beg leave to submit the following:

“Having carefully examined it they recommend, after the guarantee quoted from the treaty with the Cherokees of May, 1828, that the following be inserted:

“‘And the 3d article of the treaty of 1856, between the Creeks and Seminoles, provides “that the United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the 1st and 2d articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either or any part of either ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same”’; and also in that part of the memorial relative to the wild tribes to insert after the word surveyed ‘whenever they desire it’; that the memorial be adopted. Brother Buckner at once accepted the amendment as suggested.”

"Memorial of the Muskoke (Creek) Baptist Association, praying for the perpetuity of the present treaty rights of the five civilized tribes, and for the adoption of measures for promoting the permanent welfare of all the Indians.

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

"The memorial of the managing board of the Muskoke Baptist Association respectfully sheweth :

"That the said association having been organized for the special purpose of promoting the civilization and Christianization of the Indians, by the fostering of schools, by the promulgation of the gospel, and in every other peaceful way, have, by God's blessing, so increased that we now number in the Creek Nation alone more than 2,000 members, 32 organized churches, and 29 ordained preachers.

"It must be known to your honorable body that other denominations also have rapidly multiplied their converts among these tribes, and other Christian associations have been, and that this prosperity in civil and moral reform, unprecedented in all the past history of the Indian race, is largely owing to their removal west of the Mississippi, where they have had a country of their own; to the hopes inspired by the assurance of an undisturbed possession of that country, as well as to a confiding trust in the guardianship of the United States Government.

"That the rapid advancement of these tribes is largely due to the causes mentioned, is evident from the known fact that those who were removed west of the Mississippi have far outstripped in the arts of civilization and comforts of life those that they have left behind. First, your petitioners respectfully ask that Congress will faithfully carry out the doctrine which led to the removal of the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws west of the Mississippi River. Your honorable body are aware of the troubles that existed previously to the removal of these tribes, in consequence of the fact that they then lived within the chartered limits of Georgia and other Southern States. The general government had, by former treaties, guaranteed them ample protection, but because they resided in States that wished to extend their law over them, or because it was wished that the Indian title to any lands within the States might be made void, great disturbances arose between the whites and Indians, and even threatened the amicable relations between the general government and some of the States. It was to allay these troubles, and to prevent their repetition even in the distant future, that President Jackson, in his message to Congress of the 8th December, 1829, after recommending the removal of the Indians, proceeds to say: "As a means of effecting this end, I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designed for its use. There they may be secured in governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth destined to perpetuate the race, and to attest the justice and humanity of this government." The design of which your petitioners speak was not only set forth in the

message of the President and in the reports of the committees, both of the House and of the Senate, but it was emphasized also in every treaty that you made with the several tribes. In your treaty with the Cherokees of the 6th May, 1828, the preamble recites: "Whereas it being the anxious desire of the Government of the United States to secure the Cherokee Nation of Indians, as well those now living in the Territory of Arkansas, and those of their friends and brothers who may reside in States east of the Mississippi, and who may wish to join their brothers in the West, a PERMANENT home, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever—a home that shall never in all future time be embarrassed by having around it the lines or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of our existing Territory." And the third article of the treaty of 1856 with the Creeks and Seminoles provides that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within or annexed to any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same. It is unnecessary for your petitioners to consume your time in quoting from the treaties made with the other two tribes, for it is well known to your honorable body that each and all of them pledged the faith of the government that, on condition they released all claim to their lands within the jurisdiction of the several States where they lived, and moved on lands west of the Mississippi, they should there have a country and a permanent home that should never "*in all future time* be embarrassed by having around it lines or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of our existing Territory."

Your petitioners could make up a whole volume of quotations of the same import, taken from the treaties, reports of House and Senate committees, and from expressed statements of all the eminent statesmen of those times, but we simply wish to quote enough to fasten the conviction upon your minds that the faith of the nation was then most solemnly pledged to the Indian policy which we wish to be *perpetual*—a policy that was both humane and honorable to you, and a policy under which the Indians have prospered in such a way as to draw towards them the attention and admiration of the civilized world. That distinguished statesman, John C. Calhoun, in his letter of January 24, 1825, expressed the sentiments of your petitioners far more forcibly than they could when he says: "One of the greatest evils to which they (the Indians) are subject, is that incessant pressure of our population, which forces them from seat to seat, without allowing that time for moral and intellectual improvement for which they appear to be naturally and eminently susceptible. To guard against this evil, so fatal to the race, there ought to be the *strongest and most solemn assurance* that the country given them should be theirs, as a permanent home for themselves and their posterity, without being disturbed by the encroachments of our citizens." He further recommended that the President be authorized "to convene, at some suitable point, all the well-informed, intelligent, and influential individuals of the tribes to be affected by it, in order to explain to them the views of the government, and to *pledge the faith of the nation* to the arrangements that might be adopted." (Emphasis ours.) The Hon. Mr. Calhoun, in the letter alluded to, was but expressing the views of all

the great men of those times. Only three days later, January 27, 1825, President Monroe took up the same sentiment in his message, and said: "The great object to be accomplished is the removal of those tribes to the territory designated, on conditions which shall be satisfactory to themselves and honorable to the United States. This can be done only by conveying to each tribe a *good title* to an adequate portion of land, to which it may consent to move * * * with a view to this important object." Monroe further said: "I recommend it to Congress to adopt, by solemn declaration, certain fundamental principles in accord with those above suggested, as the basis of such arrangements as may be entered into with the several tribes, to the strict observance of which *the faith of the nation shall be pledged.*"

We beg leave to quote next from the report of the Hon. James Barbour, Secretary of War. He says: "The principal recommendation of this plan, next to the advantages to be gained to ourselves, is that the future residence of this people will be *forever* undisturbed—that there, at least, they will find a home and a resting-place; and being exclusively under the control of the United States, and, consequently, free from the rival claims of any of the States, the former *may plight its most solemn faith that it shall be theirs forever*, and this guarantee is therefore given."

Your petitioners respectfully request that you note the frequent occurrence of the phrases "*theirs forever*," "*plight its most solemn faith*," "*the strongest and most solemn assurances*," &c. It occurs to us that there is no language or speech of babbling earth that can furnish words more definitely expressive than the ones used in the treaties, reports of committees, acts of Congress, &c., &c., granting to the Indians the territory which they now occupy, and *pledging the faith of the nation* that this should be for them "*a permanent home—a home that shall never in all future time be embarrassed by having around it the lines or placed over it the jurisdiction of a Territory or a State.*"

We will trouble you with but one other quotation, and this shall be from the report of the House committee, which was approved by President Jackson. In that report they say: "To give the experiment every advantage in the power of the government, their new country should be secured to them in such a manner that they would cease to be haunted with the prospect of future change of residence." Accordingly, in the bill which they reported, the third section reads: "*And be it further enacted*, That in making any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs and successors, the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same."

With profound interest in, your memorialists pray for the continuance and perpetuity of the policy which led to the settlement of the tribes in their present prosperous territory. That policy, which was adopted at a time when political corruption was little known, has succeeded even beyond the hopes of its most ardent advocates. The warriors with whom these treaties were made have fallen asleep, but they carried with them to their graves the plighted faith of your nation that their posterity should never have extended around them the boundaries of a United States Territory. The honorable statesmen who plighted to them the honor and faith of the United States have gone with them to the land of the Great Spirit. Since then, and in a wonderfully short time, tribes of hunters, under the guarantees given them that they were within a territory set apart exclusively and forever for Indian occupancy, excepting such white people as would be necessary to aid them in improvement, have

already become tribes of farmers and stock-raisers, and are advancing in civilization with astonishing rapidity. This thriving state of improvement, which is new in the history of Indians, could never have taken place had not a policy been adopted which promised to secure them in their possessions. Under the genial influences which have been brought to bear upon them, congregations have been assembled, churches formed, associations organized, sinners converted, and each succeeding year has been one of greater improvement than the one that went before.

Allow us to say, respectfully, that the passage of any Territorial bill contrary to the wishes of these Indian people, would be in open violation of your plighted faith, the forfeiture of your national character, and, more than this, it would spread ruinous effects among our people, as uncontrollable as the effects of the spark which ignites the grass on our extensive prairies.

Second. Your petitioners would respectfully show further that, being citizens and residents of this country, and having long watched with deep emotion the progress of the various tribes in the arts of peace and civilization, we are induced very respectfully to recommend a liberal and wise policy in reference to *the wild Indians*, or all other Indians not included in the Indian Territory. Everything done for them should have reference to their being soon thrown upon their own resources.

The whole system of annuities, especially of *per capita* payments, should be abandoned as soon as they can possibly rely upon their own industries; for, so long as they live in expectation of future support, it need not be expected that they will have regard to their own agricultural products.

Let their lands or reservations be surveyed whenever they desire it; let them have suitable guarantees that they will never be removed to other regions; let them be supplied with agricultural implements instead of instruments of war; let them have liberal school funds for the education of their children; and then have them to understand that they must work or perish, and that they must never more look beyond their own resources for support.

Your petitioners are fully satisfied that all Indians will soon become self-reliant and self-supporting, when a liberal, firm, and uniform policy is adopted. There is nothing half so much in the way of Indian reform and progress as their dread of having their country taken from them. Remove them from this dread; convince them that they will never be interfered with so long as they remain friendly, and they will at once advance in a manner more remarkable than has ever been known in the history of the Indian race.

With deep interest your memorialists would recommend liberal appropriations for the education in our own advancement. Argument is not within the province of your petitioners, and, if it were, they would, in this matter, forbear to indulge in it, but would barely refer to the known fact that no one is a born savage; that a savage state is the results of a dwarfed state of the human mind from the lack of education and moral culture; and especially would we respectfully refer you to the results of former appropriations for educational purposes in our Territory as the best recommendation for the appropriations prayed for.

As in duty bound, your memorialists subscribe most respectfully in behalf of the board.

WM. McCOMB,
President.

H. T. BUCKNER,
Corresponding Secretary.

Q. That memorial is in the nature of a protest to Congress, asking Congress not to disturb the government of those people there; not to put any Territorial government over them?—A. It is a protest against a Territorial government.

Q. That is in regard to the Baptist Church. Now, from your information of the other churches—the Methodist, Presbyterian, and all the other churches there—are they not opposed to a Territorial government of the United States being established over them?—A. They are.

Q. Have you ever heard any member of any of these churches express himself as being in favor of any change of that sort?—A. The white men who are employed by the different branches of the Presbyterian Church and under the Methodist Conference, and all the ministers with whom I am acquainted, look upon a Territorial government for the Indians as a destructive measure.

By the CHAIRMAN :

Q. The territorializing the country there?—A. Yes; this territorializing the country; the breaking up their present form of government.

Q. Why do they look upon it as being a destructive measure?—A. Well, in the first place, they believe any disturbance in the title they now hold to their land would ultimately result in the country being wrested from them.

By Mr. ADAIR :

Q. Then, if Congress should open the country to the settlement of the whites, they would be flooded out by the white people?—A. Yes, sir; that is it.

Q. The schools would be interfered with?—A. The schools would be interfered with, at least in so far as the Indians are concerned.

Q. The churches disturbed?—A. The churches disturbed. Yes, I think so; especially in so far as the Indians are concerned, it would, in my judgment, militate against them in every way, and I believe that is the opinion of most of the missionaries there. At least that is the way they have expressed their opinions on the subject to me.

By Mr. HUBBARD :

Q. Can you give the names of some?—A. In our church, Mr. Stoddard, of Fort Gibson; Mr. Thompson and Mr. Duncan, of the Methodist Church South; and Mr. Foreman, of the Presbyterian Church South. I believe all these men are opposed to a Territorial form of government for the Indians, as proposed in the Oklahoma bills which have from time to time been before Congress.

By the CHAIRMAN :

Q. Are they all Indians?—A. One is a white man; the others are Indians.

By Mr. ADAIR :

Q. Is not the Rev. Mr. Duncan opposed to it?—A. I believe him strongly opposed to a measure of that kind.

By Mr. HUBBARD :

Q. Is Mr. Daniel Rogers opposed to it?—A. I think he is.

By Mr. ADAIR :

Q. Is he not very much opposed to it?—A. I think he is. He is the head of the Baptist Church in that country, and I think he is opposed to a Territorial government for that people.

By Mr. HUBBARD :

Q. You say he is opposed to it ?—A. Yes, sir ; I think he is.

By Mr. ADAIR :

Q. He is opposed to a Territorial form of government of the United States being established over that country ?—A. That is my opinion.

By Mr. HUBBARD :

Q. Has he ever told you so ?—A. In my conversations with him it has been my understanding that he would regard the matter of putting the Indians under a Territorial government as destructive to them.

Q. What has he ever said to you in regard to it ?—A. Well, it is my understanding, from conversations I have had with him, that he would regard a Territorial form of government as prejudicial to the best interests of that people.

By Mr. ADAIR :

Q. The Cherokee agent is opposed to it, is he not ?—A. I do not know positively. I am not personally acquainted with him, and therefore cannot speak positively on that subject.

Q. Is he not opposed to it ?—A. I have heard that he was.

Q. Did not the Cherokee chief issue his emancipation proclamation before President Lincoln issued his ?—A. Yes, sir.

Q. Have the Cherokees ever pretended to claim any pay for negroes ?—A. They have not, so far as I know.

Q. About how many slaves did the Cherokees have—between 4,000 and 5,000 ?—A. I do not know the number. I suppose so.

By Mr. GRAFTON :

Q. Do you think the allotment of the lands in severalty among the Indians would tend to improve the Indians individually, or create a greater incentive to industry among them ?—A. I do not think it would, so far as a majority of the people are concerned.

Q. Do you think any law or other form of government different from that you now have could receive the approval of the Christian forces among your people ?—A. I do not.

By Mr. HUBBARD :

Q. Do you think Mr. Rogers is opposed to a change ?—A. That is my opinion. I think he is opposed to Territorial government for the Indians as is proposed in the Oklahoma bills.

Q. Is that your understanding ?—A. That he is opposed to a Territorial form of government in the Indian Territory.

Q. You understand that Mr. Rogers thinks as you do ?—A. I think he does on this subject.

Q. You understand the others do ?—A. I believe that the persons I have named are opposed to the establishment of a Territorial government over the Indians.

Q. You understand that the Home Board think so ?—A. I do not know what the Home Board thinks.

Q. Have you ever talked with Mr. Rogers about the allotment of the lands in severalty ?—A. I have not talked with him in regard to the allotment of lands, but about the territorial bills which have been pending before Congress, which are different in their nature, materially different from allotment.

Q. Do you know what his views are in regard to the allotment of lands ?—A. I do not know.

Q. Do you know what the views of the other missionaries are in regard to the allotment of lands?—A. I do not remember that I ever heard any of them speak of the allotment of the Indian lands.

Q. That is dividing them in severalty?—A. I do not know that I ever heard them say anything about that matter.

Q. You never heard them say that such a course should be taken?—A. No, sir.

Q. Never heard Mr. Rogers?—A. Never heard Mr. Rogers.

By Mr. ADAIR:

Q. Have you read the treaty of 1866 pretty carefully?—A. I have.

Q. Does not that treaty provide that our lands may be allotted and distributed among our people whenever our national council shall so request?—A. It does.

Q. And that it shall be done at the expense of the United States Government?—A. It provides that it shall be done at the expense of the United States Government.

Q. There are some few people who favor sectionalizing the lands. Is it not your understanding that they do so in the hope of keeping off the Territorial government?—A. That is my understanding.

Q. You know of no one who is in favor of a Territorial government, which is a separate question from the allotment of the lands?—A. I have never heard of any who were in favor of the Territorial bill; such, for instance, as the Franklin bill, and others of like character. I always regarded the two questions as separate and distinct propositions.

Q. That the allotment of the land and the Territorial bills are two different things?—A. I have never heard of any one advocating the passage of a Territorial bill, such as is now pending before Congress.

By Mr. GROVER:

Q. Is there some arrangement now whereby families becoming located upon some other man's land can be removed?

WITNESS. How is that question?

Mr. GROVER. Do they farm on the specific lands they hold all the time?—A. On their claim.

Q. Who allots this claim?—A. They are permitted to locate a claim anywhere, so they do not interfere with a prior claim.

Q. Are they limited by public authority?—A. I think they are.

Q. Is there any public record of them?—A. They are not allowed to locate a claim within a quarter of a mile of the improvements of another person.

Q. How is this allotment maintained; is there any record of it?—A. I think they record their claim.

Q. They make a record of it?—A. Yes, sir; I think so.

By Mr. ADAIR:

Q. Have we not laws in regard to the public domain?—A. Yes, sir.

Q. Have we not laws in our statute-book providing that any citizen of the country can make a farm, houses, &c., anywhere inside the nation, provided he does not come within a fourth of a mile of some other person?—A. That is my understanding of the law.

Mr. HUBBARD. Give the reference to the laws.

Mr. ADAIR. It is an act regulating the settlement on public domain, found in the appendix to the Laws of the Cherokee Nation, page 249.

By Mr. ADAIR:

Q. Under that law, and in view of our constitution, the improve-

ments made on the land by a citizen of that country are the indefeasible property of him who made them or may rightfully be in possession of them?—A. They are.

Mr. ADAIR. For the gratification of Mr. Hubbard I will read that provision of the constitution of the Cherokee Nation:

"ARTICLE 1, section 2. The lands of the Cherokee Nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens respectively who made or may rightfully be in possession of them: *Provided*, That the citizens of the nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this nation and become a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease:

"Provided, nevertheless, That the national council shall have power to readmit, by law, to all the rights of citizenship, any such person or persons who may at any time desire to return to the nation, on memorializing the national council for such readmission.

"Moreover, the national council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper, to prevent citizens from monopolizing improvements with the view of speculation."

Mr. ADAIR (to the witness):

Q. That is the fundamental law of our country?—A. Yes, sir; I believe it is.

Mr. HUBBARD. Is there any other provision beside that?

Mr. ADAIR. Yes, sir.

By Mr. ADAIR:

Q. Under that provision of the constitution have we not (in pursuance to this provision of the constitution) a statute law on the subject?—A. We have.

Q. Laws, for instance, in regard to the public domain?—A. We have. (Appendix, p. 249, Laws Cherokee Nation.)

Q. Under the general tenor of those laws cannot any citizen locate himself a residence or farm anywhere within the confines of the Cherokee country, provided he does not settle or erect any improvement within one-fourth of a mile of the house, field, or other improvement of another citizen?—A. That is my understanding of the law.

Q. This personal property, viz, the improvements made in pursuance of the article of the constitution I have read and the laws referred to, are the exclusive property of the person who makes them or who may rightfully be in possession of them?—A. Yes, sir.

Q. The same as they own their horses, cattle, and other property of that description?—A. I so understand it.

Q. If a man dies owning a lot of cattle, live-stock, sheep, hogs, &c., together with the improvements, does not his administrator, according to law, administer upon them the same as he does upon other property?—A. He does.

Q. He makes a schedule of the property of the deceased?—A. That is the case.

Q. And files a bond for the safe-keeping of that property?—A. Yes, sir.

Q. That is so, is it?—A. That is so.

Q. So that a man is protected in his land, and no other person is permitted to settle or erect any improvements within one-fourth of a mile of his house, field, or other improvements, without his, her, or their consent, under the penalty of forfeiting such improvement and labor for the benefit of the original settler?—A. No; I believe it cannot be done without his consent.

Q. He has the possession not only of the improvements but also of the land to the extent of a quarter of a mile around him?—A. I think he has.

Q. The same as if he actually owned the land; he has the right to cultivate it, and he has the right to use the proceeds of it without any molestation whatever?—A. I so regard it.

Q. In this view of the subject has not every Cherokee equal rights; there is no class legislation?—A. No class legislation.

By the CHAIRMAN:

Q. In case of the death of a man owning property, can his children go on and occupy the same property?—A. I have known them to do so, and their full right and title to such property has never to my knowledge been disputed.

By Mr. GROVER:

Q. They inherit the possession of the land as well as the improvement?—A. Yes, sir; I have known a son to go upon the land of the father.

By the CHAIRMAN:

Q. They go on the same as if the fee had been in the father?—A. Yes, sir.

Q. Suppose the estate should be in debt, do they sell the lands with the improvements—I mean the possessory rights of the deceased?—A. The house can be sold, and other property, to meet liabilities.

By Mr. BOUDINOT:

Q. I suppose you are not a lawyer?—A. No, sir.

Q. Ever attended the courts there much?—A. No, sir.

Q. You seem to be pretty well posted on this subject. Now, suppose you have a farm one mile away from the improvements of anybody else, and you rent that farm to somebody else, and you go away for a year or two; during your absence Mr. Adair builds a house within one-fourth of a mile of your improvements, thereby intruding upon you. You give him notice that he is a trespasser, and he refuses to remove and remains there. How are you going to vindicate your rights?—A. I can only give you my opinion with regard to the matter, for I have had no experience in anything of that kind. I suppose recourse would be had to law through the common courts of the country. If not, there is no way of securing redress that I know of.

Q. What is the limitation; that he must bring a suit to dispossess a person within a year?—A. Yes, sir; I would state that an undisputed possession for two years secures the right of title or possession. I think it is two years.

By Mr. ADAIR:

Q. Under the law with regard to the improvements there is this difference. For instance, we have a certain amount of property that is exempt from seizure for payment of debts; that is to say, a certain number of cattle, hogs, horses, &c., cannot be seized for the payment of

a debt. They are kept for the protection of the family and the children. Is not that the law?—A. In making the statement that this property could be sold for debt I should have secured to the person all that the law allowed him before the sale.

Q. Our law exempts this property from execution and sale?—A. Yes, sir.

Q. And all above this certain amount that is exempted may be issued upon for the recovery of a debt?—A. That is the law.

Mr. ADAIR. Chapter 9, on page 177, Laws of the Cherokee Nation, contains "An act relating to administrations":

"Art. 1. Letters of administration, executor, and guardianship.

"Art. 2. Relating to minors.

"Art. 3. Relating to wills.

"Art. 4. Descent of property."

MONDAY, May 6, 1878.

J. B. BRYAN sworn by the chairman and examined.

By Mr. ADAIR:

Question. Will you please state to the committee how long you have been in the Cherokee Nation?—Answer. I have lived with the Cherokees about sixty years.

By the CHAIRMAN:

Q. Sixty years?—A. Yes, sir; I have lived in the present Cherokee Nation forty-six years.

By Mr. ADAIR:

Q. You emigrated from the east to the west with the Cherokees?—A. Yes, sir.

Q. With those who are known as the old original Cherokees?—A. Yes, sir; I belong to that party.

Q. You have been living in that country ever since?—A. Yes, sir, ever since; for forty-six years.

Q. What has been your occupation generally?—A. Well, it has been diversified; I have been farming, stock-raising, and merchandising.

Q. You are something of a lawyer?—A. Yes, sir; I practice some in Indian law.

Q. In your general avocations, have you not traveled over the Indian Territory pretty thoroughly, and over the Cherokee country?—A. A great deal.

Q. You are well acquainted generally with the leading men of the country?—A. Yes, sir; with pretty much all of them.

Q. At the present time, what is the situation of that country—generally peaceful—the laws executed, &c.?—A. I think they are well executed and peace reigns over the country.

Q. Our code of laws, from your observation, is generally a pretty good code as compared with those of the States?—A. Well, I think they protect persons and property as well as the laws of any States.

Q. We have a pretty good code of penal laws, have we not?—A. I think so, sir; I think they are very good.

Q. We punish with capital punishment and we have prisons to put our offenders in, have we not?—A. Certainly.

Q. State whether we punish anybody or not.—A. So far as my impression goes, I think the laws are well executed.

Q. They punish more or less for crimes, and they have put several in prison?—A. Yes, sir.

Q. How many?—A. Quite a number since the jail was erected.

Q. Occasionally they hang a man?—A. Certainly.

Q. The population of our country is on the increase, is it not?—A. I think it is at present.

Q. At the close of the war, what number did we have—was it not about 13,000 persons?—A. I do not remember the number exactly.

Q. It is somewhere in that neighborhood, according to General Craig's estimate?—A. I do not remember; I was not in the country at the close of the war.

Q. At the beginning of the war did not the Cherokees have 20,000 people?—A. I think it was estimated to be that. I do not remember exactly, but it was close on to 20,000 people.

Q. You understand they lost by the effects of the war somewhere about one-third of the population, do you not?—A. I have been told that those who went north lost more than those who went south; but as to the number I cannot say.

Q. What is the population of that Cherokee country now?—A. I think over 19,000.

Q. Somewhere in the neighborhood of 20,000?—A. Yes, sir; I think so.

Q. The material industries and wealth are on the increase since the war?—A. Yes, sir; very much.

Q. The people in that country live by cultivating the soil and not by fishing and hunting?—A. I think they live altogether by their own industry—nearly so.

Q. Within your knowledge and observation traveling through the country, conversing with the leading men of the country, is it not your impression that every family cultivates more or less of the soil?—A. Yes, sir.

Q. Have more or less stock—cattle, &c.?—A. Yes, sir.

Q. Live mainly in that way?—A. Yes, sir; live mainly by stock-raising and small farms.

Q. There are some very large farms in the country?—A. Yes, sir; a great many.

Q. Will you state to the committee how the Indians stood previous to the breaking out of the war in regard to their affairs; that is, whether they were prosperous, wealthy, &c.?—A. Yes, sir; they owned their stock, farms, &c.

Q. Could you give an idea about the number of live-stock we had when the war commenced? Was it not a common thing for some men to mark six hundred calves every spring?—A. There were some very large stock-farms in the country; they often ran up to twenty-five or thirty thousand, and of course they would mark from four to six hundred calves.

Q. Where they had those large herds, every farm had more or less stock?—A. Yes, sir; a large amount before the war, and when the war closed there was but very little. I did find but very little. I had three or four thousand myself.

Q. Was not that the case with everybody else?—A. Yes, sir; in proportion to what they had.

Q. Most of their stock driven off—improvements burnt up and destroyed, &c.?—A. Almost everything destroyed in the country, fences, buildings, &c.

Q. Now they are self-sustaining?—A. They are shipping immense amounts of live-stock, wheat, &c., to Saint Louis.

Q. They support themselves by their own industry?—A. Yes, sir.

Q. We have no annuity fund disbursed among our people?—A. None that I know about.

Q. How are our schools doing?—A. Very well.

Q. They have been increasing since the war?—A. Every year since the war; yes, sir.

Q. You are very well acquainted with the people, both full-blood and half-breeds; if you know of anybody in that country in favor of a territorial form of government for that country, will you please state who he is?—A. I do not think there are very many in the country who would be in favor of such a measure.

Q. Do you know of any one in favor of such a change?—A. I do not know that I do. They have never told me so.

Q. They never told you; certainly you would have if they had an idea?—A. Yes, sir.

Q. How many do you think would cover the number in the Cherokee Nation?—A. Very few.

Q. Half a dozen?—A. I hate to give a specified number, but it is very few.

Q. Not over a dozen?—A. Very few, indeed.

Q. Don't you think the present system of holding lands in common, from the fact that our people are a stock-raising people, is the best system for the Indians as they are; their lands being held in common, their country being in common, their stock can range over the whole?—A. I think a territorial form of government for the Indian country would be injurious.

Q. As a general thing it would be injurious?—A. Yes, sir; at the present time it would be.

Q. The treaties provide that our lands may be sectionalized at the expense of the United States whenever the national council calls for it?—A. Yes, sir; certainly.

Q. There has never been any such question raised in the council, has there?—A. No, sir: I have never heard of any such question being raised in the council.

Q. Never heard of the question being agitated in the council?—A. No, sir; not that I now remember.

Q. They seem to be satisfied with the present manner in which they hold their lands?—A. Yes, sir; I think they depend mainly upon the treaties.

By Mr. GARLAND:

Q. Have you ever read the bills—the Oklahoma bills, so called—introduced into the House of Representatives?—A. I expect I have.

Q. What is your opinion of the effect they would have if a government was instituted upon the theory contemplated in those bills—that is, what is meant by territorializing that country?—A. Well, so far as I have examined those bills, I do not see any protection in them for the Indians.

Q. What is the opinion of the people of the propriety of the passage of these bills as affecting them?—A. I do not think there would be many in favor of them, and there would be a very large majority who would not agree to it.

Q. You have heard the matter discussed among them; have had con-

versations in reference to these bills, and the theory of these bills?—A. Yes, sir.

Q. Is there a clear distinction in the minds of your people between the allotment of lands and the matter of territorializing the country, or do they confound the two together?—A. Yes, sir; they understand it to be two questions.

Q. They so understand it to be two questions?—A. O, yes, sir.

By Mr. BOUDINOT:

Q. You say the population is about 19,000?—A. Yes, sir; I think about that number.

Q. Will you state to the committee the character of that population—that is, how many are negroes who compose the 19,000?—A. I think there are somewhere near two thousand negroes in the country.

Q. How many white men?

The WITNESS. How many white men who are married?

Mr. BOUDINOT. White population without rights.

A. I should think somewhere near 500.

Q. How many Delaware Indians, Shawnee, &c., are comprised in that 19,000?—A. I have not got the number of them exactly.

Q. Approximate it.—A. Well, really I do not know.

Q. About 1,500?—A. I do not think there is.

Q. These have all come in since the war—these Delaware and Shawnee Indians, negroes, &c.?—A. Yes, sir; they have become incorporated in the nation since the war.

Q. But the negroes were there before the war?—A. Yes, sir; I think the treaty of 1866 made them citizens, but they are the same negroes that were owned there before the war.

Q. They have become citizens since the war, and the Delaware and Shawnee Indians, &c., have come in since the war?—A. Yes, sir.

Q. What is your estimate of the mixed-bloods as compared with the full-bloods—both speaking English?—A. I suppose about one-fourth.

Q. Do you suppose that the negroes, mixed-bloods, Delaware Indians, who talk English, would be equal to the full-blood population?—

A. O, no; I think not.

Q. That is your opinion; you think not?—A. I think not; yes, sir.

Q. What is their intelligence as compared with the border States?—

A. Well, the people are very intelligent.

Q. As to the tribe Indians, do you think they compare favorably with the border counties? I am speaking of those who talk English.—A. Yes, sir; they have a law to protect themselves.

Q. Capable of taking care of themselves?—A. Yes, sir.

By the CHAIRMAN:

Q. You think they are as capable as citizens living in the adjoining States? I mean those who speak the English language.—A. Yes, sir; if they have a law to protect themselves.

Q. If they owned property, you think they could take care of it as well as anybody else?—A. Yes, sir; if they have a law to protect them in it.

By Mr. BOUDINOT:

Q. Do you know anything about the petition of the Delaware Indians to separate themselves from the Cherokees?—A. I do not know that I have ever seen such a thing. I have heard it spoken of.

Q. Do you know upon what grounds they petitioned to be separated?—A. No, sir; I do not know what their grounds were, but I have heard

it spoken of that they wanted a section of ground for themselves in the western portion of the Indian country.

Q. Where do you live?—A. I live on the Grande River, about 25 miles north from Fort Gibson.

Q. Do you live upon the railroad?—A. Yes, sir.

Q. Do you own a place on the railroad?—A. Yes, sir; I live at Chouteau.

Q. After you made your improvements, was the railroad built up through there?—A. I commenced improving before the railroad was finished up there, and then they made a depot at my place.

Q. Did the national authorities take any of your lands for the purpose of dividing them into town-lots?—A. By an act of the council they laid out town sites.

Q. Did they ever pay you for it?—A. No, sir; not yet—it is still unsettled.

Q. You have no remedy in the courts, have you?—A. Well, I think there is a law that provides for a remedy now, but there was none at the time for bringing suit against the nation. I do not remember positively.

Q. Were you a member of the grand council?—A. No, sir.

Q. Do you know whether the grand council adopted a resolution for a general government over the Indian country or not?—A. If they did I do not know of it.

Q. Never knew there was a constitution adopted by the council and referred to the Cherokee Nation for ratification?—A. I understood there was one drawn up, but not adopted.

Q. Not adopted?—A. That is my understanding of the matter; perhaps I am wrong.

Q. You do not know whether the Cherokee council considered it or not?—A. No, sir; I was not at the grand council during all its sittings.

Q. Don't you think you would be benefited by having your lands divided up in severalty?—A. That would be owing to a contingency altogether. If we can hold our lands without danger of the railroad monopolies taking them, we would rather have them as they are, but to save them from the railroads, we want them allotted.

Q. You say there are very few in the Indian Territory in favor of a territorial form of government; don't you know that the popular impression, especially among the more ignorant classes of the Cherokee Nation, is that white men will take away their land from them and give it to the railroads?—A. That is what they think.

Q. What is the popular impression?—A. The opinion is that whenever a Territory is made the country will be filled up with white people, and that the railroads will get the lands from the people.

Q. Don't you think there is quite a number who are really in favor of dividing the lands in severalty?—A. Well, there is quite a number who think it would be more secure, but if they knew that they could hold the lands without the railroad land-grants being complied with, I do not think but very few would want a change.

Q. You think the Cherokees generally would be willing for Congress to organize a government in accordance with the treaty of 1866, provided it did not disturb their tribal organization—that is, to have a grand Indian council, &c.?—A. My understanding is that they want a grand Indian council and the United States courts.

By the CHAIRMAN:

Q. In the Indian Territory?—A. Yes, sir.

Q. Do they want a Delegate in Congress?—A. I do not think they do. I have heard that question argued but very little.

By Mr. BOUDINOT:

Q. You do not know whether they would object?—A. I do not know that they would object. I have never heard it argued.

By the CHAIRMAN:

Q. Do you know that there are some there who would like to come to Congress?—A. O, yes, sir; I suppose so.

Q. You think they are in favor of a grand council?—A. Yes, sir; in favor of a grand council, and the establishment of the United States courts in that country.

By Mr. ADAIR:

Q. Is not the grand council already established?—A. It is my understanding that it was established by the treaty of 1866.

Q. Was it not put into operation in the year 1869, according to the treaty of 1866, and did not our council pass a law electing members to that council?—A. Yes, sir; members have been elected several times to those grand councils.

Q. That council was organized in the year 1869, and then did not Congress pass an act in 1876 legitimizing it by making an appropriation to pay the expenses and by specifying that tribes other than the five civilized tribes should be represented?—A. It is my understanding that it was so organized.

Q. And it is composed now of nearly 30 tribes?—A. I think it has that number now.

Q. But I mean in the end that we connected those wild tribes with the council, and it was recognized by the government making an appropriation for the expenses. Is it not your understanding that that is a general Indian council already established?—A. That is my understanding.

Q. And that the Cherokees and other tribes have representatives there?—A. That is my understanding.

Q. The 12th article of the Cherokee treaty of 1866, provides that there shall be a census taken of that nation as well as the other Indians; it says:

1st. "After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe, lawfully resident in said Territory, shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

2d. "The first general council shall consist of one member from each tribe and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively, who may to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and

declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the person entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action; provided, that no session in one year shall exceed the term of thirty days; and provided, that special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interest of said tribes shall require such special session."

Q. Under this provision of the treaty assigning representatives to that council is not the census provided for in this same treaty to be taken? Is it not your understanding that that census was taken?—A. Yes, sir.

Q. And that the Cherokees had the number of representatives apportioned to them in pursuance of that census?—A. O, yes, sir.

Q. And in pursuance of that act of the government the Cherokee council passed a law providing for these representatives in that council?—A. Yes, sir.

Q. Are not the election-rolls presented to the executive, and does he not in pursuance to them issue the commission to these members?—A. Why, I suppose so. I have often voted for the members to be sent to the grand council.

Q. They were generally elected with the other members?—A. Yes, sir; except one, who was elected by the national council.

Q. It is an Indian legislative body?—A. That is my understanding.

Q. Composed of Indian representatives?—A. Yes, sir.

(At this point the committee took a recess until 1 o'clock p. m.)

After the recess:

PETER P. PITCHLYNN, having been duly sworn, testified as follows:

By Mr. GARLAND:

Q. Do you know how much money has been expended by the Choctaw Nation for maintaining delegates here within the last five years?—A. No, sir; I have spent none myself, nor have I received any from the nation, but have paid my own expenses.

The WITNESS. Before proceeding with my examination, I want to present a short reply to the remarks of Mr. Boudinot in his argument. I have them written out and would like for them to be read, and then put in as part of my evidence.

Mr. GARLAND. You desire to make this statement as a special argument in answer to the following paragraph contained in the argument of Mr. Boudinot, found on page 29 of the argument delivered on the 29th of January, 1878, before the Committee on Territories of the House of Representatives, the committee having under consideration House bill No. 1596:

"There is another measure provided for at length in the treaty, which is also submitted to your decision, and in favor of which the undersigned most earnestly counsel you. It is the survey of our lands on the principle adopted in the United States, with a view to holding hereafter lands in severalty, and not as now, in common. We are already two civilized communities; but the step in advance which we will make when our lands are surveyed will be greater than any which we have yet taken in this direction. The system has been carefully matured in the treaty in its application to our peculiar circumstances, and without

going into details, which you will see when you read the treaty, we recommended it to you for adoption. The experience of the last five years has shown how insecure is the title to lands held in common. Let us be wise and guard the future."

The WITNESS. Yes, sir; and I would ask Mr. Grafton to read the statement in the hearing of the committee.

Mr. Grafton read the statement, which is as follows:

"WASHINGTON, May 3, 1878.

"TO THE CHAIRMAN

of the Senate Committee on the Territories:

"SIR: In a printed copy of an argument of E. C. Boudinot addressed to the Committee on the Territories, I find an extract from a letter signed by the Chickasaw governor, Winchester Colbert, and myself, on the 12th July, 1866, recommending the survey and partition of the Choctaw and Chickasaw lands. That letter was prepared by the delegates who negotiated the treaty of 1866, and was brought to us for signature. Its object was to explain to our people the difficulties that had to be encountered, and to show them that the treaty was the best that could be obtained under the circumstances. No part of the letter was written by us; but there was nothing in it that we disapproved of at the time, and we therefore signed it cheerfully. The clause Colonel Boudinot quotes in favor of surveying lands and holding them in severalty expressed an opinion I then held and believed in. I had met some very intelligent Wyandotts in Washington who had incorporated that principle in a treaty with the United States, as they then thought greatly to the advantage of their people. Some time after the war, I think in 1867 or 1868, I saw the same men again, and from them learned the disastrous consequences of dividing their lands, and afterward heard similar accounts from the Pottawatomies. I became satisfied that the safety of our people depended upon their resisting and preventing any such measures, and said so in a letter to them published in 1870. When the address of Governor Colbert and myself was signed, neither of the acts granting lands to the railroads in the Indian country had been passed. The fact that such grants existed, and the efforts of certain speculators to obtain land concessions from the general councils of the Choctaws and Chickasaws, aroused the Choctaws to a sense of their danger, and caused the general feeling of opposition to any step whatever toward the ruin which had befallen their brethren in Kansas. Colonel Boudinot knew that I had changed my opinion on this subject, for I so informed him in reply to a question he asked me in the presence of the House Committee on Territories some three years ago. He is also aware that I have uniformly, for the last eight years, opposed to the best of my ability every measure proposing either a Territorial government or a division of lands.

Very respectfully, your obedient servant,

P. P. PITCHLYNN.

The WITNESS. And in this connection, as expressing my views on this subject, I desire to present the following statements for the information of the committee:

"REMONSTRANCE OF THE CHOCTAW DELEGATES."

"To the President of the Senate and the Speaker of the House of Representatives:

"The undersigned delegates, representing the Choctaw Nation, beg leave respectfully to call attention to the subjoined remonstrance, sub-

mitted by them on the 2d May last, against the passage of Senate bill No. 680, for the relief of certain persons of African descent, and also to the answer thereto of the Secretary of the Interior, bearing the same date.

"The bill in question, the remonstrance, and the reply of the Secretary, all relate to the provisions of the third article of the treaty of April 8, 1866, with the Choctaws and Chickasaws, which article is recited at length in the remonstrance.

"The chief objections to the bill were:

"First. That it violated the treaty in this: that the treaty, in enumerating certain privileges which might be granted to the freedmen among them by the Choctaws and Chickasaws, expressly excepted any share of their 'annuities, moneys, and public domain'; while the bill, professing to be founded upon the treaty, overrides and annuls it, by giving them an equal share in such 'annuities, moneys, and public domain.'

"Secondly. That the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations had already been conferred by the Chickasaws, and would long since have been conferred by the Choctaws but for the fact that the freedmen residing among them had uniformly expressed their unwillingness to be placed on the footing of Choctaw citizens. This fact, obviously of the utmost importance in considering this question, the Secretary ignores, although it was officially ascertained and reported by one of his subordinates, and is well known to every one, white, black, or red, in the least familiar with the subject.

"As to the first objection the Secretary says: 'The Choctaw and Chickasaw Nations are under treaty obligations to secure to these people the rights, privileges, and immunities of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong and a great injustice, which should be speedily corrected.' A glance at the third article of the treaty will show that no such obligation is imposed upon or assumed by the Choctaws and Chickasaws. The treaty simply presents to the two nations the alternative of granting or not granting such rights and privileges, specifying what is to be done on the one hand in case they do grant them, or on the other in case they do not grant them, and what, in the latter event, is to be done by the United States. But, says the Secretary, 'ought these people to have an actual right in the annuities and public domain of the Choctaw and Chickasaw Nations?' Let us see. The present annuity-fund of these nations amounts to about one hundred dollars per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under conditions, one hundred dollars per capita, and this is about what the three hundred thousand dollars amounts to. "By the second section of the bill objected to, this three hundred thousand dollars is to be invested and paid in trust for the use and benefit of the Choctaw and Chickasaw Nations, so that these persons of African descent will bring to the trust-fund of said nations a sum per capita equal to the amount per capita of the present annuity trust-fund of these nations.' The \$300,000 which the Secretary says, 'these persons of African descent will bring to the trust-fund of said nations,' is specified in the third article of the treaty as the price of certain territory west of 98° 'known as the land-district,' therein ceded by the Choctaws and Chickasaws.

"This district, embracing the country between 98° and 100° of west longitude, south of the Canadian and north of Red River, extends 110

miles east and west, and on an average over 100 north and south, and consequently contains upward of 11,000 square miles, or over 7,000,000 acres of land. It was leased to the United States by the ninth article of the treaty of June 22, 1855, for certain purposes and under certain restrictions therein specified, which practically left the ownership with the Choctaws and Chickasaws, who retained the right of settlement and occupation.

"For this lease the United States paid in 1855 \$400,000, the treaty providing \$800,000, the other \$400,000 being the claim of the Choctaws for lands west of the 100th meridian, conveyed to them by the treaty of 1820, which grants all the country lying between Red River and the Canadian from the mouth of the latter to its source.

"When the government wanted to extinguish the title of the Choctaws and Chickasaws to the leased district, in 1866, the undersigned, P. P. Pitchlynn, objected to the proposed price as wholly inadequate, the \$300,000 added to the \$400,000 previously paid, making in all \$700,000, or ten cents an acre for 7,000,000 of acres of territory well known to be every way superior in value to the country the United States was then purchasing from the Seminoles at fifteen cents an acre, and at least equal to what they were buying from the Creeks at thirty cents. This inadequate price of the property of the Choctaws and Chickasaws is the sum which the Secretary says 'these persons of African descent will bring to the trust-fund of said nations,' and this disposition of a scanty allowance for our own territory, 'it seems' to the Secretary, 'answers satisfactorily the objection to this bill, so far as it relates to the rights of the Africans to the annuity-funds of the Choctaw and Chickasaw Nations.' 'But the bill,' he adds, 'also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in common; the treaty contemplated making the Africans citizens with equal rights and privileges with the Choctaws and Chickasaws, and upon this principle, in justice and equity, the common property of the nation should belong as much to the Africans, made citizens, as to the native-born citizens of said nations.' Whatever the treaty may 'contemplate,' it expressly excepts the equal share in lands and in place thereof gives each freedman forty acres. The treaty either is or is not the governing rule. If it has any force at all in the matter, it settles the whole question by restricting the freedmen to forty acres of land apiece, and by excluding them from any share in the public funds.

"If it has no force, if it is not entitled to consideration, why refer to it at all? Why not say in so many words, 'These freedmen have always lived in the Indian country and want so much Indian money and land; therefore be it enacted that they shall have it.'

"The Secretary says the argument against this provision drawn from a pretended analogy between this case and that of the liberated slaves of the Confederacy does not rest upon a solid foundation. The treaty gives each of our freedmen forty acres of land, which the bill in effect increases to 480. We objected that no such provision had been made for the liberated slaves of the Confederacy; that no land had been given them, not even 40 acres, much less 480. That is the simple truth whether the foundation it constitutes is solid or not. The 'analogy' only fails in this, that ample provision is proposed to be made at our expense for our freedmen, while no provision at all has been made for the freedmen of the Confederacy. The Secretary intimates that there is something in the manner in which our national property was

acquired and in the extent of the improvements made by the freedmen and in their additions to our wealth, which, altogether make the provisions of the bill only a matter of justice. Precisely what he means by any of these intimations it is not easy to understand. It probably would not be easy for him to explain. But it is easy for any one to ascertain, by consulting the treaties, 'the manner in which the Choctaw and Chickasaw Nations acquired their property'; that they had full value for all they possess, and that the freedmen had nothing to do, directly or indirectly, with the acquisition.

"It would be equally easy to ascertain by inquiry and inspection on the spot in each case that the improvements made in our country by the freedmen are not equal in proportion to their numerical strength.

"In conclusion we desire to repeat emphatically, in reply to the charge so strongly urged by the Secretary, of injustice on our part, in withholding the rights and privileges of citizenship and suffrage, that up to this day the freedmen have never indicated, directly or indirectly, to any of us that they desired such rights, but, on the contrary, have uniformly expressed their wish to remain under the exclusive jurisdiction of the United States. If they had really wanted the privileges specified in the treaty, they could long since have secured them.

"All of which is respectfully submitted.

"P. P. PITCHLYNN,

"*Delegate of the Choctaw Nation.*

"WILLIAM ROEBUCK,

"McKEE KING,

Special Delegates,

"By P. P. PITCHLYNN.

"WASHINGTON, June 12, 1874."

List of papers accompanying foregoing memorial.

- A. Letter from Acting Secretary Cowen to Hon. J. G. Blaine.
- B. Copy of Senate bill No. 680.
- C. Remonstrance of Choctaw delegates against passage of Senate bill No. 680.
- D. Reply of Secretary Delano to Choctaw remonstrance.

A.

TREATY OF THE CHOCTAW AND CHICKASAW INDIANS.

"*Letter from the Acting Secretary of the Interior, in relation to a treaty made with the Choctaw and Chickasaw Indians, April 28, 1868.*"

"DEPARTMENT OF THE INTERIOR,

"*Washington, D. C., April 4, 1874.*

"SIR: I have the honor to invite your attention to articles second and third of a treaty made with the Choctaw and Chickasaw Indians April 28, 1866. (Stat. at L., vol. 14, p. 769.)

"The second article of said treaty provides for the abolition of slavery. The third article of the treaty provides that in consideration of the sum of \$300,000 to be paid to said Choctaw and Chickasaw Indians by the United States, the said Indians agreed to cede to the United States that territory west of the 98th degree of west longitude

known as the leased district, said sum of money to be invested and held by the United States, at an interest of not less than 5 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 might be necessary to give all persons of African descent, resident in 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. That treaty also provided 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 lands, after the said Indians and the Kansas Indians had made their selections as elsewhere provided. Immediately upon the enactment of such laws, rules, and regulations by the legislative councils of the Choctaw and Chickasaw Nations, the said sum of \$300,000 was to be paid to the said Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter, deducting therefrom such sum, at the rate of \$100 *per capita*, as should be sufficient to pay such persons of African descent, before referred to, who, within ninety days after the passage of such laws, rules, and regulations, should elect to remove, and actually remove from said nations, respectively. Said article 3 furthermore provides that should such laws, rules, and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of said treaty, then the said sum of \$300,000 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 agreed, in said article, within ninety days from the expiration of the said two years after the enactment of said laws, to remove from the said nations all such persons of African descent as might be willing to remove.

"Almost eight years have passed since the ratification of the treaty above referred to, and the legislatures of the Choctaw and Chickasaw Nations have not enacted any laws, rules, and regulations in behalf of the persons of African descent above referred to. The ancestors of these negroes came to the Indian Territory with the Choctaw and Chickasaw Nations from the State of Mississippi, and have been with them continuously since that time in the capacity of slaves. They were freed by the treaty of 1866, and have been since then enjoying the privileges of freedom. They are reported to be industrious, sober, and frugal people, desirous to learn, anxious to secure to themselves homes in severalty, and above all to remain in the country where they now live, and which is the only home they have ever known. And, so far as the department has been able to ascertain, none of them will ever leave that country voluntarily. They have formed strong attachments to the soil; they have acquired, as far as the peculiar laws and regulations governing the Indian nations will permit, homesteads and have cultivated farms. A strong prejudice seems to exist against these freedmen on the part of the Choctaws and Chickasaws, which will account in some measure for the failure of these nations to provide by law for the division among them of the lands of the nations. The Creek, Seminole, and Cherokee Nations have each adopted the freedmen into their tribes, and

given them equal rights and privileges with other citizens of the nation. The Choctaws and Chickasaws, I understand, have refused to do so. The condition of these negroes strongly appeals to the United States Government for some action that will fix their status and give them all that they are entitled to by the terms of the treaty above quoted.

"I have the honor to submit herewith the draught of a bill which, in my judgment, will secure to these freedmen all the rights and privileges to which they are entitled under the treaty. The bill also gives them the right of suffrage and an equal share in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. While this may not be exactly in accordance with the letter of the treaty, I am satisfied that it is simply a matter of justice to this class of persons, who have always been residents of said nations, and who are now industrious, law-abiding, and useful citizens thereof.

"I respectfully invite the attention of Congress to this subject, and trust that it may receive favorable consideration.

"Very respectfully, your obedient servant,

"B. R. COWEN,
"Acting Secretary.

"Hon. JAS. G. BLAINE,
"Speaker House of Representatives."

B.

The subjoined "act" is the draught of a "bill" referred to in the foregoing letter of Acting Secretary Cowen, and is a copy of the bill referred to as Senate Bill No. 680.

"AN ACT for the relief of certain persons of African descent in the Choctaw and Chickasaw Nations on the 23th day of April, A. D. 1866.

"Whereas, by the treaty concluded April 28, 1866, and proclaimed July 10, 1866, between the United States and the Choctaw and Chickasaw Indians, it was provided that slavery and involuntary servitude should cease in said nations, and that the said Indians should, and thereby did, cede to the United States certain territory west of the 98° west longitude known as the leased district, and in consideration thereof the United States bound themselves to pay the sum of \$300,000, which sum was to be invested and held by the United States at interest, not less than five per cent. interest, for the said nations, until the legislatures of the said Choctaw and Chickasaw Nations should make such laws, rules, and regulations as might be necessary to give all persons of African descent resident in the said nations at the date of the treaty of Fort Smith (September 10, 1865), and their descendants, theretofore 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 should give to each of said persons, resident as aforesaid and their descendants, forty acres of land of said nations on the same terms as the Choctaws and Chickasaws held; the same to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as provided in said treaty; and

"Whereas it was further provided by the said treaty that immediately after the enactment of such laws, rules, and regulations, the said

sum of \$300,000 should 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 \$100 *per capita*, as should be sufficient to pay the said persons of African descent who, within ninety days after the passage of said laws, rules, and regulations, should elect to remove and should actually remove from said nations, respectively; and

"Whereas it was further provided by the said treaty that, in the event that said laws, rules, and regulations should not be enacted by the legislatures of said nations, respectively, within two years from the ratification of said treaty, then the said sum of \$300,000 should cease to be held in trust for the said Choctaw and Chickasaw Nations, and should thereafter be held in trust for the use and benefit of said persons of African descent as the United States should remove from the said territory; and, whereas, the United States did thereby agree, within ninety days from the expiration of the said two years, to remove from said nations all of said persons of African descent who were willing to remove therefrom; and

"Whereas the said sum of \$300,000 has not been paid or invested in the manner above specified, or otherwise, and the said legislatures have not, nor has either of them made the laws, rules, or regulations hereinbefore referred to, or any of them, and the United States have not removed any of said persons of African descent; and

"Whereas the said persons of African descent are now anxious to remain in the territory of said Choctaw and Chickasaw Nations, and to become incorporated with the citizens thereof: Therefore,

"Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That all persons of African descent who were resident in the Territory of the Choctaw or Chickasaw Nation on the 28th day of April, A. D. 1866, and who had before that been held in slavery among said nations, or either of them, and all the descendants of such persons, shall be entitled to all the rights, privileges, and annuities, including the right of suffrage, of citizens of said nations, respectively, and the annuities, moneys, and public domain claimed by or belonging to said nations, respectively.

"Sec. 2. *Be it further enacted,* That the Secretary of the Treasury is hereby authorized and required to issue bonds of the United States, payable in twenty years from date, principal and interest in gold coin, bearing interest at five per cent. per annum, payable semi-annually, for the sum of \$300,000; each of said bonds to be for the sum of \$500 or some multiple of said sum, as the Secretary of the Treasury may deem best, and to deliver the same to the Secretary of the Interior, to be by him held in trust for the use and benefit of the Choctaw and Chickasaw Nations, in the following proportions, to wit, three-fourths for the Choctaw and one-fourth for the Chickasaw Nation; and upon the same being done the said leased district, ceded by the said nations to the United States for the sum of \$300,000, shall be deemed to have been paid for, and the United States released from any further obligation for the same."

C.—REMONSTRANCE OF CHOCTAW DELEGATES AGAINST THE PASSAGE OF SENATE BILL NO. 680, FOR THE RELIEF OF CERTAIN PERSONS OF AFRICAN DESCENT.

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

The memorial of the undersigned delegates, representing the Choctaw Nation, respectfully sheweth: That they have seen with surprise

Senate Bill No. 680, introduced April 8, 1874, "for the relief of certain persons of African descent, resident in the Choctaw and Chickasaw Nations, on the 28th day of April, 1866," and ostensibly based upon the treaty concluded on that day with the said nations. The third article of that treaty is in the following words: "The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the ninety-eighth degree of 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 said 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 \$300,000 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 \$100 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 the said nations, respectively, within two years from the ratification of this treaty, then the said sum of \$300,000 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 \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

By this article it will be seen—

"I. That the Choctaws and Chickasaws cede their territory west of 98° for \$300,000.

"II. That the money was to be held in trust until certain questions were settled in regard to the freedmen among them in September, 1865, and their descendants.

"III. The Indians were to decide in two years whether or not they would give such freedmen and their descendants political equality and 40 acres of land each.

"IV. That such political equality was not to include any share in national funds or in public domain beyond the 40 acres specified.

"V. If they make such concessions of land and political equality within the two years, they were to receive the \$300,000, less \$100 for each freedman who might leave their country within three months after the concession.

"VI. If no such concession was made, the government promised to remove, within ninety days after the two years expired, all the freedmen willing to go.

"VII. Those removed were to have the \$300,000.

"VIII. Those not removed or returning after removal were, first, to have no part of the \$300,000; second, to stand on the same footing as other citizens of the United States in the Indian Territory. The ratification of this treaty was proclaimed July 10, 1866.

"No laws securing land or citizenship to the freedmen were passed by either Choctaws or Chickasaws during the prescribed two years. The United States did not fulfill its promise to remove the freedmen, or any one of them, from the Choctaw and Chickasaw territory, within the stipulated period of ninety days which expired on the 8th October, 1868, nor have any of them removed or been removed since then. Consequently, by the plain and unmistakable language of the treaty, they have been for the last five and a half years, and are now, in the Choctaw and Chickasaw country "on the same footing as other citizens of the United States in said nations," and, therefore, in the Indian country without the rights and privileges peculiar to Indians.

"So far as the Choctaws are concerned, nothing has been done, either in or out of their national council, to modify or affect this footing, the Choctaw people having taken no steps whatever, either individually or in their national capacity, for or against the freedmen among them.

"On the 9th November, 1866, the Chickasaw legislature passed an act accepting and approving the treaty as ratified and proclaimed, and requesting the United States to remove the freedmen from among them, and to hold for the benefit of said freedmen the sum of \$300,000 provided in the third article.

"This request the same body virtually retracted in January, 1873, by passing another act granting the freedmen the privileges of land and citizenship to the extent and upon the conditions specified in the treaty.

"The Choctaw council would long since have done the same thing but for the very important fact, which ought not to be lost sight of in examining the question, that the freedmen have uniformly refused to be subjected to the Choctaw laws. They wanted the privilege of citizenship without its obligations. They were willing to vote, to hold office, and to take land, but were not willing to obey the laws.

The United States agent, Captain Olmstead, on September 21, 1869, reported officially to the Indian Office that the freedmen decided in a body to remain, if possible, in the Choctaw and Chickasaw country, "but that they were desirous of living under the protection of the United States Government, as they were unwilling to be left under the sole 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." At the same time he reported "the Choctaws as in favor of having the freedmen remain." Again, on November 1, 1869, the same agent reported "that the freedmen, while generally desiring to retain their residence in the Indian country, desire it only upon the condition that they remain under the exclusive jurisdiction of the courts of the United States, and 168 of the freedmen themselves, in a petition to Congress, in December, 1870, say that they "are not willing to be adopted by the Choctaw Nation or become citizens of any Indian nation."

These various statements, officially recorded in Mis. Doc. H. R. No. 46, second session Forty-second Congress, simply represent the impressions constantly made by the great body of the freedmen among them upon the

Choctaws, and which have prevented the latter from adopting them as citizens.

"So far as we are informed, this feeling still prevails. We have no reason to believe that any considerable number of those among us would be willing to accept the privileges of citizenship, if such acceptance involved submission to Choctaw laws. It is true that some of the freedmen have expressed a willingness to be incorporated with the Chickasaws and to become subject to their laws, and the expression of such willingness on their part is no doubt the foundation for so much of bill No. 680 as implies that all the freedmen among both nations are alike willing to accept the obligations of citizenship, which, so far as those among the Choctaws are concerned, is a very serious mistake. But admitting that all the freedmen of both tribes are really, as the bill alleges, "anxious" to become incorporated with them as citizens, the provisions of the bill to effect that object are widely different from the stipulations of the treaty, and are, as it seems to the undersigned, palpably unjust to both Choctaws and Chickasaws.

The treaty restricts the freedmen to forty acres of land each, and excludes them from any participation in national funds. This bill gives them an interest in both land and money equal to that of any other citizen; that is, it takes from the Choctaws and Chickasaws part of their property and gives it to the freedmen, without any compensation whatever to the owner. On what principle of right or justice this proposition rests we are at a loss to conceive. The land and money which the bill proposes to take are part of the proceeds of territory held by the Choctaws and Chickasaws long before they ever saw or heard of either black people or white.

In their dealings with the whites, some of them occasionally bought and paid for slaves, who were recognized at the time as property by the Constitution, the laws, the government and the people of the United States.

When slavery was abolished by the power that had formerly sanctioned it, the Choctaws and Chickasaws of course submitted to the consequent loss. It is true that they had no other alternative, but submitted cheerfully without complaining, as they might reasonably have complained, of the confiscation of property to such an enormous amount. They did not urge, as they might have urged, that the sins of the American people ought not to be visited upon them by making them pay a fine equal to a million of dollars.

In strict justice, as between man and man, they might fairly claim indemnity. Slavery was not known among them till it was introduced by the American people. Slave property was received by them from the Americans in place of money, chiefly in exchange for individual reservations of land sold usually for less than its value.

If the price paid became worthless by the act of the purchaser, it would seem no more than right that the purchaser should make good the loss.

But instead of making good our losses, Senate bill No. 680 proposes to increase them. It proposes to take from the Choctaws and Chickasaws several hundred thousand dollars in money, and nearly a million and a half acres of land, to be given to the freedmen, over and above the forty acres provided by the treaty.

No such measure has been enforced against the citizens of the States which held slaves before the war. None of the former slaveholders of the Confederacy have been compelled to share their land or other property with the freedmen.

Obviously, if they were exempt from such penalties we ought to be. If slavery was wrong—was a crime to be punished—the real offenders were the whites, not the Indians. So far as the Indians are concerned, the responsibility of the wrong lies upon the people and the Government of the United States; and any reason which might be urged in justification of the punishment of the white slaveholder could not possibly apply to the Indian, who was constantly urged by the United States Government to imitate the ways of the white man.

Moreover, to discriminate against the Indian and in favor of the white man is palpably unjust in this: Each individual slaveholder in the States held his own land in severalty, and could be made individually responsible for his own acts without implicating or punishing the non-slaveholder. With us it is different. Our lands are held in common; so are our invested funds, stocks, annuities, &c. The aggregate property, real and personal, held in common by both tribes, belongs to 20,000 citizens, of whom only 500 were slaveholders. The 19,500 who never owned slaves are required to give up one-seventh of their interest in the common stock as a penalty for the slaveholding sins of one-fortieth of the whole body of both nations. The white man, who can be reached as an individual offender, goes scot-free, while the Indians are punished in mass, the innocent with the guilty, in the proportion of forty innocent to one guilty. The injustice of such a proceeding is too obvious to need any argument or comment.

Again, as to the freedmen themselves, was there anything in the case of the seven or eight thousand slaves held in the Indian Territory to give them stronger claims than the four millions held in the States?

It will not be pretended that there was any equitable reason for discriminating either, on the one hand, against the slaveholder in the Indian country, the Indian slaveholder in favor of the white, or, on the other, in favor of the slave who was owned by an Indian as against the slave who was owned by a white man.

It was no greater sin for an Indian to hold a slave than it was for a white man; it was no greater hardship for the slave to be owned by the Indian. Bondage in the Indian country was not more grievous than it would have been in the States; not as much so, for, as a rule among the Indians, the slaves did as they pleased, and never wanted to be sold to the white people.

The Acting Secretary himself says the freedmen are anxious to remain in the country where they now live. If that is true, it is pretty good evidence that their homes could not have been made odious to them by harsh treatment in the past, or, as is sometimes falsely alleged, in the present. But it is alleged apparently as a reason why this bill should pass that "the Creek, Seminole, and Cherokee nations have each adopted the freedmen into their tribes, and given them equal rights and privileges with other citizens." True, but not, as the Secretary seems to think, as a "matter of justice to this class of persons." Justice had nothing to do with the action of either Cherokees, Creeks, or Seminoles in the premises. The war had created political dissensions and divisions in every one of the three tribes named, large numbers of each having adhered to the Union, while large numbers of each joined the Confederates. When the attempt was made in 1866 to heal these dissensions by new treaties each of the contending parties wanted to secure influence at Washington and increased political power at home. For such influence and power they were willing to pay by large concessions to the freedmen, who were looked upon at that time as a considerable element

of strength. The idea never occurred to any one of those who made the concessions that they were doing an act of justice, or that the negroes had any legal or equitable claim to a share of their property. Among the Choctaws and Chickasaws there were no such divisions. There was consequently no balance of power to be conciliated. To urge the example of the Cherokees, Creeks, and Seminoles upon them is to say, in effect, "your neighbors fell out among themselves; you did not. Your neighbors had to pay for their quarrel, and you ought to pay because you did not quarrel;" a mode of reasoning which is strictly in keeping with the bill itself and with the letter from the Acting Secretary of the Interior (Ex. Doc. 112, H. R., first session Forty-third Congress) recommending it. For example, the letter says the bill gives the freedmen "an equal share in the annuities, moneys, and public domain." "This may not be exactly in accordance with the letter of the treaty." It is not only not "exactly" in accordance with the letter of the treaty, but it is "exactly" what the treaty says shall *not* be done, as the bill itself shows in the first paragraph of the preamble, which, curiously enough, points one way, while the enacting clauses point the other. Condensed in plain English, the bill says:

"Whereas the treaty provides forty acres of Indian land for each freedman, if the owners will give it; and whereas the owners will not give it: Therefore,

"Be it enacted, That each freedman shall have 480 acres of such land."

Again, in the same peculiar style of reasoning:

"Whereas the treaty excludes the freedmen from any share in the Indian annuities: Therefore,

"Be it enacted, That the freedmen shall have an equal share in such annuities."

While it is difficult so to analyze the third article as to define precisely how much of the \$300,000 therein provided was to be paid for territory west of 98°, and how much for concessions to the freedmen, the article itself shows that before the signing of the treaty the Choctaws and Chickasaws had certain rights.

1st. A claim to the territory west of 98°, which the United States recognized and were willing to pay for.

2d. The right to decide whether the freedmen should or should not enjoy the privileges of citizenship in their country, and should or should not participate in the ownership of their national property.

So the matter stood when the treaty was signed. How does it now stand? Manifestly, as it seems to the undersigned, in the unsettled state of an open question, as well because of what the contracting parties have done as because of what they have not done.

The freedmen for whose benefit the article was inserted have shown their unwillingness to assume the obligations of the citizenship which the article meant to procure for them.

The Chickasaws have first refused and then agreed to adopt them, but did not agree till after the time specified in the treaty had expired.

The Choctaws have not acted at all.

The United States have not fulfilled their promise to remove the freedmen, though requested by large numbers of them to do so, and have paid no part of the purchase-money for the country west of 98°. To the undersigned, therefore, it seems that the more equitable course would be to make a new arrangement having for its object—

1st. To define the rights of the Choctaws and Chickasaws in the territory west of 98°.

2d. To ascertain positively whether the freedmen or any of them do or do not want to become citizens of either the Choctaw or Chickasaw Nation; and, if so, whether they are willing to assume the same obligations resting upon other citizens.

3d. To settle the terms upon which the privileges of citizenship shall be conceded to those of the freedmen desiring them. A thorough investigation of the kind which ought to precede such an arrangement will result in establishing the fact that there is no prejudice on the part of the Choctaws against the freedmen, and that up to this day not one of the latter has ever applied to the Choctaw council, or in any other manner signified to the Choctaws a desire to be adopted among them as a citizen. To pass the bill recommended by the Secretary would, therefore, not only be an act of palpable injustice to the Indians, but would be forcing upon the freedmen what very few of them have asked for.

P. P. PITCHLYNN,
WILLIAM ROBUCK,
McKEE KING,
Choctaw Delegates.

WASHINGTON, May 2, 1874.

In behalf of the Chickasaw Nation, I fully approve of the foregoing memorial, and concur in its representations.

D. O. FISHER,
Chickasaw Delegate.

D.

LETTER FROM THE SECRETARY OF THE INTERIOR TO THE CHAIRMAN OF THE SENATE COMMITTEE ON INDIAN AFFAIRS, RELATIVE TO SENATE BILL NO. 680, FOR THE RELIEF OF CERTAIN PERSONS OF AFRICAN DESCENT, RESIDENT IN THE CHOCTAW AND CHICKASAW NATIONS.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 2, 1874.

SIR: I have examined Senate bill No. 680 for the relief of certain persons of African descent, resident in the Choctaw and Chickasaw Nations, on the 28th day of April, 1866, which you have been pleased to forward me, with a remonstrance of the Choctaw delegates against the passage of the bill. The present condition of the persons of African descent resident among the Choctaw and Chickasaw Nations, on the 10th of September, 1865, should be thoroughly understood in order to judge of the propriety of passing the bill, and in order to appreciate the force of the objections made against its passage by the remonstrance. I proceeded to state the condition of these people at the date aforesaid.

But by the treaty of April 28, 1866, between the United States and the Choctaw and Chickasaw Indians, it was provided that slavery should cease in said nations, and that said Indians should cede to the United States certain territory west of the 98th degree west longitude, known as the leased district, and in consideration thereof the United States should pay the sum of \$300,000, to be invested in United States 5 per cent. bonds, until the legislatures of the Choctaw and Chickasaw Nations should make such laws, rules, and regulations as might be necessary to give all persons of African descent resident therein, on the 10th of September, 1865, and their descendants theretofore held in slavery, all the rights, privileges, and immunities, including the right of suffrage of the

citizens of said nations, except in the money annuities and in the public domain belonging to said nations. Said nations were also to give each of said persons of African descent and their descendants forty acres of land on the same terms as the citizen Choctaws and Chickasaws held the same. It was further provided that said persons of African descent, who, within ninety days after the passage of such laws, rules, and regulations, should elect to remove from said nations, should have \$100 each out of the \$300,000 before mentioned, and that the balance should be paid to the Choctaw and Chickasaw Nations in the proportions mentioned in the treaty. It was further provided that if such laws and regulations should not be enacted by the legislatures of said nations, respectively, within two years from the ratification of the treaty aforesaid, then the said sum of \$300,000 should cease to be held in trust for the said Choctaw and Chickasaw Nations, and should thereafter be held in trust for the use and benefit of said persons of African descent, the United States agreeing, within ninety days from the expiration of said two years, to remove said persons of African descent from said nations as far as they were willing to be removed.

Now for the facts. Neither the Choctaw nor the Chickasaw Nation has secured to the said persons of African descent the rights, privileges, and immunities, including the right of suffrage, provided for in the treaty. The United States has not removed any of said persons of African descent, because such persons are so identified by marriage and custom with said nations as to be unwilling to break up their homes and go elsewhere. The \$300,000 has not been invested nor paid to the Choctaw and Chickasaw Nations; and the said persons of African descent, who are the most industrious and useful portion of the population of each nation, are without the rights, privileges, and immunities of citizens; without the right of suffrage, without land, and without money, and with a disinclination under all these painful embarrassments to leave their homes, friends, and relatives and go elsewhere for the pitiful sum of \$100 *per capita*. They are as meritorious, to say the least, as the average Choctaw and Chickasaw population.

They have probably done as much toward securing the wealth possessed by said nations *per capita* as the average Choctaw and Chickasaw population. Under these circumstances, their condition is not simply anomalous; it is unjustifiable, oppressive, and wrong, and ought to be remedied.

Now for the provisions of the bill. It provided that the persons of African descent before alluded to shall have all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. Is this wrong? The Choctaw and Chickasaw Nations are under treaty obligations to secure to these people the rights, privileges, and immunities of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong and a great injustice, which should be speedily corrected. But ought these people to have an equal right in the annuities and public domain of the Choctaw and Chickasaw Nations? Let us see. The present annuity-fund of these nations amounts to about one hundred dollars *per capita*. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, one hundred dollars *per capita*, and this is about what the three hundred thousand dollars amount to. By the second section of the bill objected to this three hundred thousand dollars is to be invested and paid in trust for the use and benefit of the

Choctaw and Chickasaw Nations, so that these persons of African descent will bring to the trust-fund of said nations a sum *per capita* equal to the amount *per capita* of the present annuity trust-fund of these nations. This, it seems to me, answers satisfactorily the objection to this bill so far as it relates to the rights of the Africans in the annuity-fund of the Choctaw and Chickasaw Nations.

But the bill also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in common. The treaty contemplated making the Africans citizens, with equal rights and privileges with the Choctaws and Chickasaws, and upon this principle, in justice and equity, the common property of the nation should belong as much to the Africans made citizens as to the native-born citizens of said nations.

The argument against this provision, drawn from a pretended analogy between this case and the case of the liberated slaves of the United States, does not rest upon a solid foundation. The liberated slaves of the United States did not become entitled to the property held by individual citizens of the United States in severalty, but to so much of the public domain and other property of the United States as was not the separate property of individuals. These liberated slaves, when they became citizens, did become entitled to equal rights and privileges as other American citizens.

If you look at the manner in which the Choctaw and Chickasaw nations acquired their property, and if you consider that the improvements made thereon have been made by the labor of the African people in as large if not a larger proportion than by the labor of the native Choctaws and Chickasaws, you will see that there is not any injustice in giving to these persons of African descent, made free and made citizens, equal rights in all respects with the native Choctaw and Chickasaw people.

A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the Africans among the Choctaws and Chickasaws in their present unjust and disastrous situation; will preserve the strife, animosity, and disturbance incident to these relations; and, therefore, I cannot too earnestly or too urgently recommend the passage of the bill referred to, or some equivalent measure, during the present session of Congress.

I beg your careful and attentive consideration of this subject, and hope you will bring before such of your colleagues as feel an interest in the welfare of these people, and that, if you concur with me in this opinion, you will endeavor to procure the passage of the measure referred to immediately.

I have the honor to be, very respectfully, your obedient servant,
C. DELANO,

Secretary.

Hon. WILLIAM A. BUCKINGHAM,
Chairman Committee on Indian Affairs, United States Senate.

I now desire to present as part of my testimony the correspondence between the Department of the Interior and myself on this subject. It is as follows:

A.

WASHINGTON, D. C., August 2, 1870.

SIR: I beg leave to state, in regard to the survey of the Choctaw and Chickasaw country, that, among other things contained in the 11th article of the treaty of 1866 between the United States and the Choctaws and Chickasaws, it is provided, "That should the Choctaw and Chickasaw people, through their respective legislative councils, agree to the survey and dividing of their lands upon the system of the United States," &c.

This question, it will be seen, being thus left to the Choctaw people to either accept or reject, they did, through their legislative council, pass an act calling a special election, that the question of survey might be submitted to the votes of the people at large. The election was held in July last, and I am credibly informed that the Choctaw people have, by overwhelming majorities in every county of the nation, voted against having the country surveyed.

On page 30 (Public, No. 187), "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1871, and for other purposes," it is provided as follows:

"For survey of exterior boundaries of Indian reservations and subdividing portions of the same, and for survey of diminished reserve of the Osage Indians, \$444,480, or so much thereof as may be necessary: *Provided*, That none of this appropriation shall be expended for surveys of Choctaw or Chickasaw lands unless the same shall be requested by the Choctaw or Chickasaw people through their respective legislative councils, in accordance with article 11 of the treaty with said nation, concluded April 28, 1866."

Inasmuch as the Choctaw people have not requested to have their lands surveyed, but by the result of the special election before referred to have shown themselves to be opposed to such survey, I would, as the sole delegate of the Choctaws now in this city, most respectfully request that no steps be taken by the government to cause either the Choctaw or Chickasaw country to be surveyed.

I would here further state that the provisions of the act above referred to differs very widely from the letter and spirit of the provision contained in the said 11th article of the treaty of 1866. By the treaty the land can only be surveyed "should the Choctaw and Chickasaw people through their respective legislative councils agree to the survey," but by the act in question either the Choctaws or Chickasaws can request the survey to be made.

This matter will be better understood when it is known that the Choctaws and Chickasaws make treaties together, that their land is held in common, and that only in local jurisdiction and money affairs they act independently of each other; but the land being held in common, nothing respecting it can be done without the consent of both, especially when it is proposed to make such a radical change in the tenure of the land as the surveying and allotting it in severalty.

The provision referred to of the act in question, as originally drawn up, was in strict accordance with the treaty, but was afterward, I believe, amended in the conference committee. Why this was done I cannot well understand, nor do I believe any of my people requested it; but as it clearly contravenes the treaty, and as there is much excitement prevailing in my country upon the question of survey, I would most

respectfully again request that no steps be taken to have the Choctaw and Chickasaw country surveyed.

I have the honor to be, yours, respectfully,

P. P. PITCHLYNN,
Choctaw Delegate.

Hon. J. D. Cox,
Secretary of the Interior.

B is a letter of the Secretary of the Interior to me, which is as follows:

B.

DEPARTMENT OF THE INTERIOR,
Washington, August 4, 1870.

"SIR: In reply to your communication of the 3d instant, protesting against the survey of the Chickasaw Indian lands, for which provision is made in the Choctaw and Chickasaw treaty of 1866, on the ground that the assent of the Choctaw Nation has not been obtained to said survey, I inclose herewith, for your information, a copy of a letter I have this day addressed to Messrs. Mix & Co., of this city, in relation to the subject.

Very respectfully, your obedient servant,

J. D. COX,
Secretary.

P. P. PITCHLYNN,
Washington, D. C.

C is a letter of the Hon. J. D. Cox, Secretary of the Interior, to Charles E. Mix & Co., and is as follows:

C.

WASHINGTON, D. C., *August 3, 1870.*

Hon. J. D. Cox,
Secretary of the Interior:

"SIR: For the information of the governor and people of the Chickasaw Nation, we request that you will inform us whether any steps have been taken to survey the lands within the districts of the Choctaw and Chickasaw country which are under the jurisdiction of the Chickasaw government, and which the legislature of the Chickasaw Nation has twice, we believe, requested should be surveyed and allotted, so far as homesteads are intended to be secured, to such Choctaws, Chickasaws, and others as may, under the provisions of the Choctaw and Chickasaw treaty with the United States of 1866, be entitled to select homesteads. If no steps have been taken in this connection, we respectfully ask whether the department considers that the lands within the Chickasaw district aforesaid can be surveyed and allotted under the request of the Chickasaws heretofore made, or without the consent of the Choctaw council.

We are, sir, respectfully,

CHARLES E. MIX & CO.

D is a letter of the Hon. J. D. Cox, Secretary of the Interior, dated August 4, 1870, and is as follows:

D.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 4, 1870.

"GENTLEMEN: I have received your letter of yesterday soliciting information as to what steps have been taken by this department concern-

ing the survey of the Chickasaw Indian lands provided for in the Choctaw and Chickasaw treaty of 1866, and you are informed, in reply, that, agreeably to the recommendation of the Commissioner of Indian Affairs, a contract was entered into by the department on the 25th ultimo for the survey of these lands.

In view, however, of the protest made by P. P. Pitchlynn, esq., a Choctaw delegate, in a letter addressed to this department on the 3d instant, representing that the assent of the Choctaw Nation to the survey has not been obtained, I have directed a suspension of all work under the contract until the question of the assent or dissent of the Choctaw Nation shall be finally settled.

Very respectfully, your obedient servant,

J. D. COX,
Secretary."

E is a letter of mine to Hon. J. D. Cox, Secretary of the Interior, which is as follows :

E.

WASHINGTON, D. C., August 2, 1870.

Hon. J. D. Cox,
Secretary of the Interior :

SIR : Until my interview with you on the 24th instant, I supposed that no further steps would be taken toward surveying that portion of the country owned by the Choctaw and Chickasaw peoples as joint proprietors in fee simple, which is included within the limits of the municipal jurisdiction of the Chickasaws, until satisfactory evidence should be had of the absolute refusal of the Choctaws to consent to such survey, which refusal has been most solemnly and emphatically expressed by vote of the people taken by direction of the legislature ; and that, upon this appearing, the project would be abandoned. Your uniform kindness and courtesy shown to me on all occasions, and your evident desire to see that the Choctaw people shall be protected in the enjoyment of all the rights secured to them by the pledges of the public faith of the United States contained in treaties and acts of Congress, have been made known by me to my people, are gratefully acknowledged by them and myself, and we have the most entire confidence in your probity, honor, and official impartiality and integrity.

Therefore, in addressing to your indulgence, and your reason, and sense of justice, and knowledge of legal rights, this respectful but earnest protest, I venture to hope that no expression contained in it may be understood by way of animadversion or complaint, but only as inviting your careful consideration of lawful rights of proprietorship of lands held by the highest tenure, and under the most solemn and perfect guarantees that can exist in any civilized country. On the 28th of May, 1830, by the act of Congress "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi," the President was authorized to cause so much of any territory belonging to the United States west of that river, not included in any State or organized Territory, and to which the Indian title had been extinguished, as he might judge necessary, to be divided into districts, for the reception of such tribes or nations as might choose to exchange therefor the lands on which they then resided and remove thither ; which exchanges the President was, by the second section, empowered to make. And by the third section it was provided that, in the making of any such exchange or exchanges, it

should and might be lawful for the President solemnly to assure the tribe or nation with which the exchange might be made that the United States would forever secure and guarantee to them and their heirs or successors the country so exchanged with them; and, if they should prefer it, that the United States would cause a patent or grant to be made and executed to them for the same; provided that such lands should revert to the United States if the Indians should become extinct or abandon the same.

The United States had ten years before, by the treaty of October 18, 1820, in consideration of a cession by the Choctaws of a certain body of land in the State of Mississippi, ceded to the Choctaw Nation the country west of the river Mississippi, of which the present country of the Choctaws and Chickasaws is a part, the eastern line having been moved farther to the eastward by the treaty of January 20, 1825, and the Choctaws ceding so much as lay east of the new line, for the sum of six thousand dollars per annum, forever. The treaty of 1820 had provided that the boundaries established by it should remain without alteration until the nation should become so civilized and enlightened as to be made citizens of the United States, and Congress should lay off a limited portion of land for the benefit of each family or individual in the nation; and the treaty of 1825 provided that this should be so modified as that Congress should not exercise the power of apportioning the lands for the benefit of each family or individual of the Choctaw Nation, and of bringing them under the laws of the United States, except with consent of the Choctaw Nation.

By the treaty of September 27, 1830, the Choctaw Nation cede to the United States all their lands east of the river Mississippi, and in consideration of this cession, and their agreement to remove, the United States promised to "cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee-simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it"; and the boundaries of this country were described.

A patent was issued to the Choctaw Nation in accordance with the provision of the treaty. In 1832 the United States took all the lands of the Chickasaws in trust, and agreed to sell them and pay that tribe the net proceeds. The United States had no country west of the Mississippi which they could sell them, and the Chickasaws speaking the same language as the Choctaws, and being originally of the same race, the two nations made a convention in 1837, with the sanction and approval of the United States, by which the Choctaws agreed to receive the Chickasaws among them, and to give them a joint interest in their country, as joint proprietors with them of the lands, in proportion to their numbers, for which the Chickasaws agreed to pay them \$530,000, \$500,000 of which still remains in trust in the hands of the United States, they paying the Choctaws interest therefor.

The Chickasaws were and are in number about one-fifth as large a people as the Choctaws. The consequence was that serious disagreements arose from their having but one government, and it became necessary to readjust their relations by the treaty of 22 June, 1855. This treaty first redefined the boundaries of their common country; and the United States did, by the first article, in pursuance of said act of May 28, 1830, "*forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common,*" so that each member of either tribe should have *an equal, undivided interest in the whole*, with a proviso that *no part of them should ever be sold without the consent of both tribes*; and that

they should revert to the United States if said Indians and their heirs should ever become extinct or abandon the same. There is no possibility of mistaking the nature of this title. The Chickasaw Nation, as a corporation or individual, has no interest whatever as proprietor in the lands. These belong to *all* the *individuals* of *both* nations, an equal and undivided interest to each, and the Chickasaws being, in number to the Choctaws, about as one to five.

Then a district for the Chickasaws was established, with defined boundaries, "the remainder of the country held in common by the Choctaws and Chickasaws to constitute the Choctaw District"; distinct civil governments being thus provided for, but the joint title to all the land being in no manner affected; and all, whether Choctaws or Chickasaws, having the right to settle and live on lands in either district.

By the treaty of 1866, the Choctaws and Chickasaws ceded to the United States their country west of the 98th degree of west longitude, and the United States formally reaffirmed all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the rebellion, and then in force, not inconsistent with said treaty of 1866; which, of course, reaffirmed the obligations, as to the said lands and the title to them, arising out of the provisions of the act of Congress and treaty of 1830; there being nothing whatever in the said treaty of 1866 inconsistent with these obligations or with the absolute ownership in fee of the Choctaw and Chickasaw country by all the individuals of both nations, as tenants in common, whose title an act of Congress can no more disturb, or change, or affect, than it can destroy yours to your own homestead in Ohio. The same laws and guarantees protect you and us, and if worthless for us they are intrinsically just as worthless for you; of no more value to either, and the public faith and honor and common honesty and decency, as utterly without a market value as rotten mackerel.

I know, Mr. Secretary, that this political irreligion is not yours, but there are legislators who have boldly and badly announced it as theirs, and there are so many sordid and base influences that are urging Congress to authorize plundering us of our lands.

I have been all my life struggling against wrong and injustice done my people, who were never faithless nor in fault, by those who have made ill use of the powers and opportunities offered them by the United States, some of them sitting in high places, and I do not remember any of them who were fortunate to this end.

The treaty of 1866, article 2, explicitly recognizes the fact that all the land occupied by the Choctaws and Chickasaws, as described in the treaty of 1855, "is held by the members of said two nations in common, under the provisions of the said treaty"; and it provides that "should the Choctaw and Chickasaw people, through their respective legislative councils [that is, *both* of them, *each* by and through *its* council], *agree* to the survey and dividing of their land," *then* it shall be surveyed, and the other provisions in the treaty, as to its distribution, will become operative.

It could not have been stipulated that one-fourth or one-fifth of the joint owners or tenants in common, of these lands, should have the right by their own vote, and against or without the consent of the others, to take to themselves as their separate property a particular portion of the common country, and divide it out in fee among themselves. It is ridiculous to imagine the existence of such a right, so directly and absolutely contrary and repugnant to and inconsistent with the joint right of proprietorship.

You had no right or power (I say this with the utmost respect) to make or authorize to be made, any contract for the surveying any part or portion, even a single acre, of the common lands of the people of both nations, until you had official evidence that *both* nations, each by its legislature, had agreed to it. No act of Congress can destroy our joint proprietorship by empowering one portion of the joint owners to select a part and have it divided among themselves. No act of Congress could make the assent of one nation sufficient, any more than it could give one man a right to sell or take the property of another. There are limits beyond which an act of Congress is utterly impotent. There is no power vested in Congress to legislate as to private titles to land, and our title to our land is as much a private title as yours is. That they are to revert if we become extinct, if the last of us perishes, or if we leave and abandon them, creates a reversionary interest too utterly remote, contingent, and shadowy to make our title less than a fee-simple. The lands are ours, and without our consent they cannot be surveyed or parceled in severalty. The Choctaw people have emphatically refused, by ten votes or more to one, to give their consent. As to the Chickasaws, I never knew until I lately learned it from yourself, that they had consented to, and their legislature asked for a survey. I am quite certain that such is not the wish of the Chickasaw people, and that the alleged request of the legislature, if made at all, has been unfairly procured by interested individuals, and by improper influences, exerted by men who have no Chickasaw blood in their veins. To say that a survey of lands in their district, so obtained, destroying the right and title of the Choctaws to these lands, would be viewed by the Choctaws as an inexcusable outrage and a wrong for which there could be no apology or excuse, and would create alarm and indignation, is only to say that they have intelligence enough to know their rights, and are not so tame of spirit as not to feel the sting of a bitter and grievous wrong; but, also, it is certain that when the Chickasaw people learn the trick that has been played upon them, there cannot but be disturbances and discontents among them also.

You cannot know, for it is not true, that the Chickasaw people have agreed to the proposed survey by their legislature; and until the action of the council is ratified by the vote of the people, it ought not to be deemed the act of the people.

I do, therefore, in the name and in behalf of the whole Choctaw people, and of four-fifths of the joint owners of said lands, solemnly protest against any survey of any part of the joint lands, and do make known that they have, by an overwhelming majority, refused to consent to such survey. They do not consent, and will not consent to part with their joint interest in the lands in the Chickasaw District, and they do absolutely deny the power of Congress to take that joint interest away from them. The lands, power may wrest from them, but the title and right will still remain as perfect as ever, and can no more be annihilated than right and justice can, by act of Congress. Wherefore, I do respectfully ask that the project of survey be abandoned, and the contract rescinded, as one which the Government of the United States had not the power to make.

PETER P. PITCHLYNN,

*Delegate of the Choctaw People and one of the joint owners
of the lands in the Chickasaw District.*

F is a letter of the Hon. Joseph S. Wilson, Commissioner, to me, dated September 2, 1870, which is as follows:

F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

September 2, 1870.

P. P. PITCHLYNN, Esq., *Washington, D. C.:*

SIR: Pursuant to the direction of the honorable Secretary of the Interior, I have to inclose herewith for your information a copy of his opinion in the matter of the survey of the Chickasaw lands now under contract, dated the 29th ultimo.

I am, sir, very respectfully your obedient servant,

JOS. S. WILSON,
Commissioner.

G is a letter of the Secretary of the Interior dated August 29, 1870, which is as follows:

G.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 29, 1870.

SIR: On the 3d instant, I directed that the contract for the survey of Chickasaw lands be suspended on account of a protest filed by Mr. Pitchlynn, one of the delegates of the Choctaw Nation, and since that time I have had the case under consideration. I now write for the purpose of removing the suspension, and to direct that the parties be permitted to go forward with their surveys under the contract. It appears from the records of the Indian Office that the legislative council of the Chickasaw Nation have formally requested that their lands may be surveyed into townships and sections, in accordance with the provisions of the treaties with the Choctaws and Chickasaws of 1866; and that, in consideration of such request, an estimate of appropriation was made by the Indian Office, approved by this department in the usual routine of business, and sent to Congress.

Upon this estimate an appropriation was made, with the proviso that "none of this appropriation shall be expended for surveys of Choctaw or Chickasaw lands, unless the same shall be requested by the Choctaw or Chickasaw people through their respective legislative councils."

It was not until after the contracts for the surveys had been made and approved that I obtained any personal knowledge of objections on the part of Choctaw Nation, the protest filed by Mr. Pitchlynn being the first intimation that the Choctaws were not fully in accord with the policy indicated by the Chickasaw council.

I was the more easily led to this opinion by the fact that Article eleven of the treaty of 1866 with the Choctaws and Chickasaws, declares, on the part of the parties to said treaty, that 'it is believed that the holding of said land in severalty will promote the general civilization of the said nations, and tend to advance the permanent welfare and the best interests of their individual members,' and such belief is made the basis for the treaty provisions for survey at the cost of the United States.

Mr. Pitchlynn, as principal chief of the Choctaws, appears as one of the witnesses to the execution of the treaty, although not himself one of the commissioners executing it. His protest was, therefore, a com-

plete surprise to me. I should be exceedingly cautious in doing or permitting anything to be done which I did not believe to be for the best interests of the Indians themselves, and as an administrative officer of the United States I should certainly not consent to the expenditure of a large appropriation from the Treasury, if I did not regard the obligation upon the government a recognized one.

The policy of surveying Indian reservations with a view to the ultimate settlement of the Indians upon lands to be held by them in severalty, with proper restrictions upon alienation of the same, has been approved by all the most active friends of the Indians in the country, and the incorporation into the treaty of 1866 of a distinct avowal of such policy on the part of the Choctaws and Chickasaws, must certainly be regarded as the most authoritative expression possible of the wishes of those nations. I cannot treat the question, therefore, as one in which the survey itself would be any diminution of the Indians' rights in the premises, or a violation of any privilege which they may lawfully claim. The survey, at the cost of the United States, is a free gift on the part of the government to the Indians, and by no means an imposition of something upon them which they do not desire.

The present appropriation does not provide for the opening of a land-office or the present distribution of the lands to the Indians in severalty. The surveyor's lines will in no way interfere with the possession of the lands in common as heretofore, and determines nothing with regard to the policy, either of the nations or of the United States, in that respect, in the future. As, therefore, the appropriation has been made and the delays in making the surveys are occasioning considerable loss to the contractors, I do not feel at liberty to suspend action longer, failing, as I do, to find, in the protest of Mr. Pitchlynn any conclusive reasons for apprehending mischief to the Choctaws from the survey.

The question whether the land office, provided for by the treaty, could be established without the consent of both nations, or the actual apportionment of the lands in severalty carried out without such consent, may be safely reserved for future consideration. The grand council of the civilized nations is soon to be held, and the department will take every means in its power to obtain the fullest light upon the subject, and endeavor to follow, as far as possible, the wishes of the nations as they may be officially expressed.

Copies of this communication may be forwarded to Mr. Pitchlynn, as also to the contractors for the survey.

I am, sir, very respectfully, your obedient servant,

J. D. COX,
Secretary.

H is a letter of mine, dated September 7, 1870, to the Secretary of the Interior, which is as follows:

H.

WASHINGTON, D. C., September 7, 1870.

Hon. J. D. Cox,
Secretary of the Interior:

In behalf of and for the information of the Choctaw people, I respectfully request to be furnished with copies of whatever documents or papers are on file or in possession of the Department of the Interior, General Land Office, or Indian Office, evidencing a desire or request on the part

of the legislative council or people of the Chickasaw Nation, for the survey of the lands in the Chickasaw district.

What these evidences are is totally unknown, as the supposed action of the Chickasaw council has been, to the Choctaw, and I am credibly informed, to the Chickasaw people. Them I do not represent; but the interest of my own people in the lands in question is sufficient to entitle them to be informed of any action taken in regard thereto by those who are joint owners of the same with them.

I have the honor to be, with the highest respect, the Secretary's most obedient servant,

PETER P. PITCHLYNN,

Delegate and Representative of the Choctaw People.

I is a letter of mine to the Secretary of the Interior, dated September 12, 1870, which is as follows:

I.

CITY OF WASHINGTON,
September 12, 1870.

The SECRETARY OF THE INTERIOR of the United States of America :

The undersigned, delegate and representative of the Choctaw Nation and people, has been furnished, in response to his communications addressed to the Secretary of the Interior upon the subject of surveying the Choctaw and Chickasaw lands, with a copy of the letter of the Secretary to the Commissioner of the General Land Office of date the 29th August, 1870, in which, finding in the protest of the undersigned no conclusive reasons for apprehending mischief to the Choctaws from the survey, the Secretary has been pleased to direct that upon the application of the Chickasaws only the lands within their district—though they are but joint owners and tenants in common of every acre with the Choctaws—shall be surveyed.

The undersigned will offer no further argument or expostulation in the vain hope of arresting the execution of this order. As the Choctaws have the absolute right to determine whether any of the lands of which they and the Chickasaws are joint proprietors shall or shall not be surveyed, so they alone are the judges whether a survey will be mischievous in its consequences to themselves. It was not their purpose, in stating the consequences apprehended by them, to produce conclusive reasons to be judged of by the honorable Secretary of the Interior, who is not invested by the treaty or by any law with the jurisdiction to decide upon the sufficiency of those grounds of apprehension.

The undersigned refrains from offering further argument, because the decision is announced as final, and of course he and his people can but submit. The United States have the power to cause their will to stand for reason, and may decline to argue questions of right and obligation with those who have no rights, because they have no remedies. But the undersigned cannot refrain from saying, as he most sensibly and painfully feels, that the blow inflicted upon the Choctaw people by the decision of the honorable Secretary of the Interior is only the more cruel and the more fatal, because it is struck by one who, the undersigned sincerely believes, does not design to do them injustice or injury. For it proves that even those who would fain be just cannot be so in dealing with a feeble and dependent people, and that there is, even for them, one rule of construction for treaties with the strong and another rule for treaties with the weak; and which is the more alarming than

anything else can be that the head of a department of the government of the United States, however desirous to protect an Indian nation in the possession and enjoyment of their rights solemnly guaranteed by treaties, holds himself bound to execute an act of Congress, though it may be in direct contempt, contravention, and violation of the positive guarantees, reiterated pledges, solemn assurances, and religious obligations of treaty after treaty that are too plain to be misunderstood and too positive to be perverted.

Wherefore the undersigned, in behalf of the people of the Choctaw Nation, places on record this protest, not only against the survey so ordered, but also, and still more, against the principal propositions contained in the letter of the Secretary of the Interior of August 29, 1870.

The letter in question states that it appears that the legislative council of the Chickasaw Nation have formally requested that their lands may be surveyed. There are no lands that can properly be called theirs. There are no Chickasaw lands, but only Choctaw and Chickasaw lands of which all the people of both nations are joint proprietors and tenants in common; and there is no right of partition of any of these lands, except by the concurrent action of the legislatures of the two nations. The Chickasaw council has requested that a certain body and region of this land may be surveyed for themselves alone, and that it may be divided among themselves. If they have a right to demand the survey they have a right to demand the distribution. They have no right to either.

It is true that the undersigned witnessed the treaty of 1866, as hundreds of clerks and others have witnessed treaties. It would not follow that he had ever read it. But he had read it carefully and consented to it, though it contained many things to which he would never have agreed voluntarily. The treaty says that it is believed that holding their land in severalty would promote the civilization of the two nations. That was the belief of Mr. Secretary Harlan, and it was for him the treaty spoke in that. But it was not intended that this expression of opinion should estop or commit the Choctaws or Chickasaws, or be deemed to bind them to consent to the surveying and partition of their lands. It was not intended that it should be taken as an expression of their conviction or opinions; and it is not fair or just to take it in that sense.

The undersigned protests against the force and effect imputed by the Secretary of the Interior to the clause quoted by him from Article XI of the treaty, as against the Choctaw people; and he protests against the proposition that the Secretary has a right to consider that clause "the most authoritative expression possible of the wishes" of the Choctaw and Chickasaw Nations. With the greatest respect and deference, he is nevertheless constrained to declare that no such use can fairly be made of that clause; that it has not and never was meant to have any such force, effect, or virtue. Nothing can be plainer and clearer than this; for, on the contrary, the treaty provides another and the only way of ascertaining the wishes of the nations; and that is the action of their councils concurring in requesting the survey and parceling out their lands. It is impossible to say that Mr. Secretary Harlan's expression of opinion in the treaty is the most authoritative expression possible of the wishes of the Choctaws, or any expression of their wishes at all.

The undersigned was aware that the appropriation act provided that the moneys appropriated by it for the surveys of Choctaw or Chicka-

saw lands should not be expended, unless the same should be requested by the Choctaw or Chickasaw people through their respective legislative councils. The undersigned did not at first suppose that it would be necessary to do more than to invite the Secretary's attention to the treaty, which being part of the supreme law of the land must prevail over any provisions of an act of Congress in conflict with it, and he does now most earnestly and solemnly protest against the disregard of any guarantee of right in favor of his people contained in a treaty in obedience to an act of Congress that violates such guarantees; such an act of Congress is but the refusal of one party to comply with an obligation voluntarily assumed. It is but the attempt of one party to a treaty to violate and disregard it; and the United States have no more right to do that than the Choctaws have.

More especially the undersigned protests against such violations of rights and guarantees by erroneous and false construction of statutes that do not mean to perpetrate so great an outrage, and which are not of necessity so to be read.

To annul the right of the Choctaws to a voice and vote in regard to the survey of the lands of the two nations by means of the force and effect imputed to the clause quoted from Article XI, would be even worse than to take a clear right from them by force and violence. Neither can the clause in question of the appropriation act have the effect imputed to it. To justify the imputation to the legislature of an intention to authorize a wrong and to violate the promises and defile the honor and faith of the nation, there must be no escape from that conclusion.

The treaty makes the consent and request of both nations necessary. Under it no protest by either was needed to make it the duty of the Secretary to refrain from ordering the survey. He had no right to order it and expend the moneys of the United States upon the application of either nation alone. To do so was, according to the treaty, a clear violation of the rights of the other nation, and an idle act that could result in nothing, unless intended to be followed up by the division of the lands, become a pretext and precedent, as a first usurpation, unresisted always does, and an unlawful expenditure of the public moneys. The statute substitutes the word "or" for the word "and." It is not a matter of surprise that Congress or those by whom the clause was draughted, or the money estimated for, should not have been accurately informed in regard to the tenure by which the Choctaws and Chickasaws hold their lands. To suppose an accurate knowledge and to suppose that the change was intentional, is to suppose a deliberate intention to do a great and grievous wrong against equity and good conscience.

The treaty and the statute are equally laws, and in construing the latter the former must be considered, as if they were two statutes *in pari materia*. The statute will not be construed as to violate the treaty if that can be avoided or so as to subvert the rights of property of the Choctaws; and no court would hesitate to construe the word "or" in such a case to mean "and." For, as a court of the United States has declared, this has sometimes been done, when such a construction was clearly necessary to give effect to the legislative provision.

Moreover the clause of the appropriation act is not affirmative, but negative. It does not declare that the survey shall be made when either nation may ask it; but that it shall not be unless one or the other does. Even a prior statute to the same effect with the provision in the treaty would not be repealed by this negative provision. These, the under-

signed has been assured by counsel, are propositions as to which there is no doubt, and which are well known to every lawyer and among the commonplaces of the profession, and therefore the undersigned formally and especially protests against the enforcement of the clause of the appropriation act in question, as a repeal in any degree or regard whatever of the proposition of the said treaty in regard to the surveying of the said lands; and against any such repeal now or hereafter, by construction or implication.

But, above all the undersigned earnestly protests against the declaration of the honorable Secretary of the Interior that the survey will be "no diminution of the rights of the Choctaws in the premises or violation of any privilege that they may lawfully claim," and that it determines nothing with regard to the policy either of the nations or of the United States for the future.

Whether it is for the interest of the Choctaws that this survey should be made, is a question for them alone to consider. The United States may urge it upon that consideration, and by reason and argument endeavor to convince them, and by convincing to induce them to consent. To anything that might be said to us upon that subject by the Secretary of the Interior, we should listen with profound respect, and should not be wise in our own conceit, nor unwilling to be convinced. But that it will be for our interest is a consideration singularly out of place in a reply to our refusal to consent; and equally so is what is said in the response, as to the policy of the government of surveying Indian reservations, with a view to the ultimate settlement of the Indians on lands to be held by them in severalty. The friends of the Indians can effect that policy with the Choctaws only by agreement and treaty unless they resort to force. The force is resorted to; for the survey of our lands without our consent is a trespass, a violation of the treaty that would never have been resorted to against any but a feeble people incapable of resistance; or if an Indian treaty seemed to impose the same obligations upon the conscience and soul of the nation as a treaty with England does, or was to be construed by the same rules.

It does not seem to the undersigned that it is in question whether the survey will do the Choctaws direct and positive material injury. The only legitimate question before the honorable Secretary of the Interior was the simple one whether he had the right to order the survey without the consent, and even against the refusal of the whole Choctaw people. That the contractors might suffer, and that the appropriation had been made, were matters with which the Choctaws had no concern. And with great respect, the undersigned cannot resist the impression that the several considerations urged in his justification for the plain violation of a treaty by the honorable Secretary of the Interior would, in the case of an argument at the bar, be deemed but special pleading.

If the United States have no right to survey any part of the Choctaw and Chickasaw country, until the Choctaw council asks it, surely it is a diminution of the rights of Choctaws to do so notwithstanding and in contempt of their protest. Surely it is a violation of their privileges, if it is right so to style their vested rights of property, ownership, and dominion. That the survey is a free gift to them does not change this.

The honorable Secretary of the Interior recognizes the right of Congress to change a treaty by the use of the word "or" in the place of "and"; and he recognizes the right of the Chickasaws alone to demand a survey of the lands within their district. To do that is to recognize their right to demand a distribution of that land among themselves, to the exclusion of the Choctaws. True the mere survey harms no one. It does not

take away the land from the Choctaws. It is but preliminary to that, and that may never follow. The undersigned does not believe that such arguments as these would be ventured on, to add insult to injury, in the justification of a violation of the territorial or landed rights of England or even of Mexico.

If the Choctaw people were to concede the right of the Chickasaws to demand, or of the United States to make this survey, they would concede all. They would concede the exclusive or peculiar right of proprietorship of the Chickasaws, as a people, to the lands within their district, into which district every Choctaw has a plenary right to remove, and the Chickasaws have, individually, only the same right of occupancy. They never will concede that. The Chickasaws have never been bold enough to claim it. The rights of each nation, within its limits as a government, are merely jurisdictional rights, those over persons and property arising from governmental organization. As land-owners they have no territorial line between them. As such they are all one people; and the consent of one portion is as necessary to the survey of any part of their lands as the consent of the other is.

The honorable Secretary of the Interior has done all it was in his power to do to encourage the idea among the Chickasaws that they have the entire ownership of the lands within their jurisdictional limits; for he has no power as yet to do more than order a survey on their application, which assumes the existence of that exclusive right and proprietorship. In doing it he done a very mischievous and, the undersigned cannot but think, a very wrong thing, justified by reasons and propositions that are even more mischievous, and, if that be possible, more unjustifiable. In using these words the undersigned speaks with perfect respect, without anger and without any desire to win the advantage in controversy.

If he speaks earnestly and plainly, the honorable Secretary of the Interior will pardon him when he reflects that in this Republic the judiciary alone stands between private rights, even of property, and the arbitrary will of an omnipotent Congress; that the shield of the judiciary cannot be interposed between that omnipotence and the rights of property of Indians or an Indian nation; and that it is now boldly asserted in Congress, and is, by his action in regard to this survey, admitted by the Secretary, that if Congress violates an Indian treaty, the executive departments must obey and give effect to the legislative will; and it does not lessen the grievance nor diminish the alarm with which the Choctaw people regard this violation of the treaty, to be told that the survey itself will be no diminution of their rights or violation of any of their privileges. A court of equity will entertain a bill to remove a cloud upon a man's title to his land, or a bill *quia timet*. It will grant injunctions to prevent anticipated invasions of right. That the survey will take no land from and do them no actual present material damage is of small import. They have learned again and again to what such inceptions and assumptions of power and apparently harmless preliminaries lead, and are not misled by the delusive idea that the survey is a free gift.

They know too well the sinister purposes of greed which have prompted the application for this survey, and the malignant influences to whose action it is owing. They know that a weak people that would retain any of its rights, must resist the beginnings of encroachments; and how often all has been lost by seemingly harmless concessions. A nation or a people has no abstract or valueless rights. There can be no invasion of any right of a people without injury, and no other na-

tion would venture upon such an argument as that of the honorable Secretary of the Interior, in regard to the right of joint proprietorship or occupation of land by the United States.

The undersigned respectfully protests against the proposition that the question whether the land-office provided for by the treaty, can be established without the consent of both nations, or the actual apportionment of the lands in severalty be carried out without such consent, can ever become a subject of consideration. To suggest that is to suggest that the question is doubtful, and to invite discussion and agitation. It can never be doubtful, while language has any meaning, and any reliance can be placed upon solemn pledges guaranteed by national honor.

And he protests against the idea, implied in the last paragraph of the letter of the honorable Secretary, that "the grand council of the civilized nations" can have anything whatever to do or consider or any wishes to express in regard to the lands of the Choctaws and Chickasaws. It is wholly optional with the Choctaws whether they will or will not be represented in that body, and if there is the least probability that it will undertake to legislate as to their lands, or that its wishes in regard to them would be listened to by the United States, it is little likely that such a grand council will be held.

With full reliance upon the justice of the claims of his people, and regretting to have found nothing in the letter of the honorable Secretary of the Interior to allay their apprehensions, but much to justify and increase them, the undersigned will submit the whole matter to their consideration, and remain, with profound respect, the Secretary's most obedient servant,

PETER P. PITCHLYNN,

Delegate and Representative of the Choctaw Nation.

"K" is a letter of Wm. F. Cady, acting commissioner, to me, dated September 9, 1870, and is as follows:

K.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., September 9, 1870.

SIR: I have received, by reference from the honorable Secretary of the Interior, your communication of the 7th instant, requesting "to be furnished with copies of whatever documents or papers are on file in or in possession of the Department of the Interior, General Land Office, or Indian Office, evidencing a request or desire on the part of the legislative council or people of the Chickasaw Nation for the survey of the lands in the Chickasaw district."

In compliance with such request, I inclose you herewith a copy of an act of the Chickasaw legislature, approved November 9, 1866, entitled "An act confirming the treaty of 1866."

In the second section of said act you will observe it is enacted "that the Chickasaw legislature does hereby give its assent to the sectionizing and allotment of lands in severalty, under the system of the United States, as is provided for in the treaty of April, 1866, and the President of the United States is hereby requested to cause the same to be done as soon as may be practicable."

The resolution referred to is the only document or paper on file in this office giving a direct and authoritative expression of the wishes of the

Chickasaw people in the premises, and all that is required under the treaty of 1866, above referred to.

Very respectfully, your obedient servant,

WM. F. CADY,
Acting Commissioner.

P. P. PITCHLYNN,
*Delegate and Representative of the Chickasaw People,
Washington, D. C.*

"L" is a letter of Th. Drennen, in charge of agencies, to Hon. E. S. Parker, Commissioner of Indian Affairs, dated May 16, 1870, and is as follows:

L.

UNITED STATES INDIAN AGENCY FOR
CHOCTAWS AND CHICKASAWS,
Boggs Depot, C. N., May 16, 1870.

SIR: I have the honor to inclose herewith an act passed by the Chickasaw legislature November 9, 1866, relative to sectionizing the land, and other matters appertaining to the Chickasaws. * * * * * The United States agent, Captain Olmstead, being absent at Saint Louis for Choctaw funds, I have forwarded the inclosed papers at his request.

TH. DRENNEN,
In charge of Agency.

Hon. E. S. PARKER,
Commissioner of Indian Affairs, Washington, D. C.

"M" is an act of the legislature of the Chickasaw Nation confirming the treaty of 1866, approved by Cyrus Harris, governor, certified by Alexander Dennis, national secretary, and is as follows:

M.

AN ACT confirming the treaty of 1866.

SEC. 1. *Be it enacted by the legislature of the Chickasaw Nation*, That whereas a treaty was concluded at Washington City on the 28th day of April, 1866, by commissioners duly appointed on the part of the Chickasaws, Choctaws, and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby give its assent and confirm the said treaty and amendments made by the Senate of the United States.

SEC. 2. *Be it further enacted*, That the Chickasaw legislature does hereby give its assent to the sectionizing and allotment of lands in severalty, under the system of the United States, as is provided for in the treaty of April, 1866, and the President of the United States is hereby requested to cause the same to be done as soon as may be practicable.

SEC. 3. *Be it further enacted*, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations, as will give to all persons of African descent certain rights and privileges, be, and is hereby declared to be, the unanimous consent of the Chickasaw legislature, that the United States shall keep and hold said sum of three hundred thousand dollars for the

benefit of said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the 3d article of the treaty of April 28, 1866.

CYRUS HARRIS,
Governor.

I hereby certify that the above act is a true copy of the original law on file in the archives of the Chickasaw Nation.

{ GREAT SEAL OF THE }
{ CHICKASAW NATION. }

ALEX. DENNIS,
National Secretary.

"N" is a letter of mine to the honorable Secretary of the Interior dated September 12, 1870, and is as follows :

N.

WASHINGTON, D. C., *September 12, 1870.*

SIR: I acknowledge the receipt from the Acting Commissioner of Indian Affairs of a copy of an act of the Chickasaw legislature, giving its assent to the survey and sectionizing of the lands of which the Chickasaws are part owners.

It was not necessary for the clerk, who is acting commissioner, to add that the resolution referred to "is all that is required under the treaty of 1866 above referred to." It is for others than he to judge what the treaty requires. The Chickasaw Nation gave its own assent; but it has never demanded of you that you should order a survey without the assent of the Choctaw Nation. I knew that our brethren, the Chickasaws, could not have done so, whatever Messrs. Cooper & Mix may have wished you to do. I now know what I wished to know, that the Chickasaw people have never known of the passage of the act or resolution of 1866; that you only received it in May, 1870, and that the Chickasaws, our brethren of the same blood, never asked you nor authorised any white man to ask you to have the lands surveyed without our consent. I thank God for that, since nothing could so much afflict and grieve me, as to know that the Chickasaws, who are brave and true, and gentle, man could have sought, under any influences however sinister, sordid, and malignant, to take so base and so contemptible an advantage of their brothers, by means of the swift alacrity of the Indian Office to do anything that shall help give our lands to railroad corporations and vulturous speculators.

The clause of the appropriation act under which the survey is to be made required the subsequent assent of the Chickasaw or Choctaw council. It forbade the survey unless the assent of one or the other should be given subsequent to its passage; for if the previous assent now relied on was to be deemed sufficient, there was no need of the proviso. Congress did not choose to accept any former assent, which might have been repented of. Has any step been taken to ascertain whether the Chickasaws still assent since the passage of the appropriation act? Or has any inquiry been addressed to the Choctaw council to know if it would assent?

Thus, whatever the clerk who acts as Commissioner of Indian Affairs may see fit to think upon the subject, the consent of the Chickasaw council, given in 1866, and sent here by a person who has no official

character, is not all that the treaty of 1866 requires to warrant the survey of our lands, nor all that the appropriation act requires to authorize an expenditure of the moneys of the United States in surveying them.

I have the honor to be, sir, with great respect, your obedient servant,

PETER PITCHLYNN,

Delegate and Representative of the Choctaw People.

Hon. JACOB D. COX,

Secretary of the Interior.

"O" is a letter of mine to the honorable Secretary of the Interior, dated August 29, 1870, and is as follows:

O.

WASHINGTON, D. C., August 29, 1870.

SIR: By the treaty of October 18, 1820, made with the Choctaws, the United States, in consideration of a cession of lands in the State of Mississippi, made by the Choctaws, ceded to the Choctaw Nation that country west of the river Mississippi contained within the following boundaries; that is to say, beginning on the Arkansas River where the lower boundary-line of the Cherokees struck the same; thence up the Arkansas River to the Canadian Fork and up the same to its source; thence due south to Red River; thence down Red River three miles below the mouth of Little River, and thence a direct line to the beginning.

By the treaty of January 20, 1825, the Choctaw Nation sold and ceded to the United States so much of the said lands and country as lay east of "a line beginning on the Arkansas one hundred paces east of Fort Smith and running thence due south to Red River;" and it was declared to be understood that this line should constitute and remain the permanent boundary between the United States and the Choctaws. By the treaty of September 27, 1830, it was expressly stipulated that the United States, under a grant specially to be made by the President of the United States, should cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee-simple to them and their descendents, to inure to them while they should exist as a nation and live on it. And this grant was to be executed as soon as the treaty should be ratified. If it had never been executed at all, the grant by the treaty itself was perfect and complete. The patent was but evidence of it. What more full words could one use than "grant and convey in fee-simple?" If national faith has not become utterly worthless, we own our lands by as good and perfect title as you own yours.

The land thus granted and conveyed in fee-simple was thus described: "Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River and down Red River to the west boundary of the territory of Arkansas; thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825," already cited. And the government and people of the United States by the said treaty declared themselves obliged to the Choctaw Nation of red people that no part of the land granted them should ever be embraced in any Territory or State.

But when the line between the Choctaw country and the territory of Arkansas was directed to be run in accordance with this treaty the point of beginning of which line was at once and without difficulty as-

certained with certainty, it was found that if it were truly run due south to Red River, it would throw into the Choctaw country sundry salt springs in what was then or afterward the county of Sevier; and therefore not a straight but a crooked line was run to the westward of the true line so as to leave the said springs in the said territory, and to include in it a triangular piece of country, having its apex at the initial point near Fort Smith and its base on Red River, not by mistaking the direction of the western line, but by intentionally making it crooked with offsets, and thus deliberately robbing the Choctaws of part of their country and including it in Arkansas, as if it had been a part of that sold and ceded by them by the treaty of 1825.

By the treaty of June 22, 1855, the boundaries of the Choctaw and Chickasaw country were defined as follows: "Beginning at a point on the Arkansas River one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses the said river, and running thence due south to Red River, thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along the said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning;" the lands within which limits were by the said treaty, in pursuance of the act of Congress of May 28, 1830, forever secured and guaranteed by the United States to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common.

After the making of which treaty the said line between the Choctaw and Chickasaw country and the State of Arkansas was ordered to be surveyed and run by commissioners of the United States, the State of Arkansas, and the Choctaws and Chickasaws, which commissioners ascertained, without difficulty, the initial point of said line; but, finding that the old line varied from it, the commissioner on the part of the United States suspended the running of the line, and waited for instructions from the Secretary of the Interior, instead of doing his duty and running the line as the treaty directed and required; at which the surveyor employed as commissioner by the State of Arkansas was so greatly disgusted as to throw up his appointment, refusing to be a party to the contemplated dishonesty and outrage.

The Hon. Jacob Thompson did not venture to direct the true line to be run regardless of consequences. His duty required it, and honesty and the faith of treaties and the rights of property of the Choctaws demanded it, but the opposition of the Senators from Arkansas and their friends in the Senate was too formidable and their support of the administration too necessary to permit him to change the actual western boundary of Arkansas, and he ordered the old erroneous line to be run.

The treaty of 1866 refers to that of 1855, for the limits and boundaries of the Choctaw and Chickasaw country, and guarantees all obligations, and declares in full force all rights, privileges, and immunities possessed under former treaties.

The Choctaw and Chickasaw people have in vain endeavored to have the true line between their country and the State of Arkansas run, and to regain possession of the land east of the old line and west of the true one, of which they have been deprived for forty years, while a large part of it has been sold and disposed of by the United States, and the use of the said salt springs has all the time been denied them and been enjoyed by the people of Arkansas, by whom vast quantities of salt have been manufactured there.

The Choctaws and Chickasaws have been willing to sell to the United States their right and title to the said land and springs upon being paid the value of the lands and a fair compensation for the long use of the springs, and the salt made thereat; but no regard has been paid to them, and the land is still included within the territorial limits of Arkansas, while it is and always has been in fee simple absolute the property of the Choctaws and Chickasaws, as much as the Capitol of the United States is the property of the people of the United States.

They are without rights or remedy in the courts of the United States, having no standing therein, so as to be able to vindicate their rights of property, however clear they may be. They can only petition and pray for redress. They have just claims against the United States, to adjudge satisfaction whereof no respectable court would hesitate an hour, or even need to hear argument; but the United States will not permit them to present these claims to the courts in which their own judges preside.

These things are not fit to be suffered by a great republic that claims to govern more wisely and justly than kings do. That is, in practice and fact, the best government which has the most incorrupt courts and secures most perfectly to every citizen and every subject the vindication before such courts of his rights of property and action. It is not a good nor a wise government which denies to the humblest human creature whom it governs all remedy to enforce his rights; for when it denies the remedy it annuls the right (or rather paralyzes it, for no human power can annul a right if even God can); and so does that which is unjust, dishonorable, and dishonest. I beg the Secretary not to condemn me for disrespect to the government. It should itself be indignant with those legislators who cause it to play a part so unworthy of it and so foreign to its nature and to the sense of justice of its people. I am an Indian, and I only express what an Indian feels. Few kings have denied all justice and remedy and rights in their courts to even the lowest and humblest of their subjects. Even the Saxon swine-herd was not entirely without the protection of the law, and in Rome under Domitian, the slave could be heard to revindicate his *peculium*. Yet the ancestors of the Romans had not solemnly stipulated for themselves and their descendants that they would not *sell*, would not *deny*, would not *delay* justice to *any* one. The statesmen and the people of the United States surely do not know the injustice with which they deal with our Indian tribes. Treaties are made with us that are a part of the supreme law of the land; lands are bought from us and sold to us; moneys become due to us, awards are made in our favor, solemn guarantees are given us, and the most solemn obligations assumed toward us, and yet we are utterly powerless to enforce or assert a single right. We can only be suppliants and beggars. There never was in all the world a people more utterly without any lawful remedy for wrong or means of asserting a right than the Choctaws and Chickasaws are; and yet they are neither slaves nor a conquered people, but the allies and wards and under the protection of the United States; and the Constitution of the United States was made "to establish justice."

The Choctaw and Chickasaw people do therefore most respectfully demand to be put in possession of the land which has been theirs for fifty years, sold to them by the United States, paid for by them, solemnly guaranteed to them, again and again, patented to them in fee simple, and of the possession of which they have been deprived by fraud on the part of the officers of the government. And they earnestly pray that the true line may at once be ordered to be run and surveyed, and they

placed in possession, since it is the sworn duty of the President to support the Constitution and see the laws faithfully executed, and so long as this land is withheld from them, an act of Congress, five treaties, and the repeated promises and pledges of the government are set at naught.

Respectfully, your obedient servant,

PETER P. PITCHLYNN,

Representative and Delegate of the Choctaw Nation.

Hon. J. D. Cox,

Secretary of the Interior.

By Mr. GARLAND :

Q. Mr. Pitchlynn, you want these papers to go in as expressing your views upon these questions. You still hold the same opinions expressed in these papers, do you ?—A. Yes, sir ; I hold the same opinions now that I have expressed in those papers.

By Mr. GRAFTON :

Q. What proportion of the Choctaws farm their lands, live by farming, stock-raising, &c. ?—A. All heads of families.

Q. Do you know of any who do not till more or less land ?—A. I do not know of any. There are no married men in my country who do not have farms and own stock ; all the married men in my nation have farms and raise stock ; all live in houses, and there are no "moccasin" or "leggin" Indians among us.

Q. They all wear boots and shoes ?—A. They wear shoes, boots, coats, and hats, and dress as the white people do in the United States. I do not believe there is one Choctaw who can dress a buck-skin or make a pair of moccasins—the moccasin-makers are all dead.

Q. Are the Choctaws manifesting much interest in the matter of education ?—A. They have for more than fifty years past taken a deep interest in their schools and in the matter of education.

Q. What proportion of the full-bloods speak and write the English language ?—A. They nearly all can read and write Choctaw, but what proportion that are educated in English I am unable to say, but there are very many.

Q. What was the condition of the Choctaw people prior to the war, as to prosperity, &c. ?—A. They were in a very flourishing condition, and also sent many children to colleges and high schools in the States. They had three large male academies and five female seminaries, and many neighborhood schools.

Q. Had your people much property ?—A. They had a great deal. They were all stock-breeders, and owned cattle and horses. They had immense quantities of cattle.

Q. What was the condition of your people at the close of the war ?—A. They lost nearly everything they had.

Q. Stock all gone ?—A. Pretty much swept out, just as the other tribes were, and there was but very little left, indeed.

Q. Were your school buildings injured in any way ?—A. They were abused a good deal.

Q. And had fallen into decay, more or less ?—A. Yes, sir.

Q. How have your people been getting along since the war ?—A. Rapidly improving, and have a forward tendency in the way of civilization.

Q. Have the school-houses been rebuilt and repaired ?—A. Yes, sir.

Q. And the people are all getting a good start again with their flocks, &c. ?—A. Yes, sir ; increasing in property, and are farming more extensively than before the war.

Q. Now, just state all you know about your people.—A. There is less whisky drank there, except along the line of the railroad, than in any other part of the United States. You scarcely ever see a drunken Indian. Our laws prohibit its being introduced into the nation, and that law is positively enforced by the authorities of the nation. Our temperance law extends back to 1824, and that law has been kept up and sustained by the nation ever since. We are ahead of the State of Maine on the liquor question.

Q. How about your churches?—A. The Baptists have probably twelve hundred members among the Choctaws. The Methodists more. I do not know their number exactly. The Presbyterians are probably as numerous as any of the others. They all have Sunday-schools attached to their churches. We have many natives who are powerful preachers. We have Masonic lodges among us.

Q. How about the Sabbath day; is that well observed?—A. By the Christians it is, and the most of our people are under Christian influence.

Q. What is the sentiment of the Choctaws in reference to the Territorial question, as far as you know?—A. Well, they are all opposed to that, with some few exceptions. Speaking of the really native Choctaws, I do not think you can find any who favor a Territorial form of government.

Q. How is it as to the division of the lands in severalty?—A. They are nearly all opposed to that measure.

Q. Have you any knowledge in reference to the Chickasaws concerning those subjects?—A. No, sir; I have not. Their delegates are here to speak for them.

Q. Governor, do you think that the allotment of land in severalty among your people would tend to produce a greater incentive to industry than under your present system of government?—A. No, sir; I do not. I will give you the reason. The Choctaw law provides that the improvements are his who makes them, and when he locates on the land, the law protects him. It is his property; it is his home, just as much as it can possibly be if sectionalized and a patent was issued to him. For the last forty years, since we have been in that country west, the Choctaws have greatly improved in agriculture; they have their orchards, and they had just as good improvements before the war, had as good homes, just as much improved as if they had held their lands in severalty. You cannot disposses a man of his home nor can you encroach upon his improvements. The law protects the timber around his farm.

Q. Explain the principal workings of taking up a farm in your country?—A. We select a place or buy a place from a man who has before improved it.

Q. Suppose you select one originally?—A. We select a place, locate on the land, and get boards, &c., and build the improvements.

Q. Do you have it surveyed and make a return of it?—A. No, sir; we go into the country and take in as much land as we want.

Q. And your inclosure marks the line?—A. Yes, sir; that is mine. We have a law to protect the timber; nobody dare touch my property. I have been eleven years from home, and yet my property stands there safe, and is now under the control and management of one of my children there.

Q. How about the protection of person and property?—A. It is just as safe there as in Washington, and much more so. We speak in the treaty of the better protection of person and property. I do not see

why that provision should have been put in the treaty, for life and property are just as safe there without it as if we had the laws of the United States placed over us. You cannot make laws to prevent men killing one another; you cannot make laws to prevent men from stealing; you cannot make laws to prevent them from committing assassination, or suicide, or any crime whatever. There never has been any law that would prevent murder, stealing, &c. There are examples of this in the State of Pennsylvania, and we have had examples of it here in the city of Washington. If a Territorial government is extended over that country and it is thrown open to white settlement, we will have fifty crimes where one is committed now.

Q. What evils, if any, would fall upon your people if the lands were allotted in severalty?—A. Well, sir, just the moment the Indian land is allotted to him he would have a hundred white men striving to get it from him. They would swear him out of it. I will tell you what they did with the great chief of the Choctaws, Mooshilatubbe, who served with General Andrew Jackson in the war of 1812. He was sued for a debt which he did not owe, and by sharp practice and fraud he was deprived of a valuable section of land granted him by the treaty of 1830. He never could understand the processes by which he had been dispossessed, and used to say all a white man had to do to get an Indian's land was to put his mouth to a book and blow on it, and away went the land. That was the experience of the Choctaws in Mississippi and Alabama. Some man with a barrel of whisky across the line would find out where there was a man who had property, and he would get some one to swear against him, and then send the sheriff, and gather up his cattle and horses, and take them away.

Q. In the light of that experience you do not want to make it possible to be repeated?—A. There would be no peace for a day in the Choctaw territory if you open that country to white settlement. They would be rooted out; they would be cheated out of the country by the white men. They would steal something and put it upon an Indian and go and hang him. In this day, particularly, when there is so much wickedness, and the whole world has got to stealing and robbing, just open that country to white settlement, and you will have a hundred thousand thieves there in less than six months. There would be no safety for life or property for the Indian. I do not speak this in prejudice, but this would be the working of extending a Territorial form of government over the country or on opening it to white settlement.

Look at the Wyandottes: they were robbed of everything they had in Kansas. They have had to flee to the Indian Territory. There is no country now that the United States can point the Indians to west of the Mississippi. There is no west of the Mississippi any more for the Indians in the sense that term was formerly used. There is no place to fly to find an asylum. We are at the last resting-place. I wish to say one thing about the policy of the Government of the United States towards the Indians. It commenced before the year 1830. This country was given to be an exclusive home for the Indians by the treaties, and the facts of history bear testimony to my statement. It was General Jackson's policy, in order to give the Indians a permanent home. It was the great Democratic policy of 1830. It was carried out with the five civilized tribes who went there to secure a home. The treaties, correspondence, and all negotiations with the Indians express it most plainly. If the Territorial bills that I have seen were passed (I do not speak with enmity of the men who introduced them), there is not one of them that would benefit the Indians.

Q. What is the condition of the freedmen; how do they get along in your country?—A. They are doing well; they are in the country enjoying themselves as freemen. Nobody molests them; they have never been ku-kluxed or outraged in any way.

Q. They do not vote?—A. No, sir; they do not vote.

Q. They do not hold office?—A. No, sir; they do not hold office.

Q. Any of them farming?—A. Yes, sir; they are farmers, and are doing very well.

Q. Do they pay taxes?—A. No, sir.

Q. Are they allowed to till the soil?—A. Yes, sir; they are permitted to till all the land they can, own stock, cattle and horses, and are better off on the whole than they are in the States or here. The Indians who have had lands allotted them in severalty have not been able to hold them. That experiment was made by the Wyandottes in Kansas. I was here when they made their treaty, and I saw them again after the war, and they told me that they were divested of their lands; robbed of every thing; cheated and defrauded, and there was no such thing as remaining in Kansas, and they sought a home in the Indian Territory. The same story was told me by the Pottawatomies. The Indians now in New York hold their lands in common; they are increasing; they are improving in every respect, and they are a prosperous, happy people. Every time you survey the Indian's land and make him a citizen, he sinks under it; but when they hold their lands in common they go upwards; they hold their own and remain united.

Q. How long have you been in public life?—A. About fifty-four years.

Q. How often have you been governor?—A. But once; I was elected chief but once.

By Mr. ADAIR:

Q. How many treaties have you assisted in negotiating between your people and the government?—A. Well, one in 1830. I was a signer of the treaty of 1830, but that treaty was forced upon us. I helped to make the treaties of 1837 and of 1855. At the request of the Government of the United States I accompanied the delegates to Washington who negotiated the Treaty of 1866. I was principal chief at the time.

Q. You were a witness to the treaty of 1866?—A. Yes, sir.

Q. Were you personally acquainted with General Andrew Jackson?—A. Well acquainted with him. I was educated at Nashville, Tenn. I knew him personally for many years from the time when I was a little boy; my father and my kinsmen fought with him in the war of 1812. He was a trustee of the National University at Nashville. I went to school with his adopted son, Andrew Jackson, jr., and we were in the same class together.

Q. It was his policy as devised by the treaty of 1830, and subsequent treaties, that that country should be occupied by the Choctaws, Chickasaws, Creeks, Seminoles, Cherokees, and should belong to them. The lands were to be owned by them and it was to be a permanent home for them. That was the way he understood it, was it?—A. General Jackson made the treaty of 1820 with the Choctaws and it was understood to be a complete cession of that country to the Choctaws without any conditions; in the language of General Jackson, "to be theirs as long as grass grows and water runs."

Q. Under the Choctaw treaties, previous to their removal West, there were certain parts reserved to them and they could not hold them?—A. A great many were unable to hold them.

Q. Was not that the reason why General Jackson changed his policy?
—A. No, sir; General Jackson was out of office then.

Q. Those who had their lands sectionalized and remained in the States had to give them up and go West afterward?—A. Yes, sir.

Q. The experiment was a complete failure?—A. Yes, sir; a complete failure with few exceptions.

Q. Were you present when the treaty of 1866 was made?—A. Yes, sir; I signed it as one of the witnesses.

Q. You were a chief at the time?—A. Yes, sir.

Q. Was it not the understanding of all the parties that made that treaty, that it did not authorize the establishment of a territorial government over that country; but that it provided for the establishment of a grand Indian council to be composed of all the Indian tribes?—A. That was the understanding of the delegates. It was so understood at the time, that it was not to be a Territory of the United States, but an Indian council. That is in the seventh article of the treaty of April 28, 1866 (14 U. S. Stat., p. 771).

Q. It was understood at the time that it was to be a confederation of all the tribes?—A. That was what was understood and expressed by the treaty.

Q. And that the Indian council provided for was to be an Indian organization?—A. Entirely so.

Q. And was not this completed in 1869?—A. Yes, sir; the Choctaws had been sending delegates to that council until the United States failed to make the necessary appropriation to run it.

Q. And all this time it has not been a Territory of the United States?—A. No, sir; not a Territory of the United States.

Q. Did not that treaty provide that it could not be made a Territory without the consent of the Choctaw nation?—A. The treaty provides that.

Q. You did not consider, at the time, that the Choctaws in the treaty of 1866 gave their consent to the establishment of a Territory proper of the United States?—A. No, sir.

Q. But that it was understood to be an Indian council?—A. That is the way the treaty was understood, and hence my opposition to these bills. They are bills establishing a Territory of the United States and not an Indian council or confederation.

Q. Congress had made appropriations ever since 1869, to pay the expenses of this general council?—A. With the exception of a year or two past.

Q. Don't you think the general council has proved a great benefit to the Indians, and has been the means of civilizing the wild Indians?—A. I think it has been a great benefit to the wild Indians by bringing them into our councils, and by bringing them into the society and into contact with the civilized tribes. It has certainly had a salutary influence over the wild tribes and has been a benefit to them. They all speak a different language, and they come together and form a brotherhood and get acquainted with each other.

Q. This confederation established under the auspices of the treaty of 1866 is an Indian organization, and the doors of that country are left open for the reception of friendly Indians?—A. That is what the treaty provides.

Q. The Cherokee treaty provides for the same thing?—A. Yes, sir.

Q. And the object was to bring other Indians into the country according to the established policy inaugurated by General Jackson and per-

fectured by the subsequent Administrations of the government?—A. That has been the understanding of the Indians.

Q. That is the way you understand all the Indian treaties?—A. Yes, sir; that is the way I understand it, and I understood it was contemplated by the Government of the United States to be for the benefit of the Indians.

Q. Has not the President of the United States understood it that way as is evidenced by the establishment of the council?—A. Yes, sir; and everybody else understood it so, as carrying out the true intent of the treaty.

Q. Has not every Congress since the year 1870 taken that view of the subject?—A. Yes, sir.

Q. That it is not a Territory of the United States, but a confederation of Indians?—A. Yes, sir; a confederation of the tribes; and there is a provision as to how the smaller tribes shall come in.

Q. So it seems the Indians understood the treaty of 1866 as Congress and the President have understood it since, as is evidenced by making appropriations, &c.?—A. Yes, sir; it cannot be understood otherwise.

Q. By a fair construction?—A. Yes, sir; by a fair construction.

Q. If you put any other construction upon it it will be an admission that the President and Congress have all been fools?—A. Yes, sir; and we the most deceived people in the world.

Q. As to the establishment of a court, the people generally are in favor of being cut off from the western district of Arkansas and having a judicial district established according to the treaty?—A. Yes, sir.

Q. Inside of the Territory?—A. Yes, sir.

Q. Don't you think the interest of the Indians would be promoted by the United States Government making provisions to pay the Indians what they owe them? And if so, state your reasons why. And does not the government owe the Choctaws a great deal of money? And if so, state how much and on what account.—A. The Choctaws have a very large claim against the Government of the United States, which they have sent me here to secure for them. I have failed ever since, excepting one year. They paid a portion of the claim in 1861. Since then they have not paid anything.

Q. About how much does the government owe the Choctaw Nation, according to a fair statement?—A. They owe the Choctaw Nation, interest and all, nearly five millions of dollars. The United States forced us to give up over ten million acres of land, to leave our cultivated and improved farms; we lost all our stock, had to give up everything and move into the western wilderness and commence life anew. By the treaty of 1855, article 11, the United States agreed to submit our claims for losses to the Senate for final adjudication; and in 1859 we were awarded the net proceeds of the sales of our lands, and an account was stated showing the United States to owe the Choctaws over two millions of dollars, of which only \$250,000 has been paid; the balance, with interest from the date of the award, is still due. But five millions would not pay us for our actual losses of property beside the afflictions and tribulations we suffered in moving.

Q. Did you not lose about one-third of your people?—A. Yes, sir; about one-third. Many died on the journey. The climate of the new country for several years proved very sickly, and many died soon after reaching there.

Q. How long have the Choctaws been trying to get the Government of the United States to pay that money?—A. They have been prosecuting the claim for more than forty years.

Q. They have been forty years?—A. Yes, sir; forty years.

Q. You are begging Congress now?—A. Yes, sir; I am asking now. I have got memorials in my pocket now, copies of which I furnished to my friend, the honorable Mr. Garland.

Q. Has not the department recommended its payment?—A. It has been recommended by every committee that has investigated it; by the Secretary of the Interior in his report; by the Secretary of the Treasury in his report, and one of the Attorney-Generals said it was a just claim and ought to be paid.

Q. Do you not think it would be doing the Choctaws more justice for the Government of the United States to pay them what it owes them than to be trying to get these Oklahoma bills through contrary to the treaties?—A. The United States sold our lands in Mississippi and covered the money into the Treasury, and have been using it ever since. If we had what is justly due us we could go ahead and improve our farms, &c. But Congress delays and puts off making the appropriation, and we think it very unfair for them to get up these Oklahoma bills while the former treaties are not carried out.

Q. Have you read these Oklahoma bills?—A. I have read them, and must say that their object and design is to abrogate our treaties. There is just enough of the treaty in the Franklin bill to swear by and not to commit perjury.

Q. Do you recollect the provision which says the fee of the land is in the United States—that declaration assumes that the fee of the Indian land is in the Government of the United States?—A. Yes, sir.

Q. The fee is not in the Government of the United States, but it is in the Indians, is it not?—A. They own every inch of that land. If there was only one Choctaw or Chickasaw living on it, according to the treaty he would own the whole of that country. If the Franklin bill passes it would be taking the fee out of the Indians and giving it back to the Government of the United States. The country is ours; we have paid for it and we hold a patent for it. The United States have guaranteed us self-government by the most solemn and repeated treaty stipulations. No change can be made without our consent, either in our lands or government. As soon as the Indian title is extinguished, the railroads would claim the contingent land-grants. I presume that is the reason why such efforts are being made to transfer the title or fee from the Indians back to the government, and the main reason why these Oklahoma bills are being urged.

Q. Do you not construe section eighteen of that treaty to mean that the fee belongs to the Indians, and not to the United States? Franklin's bill takes no cognizance in the world of the provisions of the Choctaw and Chickasaw treaty. Now, don't you remember that there is a provision in Franklin's bill which says nothing shall be construed to dispossess the Indians of the soil?—A. We would soon be dispossessed of our homes, our country, our money, and everything else. We would lose all. That would be the working of Franklin's bill in the Choctaw Nation. You would not find after five years an hundred Indians in that country. They would seek homes in Arkansas or in Mississippi and in the other States. That would be the workings of that bill if it passed. There would be no Choctaw Nation, no Chickasaw Nation, no officers, no chiefs, no Indians. It would be just such a nation as the Wyandottes were in Kansas—the Indians destroyed or driven out.

By Mr. GRAFTON:

Q. Don't you think that the railroad people believe that would be the

effect of that measure, and that that is the reason why they press it?—A. Yes, sir; that is the reason, as I have before stated. When the treaty of 1866 was signed the bills giving contingent land-grants in our country to the railroads had not yet been passed by Congress, and we knew nothing about them until some time after they had passed. Seven years ago I passed through Arkansas. I went through Little Rock, to my home, and these Oklahoma bills were talked about at that time, and I found that at every place I stopped people were talking about going up into the Indian country as soon as the Territorial bill passed, and I think two-thirds of Arkansas would have gone into the Indian country to get rid of paying taxes and to get out of politics. There was at that time a terrible conflict existing in the State of Arkansas.

By Mr. GARLAND :

Q. That was before I was governor?—A. Yes, sir; I did not say anything to reflect on my friend the honorable Senator.

By Mr. ADAIR :

Q. Speaking about the policy of sectionalizing the lands in regard to the Indians, you alluded to the Pottawatomies, the Delawares, and Shawnee Indians having had their lands sectionalized in Kansas, and since that time have had to come into the Indian Territory?—A. Yes, sir; they had to flee from the country. The Ottawas had established for themselves a fine school in Kansas, worth over \$100,000. It was taken from them. Two acts of Congress have been passed to help them recover it—one June 10, 1872, and the other March 3, 1873. At the last account they had not recovered it. They had to flee to us. They have got their schools started again, and are doing well. They suffered when citizens of the United States, but since coming into the Indian Territory they have been prospering. And the other tribes you mentioned suffered in like degree. It seemed impossible for them to live among the whites, as citizens of the United States, and to prosper. The Indians can only live and prosper by retaining their tribal organization, holding their lands in common, and in being protected by the government in their treaty rights.

Q. Did you ever hear about the Poncas?—A. I have no knowledge of their condition, but if any of these Territorial bills pass, the rush of speculators into the Indian country would be a great evil. There would be at least a hundred thousand thieves in that country in less than six months.

Q. There have been a great many tribes. Originally there were five, now there are thirty-two?—A. I believe so.

Q. All fled from this section?—A. Yes, sir.

Q. Is there not a great advantage to the Indians in holding their lands in common—that no one can enter and dispossess them of it?—A. It is. I have always advocated the policy that no man shall sell his country without the consent of all.

Q. Therefore there is no opportunity for the Indians to sell their lands without the consent of the others?—A. They can hold their lands in that way. It is the only way they can hold land. It is the only chance for him to hold property for his posterity; he will then have an opportunity to raise his children and educate them.

Q. When all the people own the land it is the interest of all to defend it?—A. Yes, sir.

Q. They may differ in politics but when they come to the land question they fall into line?—A. Yes, sir.

Q. That protects all?—A. It protects all.

Q. It protects all—the rich and the poor, the widow and the orphan, a like?—A. Yes, sir; all a like.

Q. If the Indians had the lands in fee simple, those ignorant Indians, the full-bloods, would not be capable of taking care of them, would they?—A. No, sir; sectionalized they could not hold them.

Q. Outsiders would come in and take them away?—A. Yes, sir; it would not be the ignorant ones alone, but the intelligent Indians would fare just as badly; they would swear him out of his land; I saw that done in Mississippi.

Q. They did that in Mississippi?—A. Yes, sir; in many cases.

Q. Did so in regard to the Cherokees?—A. Yes, sir; Creeks, Cherokees, Seminoles, Choctaws, and all experienced the same kind of outrages, and there seemed to be no help for them for the government failed to protect them.

Q. They took about nine hundred reservations from the Creeks?—A. Yes, sir.

Q. They have never got them back?—A. No, sir; they have never got them back.

Q. Treating them like the other Indians?—A. Yes, sir.

Q. From your information of the civilized Indians what would you estimate their property lost by the war to be—about twenty millions?—A. The Choctaws alone lost not less than five millions, probably much more; the Creeks were a very rich people, and the Cherokees had a great deal of very fine stock, &c.

Q. Twenty or thirty millions would not cover the amount?—A. No, sir.

Q. Have you ever heard of these humanitarian men outside of Congress pressing to have the Indians paid?—A. No, sir.

By Mr. BOUDINOT:

Q. How long have you been living in Washington?—A. I have been living here pretty much all my time since the war.

By Mr. ADAIR:

Q. You have been back and forth during that time?—A. Yes, sir; I have been attending the general council nearly every year, and have been in full correspondence with my people, and I know as much about them as if I was living at home.

Committee adjourned until Friday, May 10, 1878.

FRIDAY, May 10, 1878.

Committee met pursuant to adjournment and examined no witnesses. Adjourned until May 13.

MAY 17, 1878.

Committee met at 10.40 a. m. Senators present: the chairman, Mr. Saunders, Mr. Hereford, and Mr. Grover. Delegates and counsel all present.

CYRUS BEEDE, upon affirmation, testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Cyrus Beede.

Q. Where is your home?—A. My home is in Iowa, but I am residing at present in the Osage Indian agency. I am the agent for the Osage Indians.

By Mr. ADAIR:

Q. Where do you reside and what is your occupation?—A. I reside at the Osage Indian agency. I am the agent for the Osage and Kaw Indians.

Q. How long have you been such agent?—A. Upward of two years, I think, perhaps a year in February last.

By Mr. HEREFORD:

Q. What do you mean by agent or agency; do you mean you are the United States Indian agent?—A. Yes, sir.

By Mr. ADAIR:

Q. Appointed by the United States Government?—A. Yes, sir.

Q. Then you are a government officer?—A. Yes, sir.

By Mr. HEREFORD:

Q. What are your duties as Indian agent?—A. I have the general supervision of the tribes under my charge, subject to the Commissioner of Indian Affairs and the superior officers in Washington.

Q. But what is your duty there—what do you do?—A. I pay the annuities to the tribes, issue rations to them, and look after their farming interest, and keep them in subjection to the laws of the United States as nearly as practicable.

Q. In that capacity you have intercourse with the leading men of the nation?—A. Yes, sir.

Q. Do you see the masses of the nation often, or what proportion do you see?—A. Well, I think so; the heads of all the families are required to come to the agency once a week, for rations, &c.

Q. All the heads of families?—A. Yes, sir.

Q. For what purpose?—A. For the purpose of having rations distributed to them every week. The Osage and Kaw Indians get rations that often.

Q. Do they have to come once a week?—A. Once a week.

Q. Don't they have to travel a long way so that they have to come back immediately on their return?—A. That is true. We have a reservation about fifty miles square, and they have to come every week; that is the law of Congress. It is a pretty hard case.

Q. Many of them have come right back after their return, in order to get something to eat?—A. Yes, sir; instead of raising it themselves.

By Mr. CHAIRMAN:

Q. How wide is the agency?—A. It contains about one million six hundred thousand acres; it is not quite fifty miles square.

Q. Then some would have to come twenty-five miles?—A. Some more than that.

By Mr. HEREFORD:

Q. Is the agency anywhere in the center of the reservation?—A. It is pretty well located in the center. It is about twenty-five miles from the border of the State of Kansas.

Q. They come to get bread, meat, clothing, &c.?—A. Yes, sir.

By the CHAIRMAN:

Q. It takes all their time coming and going to secure something to eat?—A. Yes, sir.

By Mr. ADAIR:

Q. Were you connected with the Indians previous to your present

appointment? If so, tell the committee when and how long.—A. I was chief clerk of the central superintendency under Mr. Hoag. If my memory serves me correctly, about the first of 1871, until my appointment to my present position.

Q. That would make about how many years?—A. From 1871 to 1876 would make five years.

Q. During the time you were chief clerk of the central superintendency under Mr. Hoag, about how many different tribes have you visited?—A. Well, there are the Osages, Kaws, Sac and Foxes, Shawnees, Arapahoes, Crows, Comanches, and various other tribes; then there were some tribes not organized.

Q. Did you get pretty well acquainted with the members of these tribes in the discharge of your duties?—A. Yes, sir; I got very well acquainted with the tribes to which I allude, but less, perhaps, with those of the Quapaw agency than any other.

Q. From your knowledge of the tribes from the time you first became acquainted with them up to the present time, have they not gradually increased in numbers and improved in intelligence, &c.?—A. I think they have decidedly improved in civilization since I have been among them.

Q. Are not all these tribes to which you have alluded at peace with the Government of the United States and the border States?—A. They are so far as I know.

Q. Are not these roving tribes beginning to take up the habits of the civilized Indians, raising stock, farming, &c.?—A. Yes. I can only speak intelligently in regard to the Osage and Kaw Indians.

Q. I speak in view of your past experience with the others.—A. Yes.

Q. Do you know of any of those Indians that are in favor of a Territorial government of the United States being extended over them?—A. I do not.

Q. What, in your opinion, would be the result if Congress should pass either one of these Oklahoma bills, and open that country to white settlement and turn it into a Territorial government of the United States; would it not create great confusion?—A. I have not read either of those bills.

Q. Then what would be the effect if that country should be opened up to white settlement under a Territorial form of government of the United States?—A. Well, I think it would demoralize the Indians. I think the result of such a course as that would be demoralizing to the Indians.

Q. Don't you think the result would be the crowding out of the Indians from the country and its eventually being settled by the whites?—A. I think so.

By Mr. SAUNDERS:

Q. Why do you think they would be crowded out? Upon what ground would an Indian more than anybody else be crowded out?—A. They seem to regard that they have been pressed from the East to the West, and it seems they never had a permanent abiding place in the country. They know that whenever the white men go in they take possession of not only their own particular allotment, but they induce others to come in. There is a great deal of pressure upon the Indians to move. I only judge this by the experience of the past.

Q. Do they fear the United States Government or individuals in this case?—A. They look upon it in this way, that the Government of the United States has never been known absolutely to restrain its settlers

when they come upon an Indian reservation. Although they may be driven back for a short time, yet the ultimate result is that they create such a power as to maintain themselves.

Q. Then they are not afraid of the Government of the United States taking advantage of them?—A. Yes, sir, the Indians are afraid of the government. I have never been with a tribe that did not believe, whether rightfully or wrongfully, that the Government of the United States has, in the past, taken advantage of them.

By Mr. ADAIR:

Q. After the war a few of the Osage Indians went upon reservations in the State of Kansas; were they not run out of the country?—A. Yes; I have so understood it. It was so officially announced at the superintendent's office.

Q. Was that since the war?—A. Yes, sir; that was since the war.

Q. A number were promised that if they would have the country sectionized and locate upon it they should be protected and have patents, including homesteads?—A. That is my understanding.

Q. As soon as the lands were surveyed and they ascertained how the marks stood, did not the settlers crowd the Indians out and run them off and they are now in the Osage agency?—A. The reports of the agents so stated it.

Q. That is official, is it not?—A. Yes, sir.

Q. Were not some of the Osage Indians shot down and run off?—A. That is my understanding of it.

Q. That they were literally robbed of everything?—A. Literally driven out.

Q. They lost their homes?—A. Yes, sir.

Q. Don't you think if the country should be opened to white settlement that the flood of emigration would be so overpowering from the adjoining States that the Indians would have but little show, if any?—A. I don't think they would have any show at all.

Q. As they stand now they are at peace?—A. Entirely so, as far as I know.

Q. Wouldn't you regard it as unfortunate if that country was opened for white settlement?—A. I should indeed.

Q. Don't you think it would disturb them in their material prosperity, stock-raising, as well as education, &c.?—A. Yes, sir; in every way. I think it would be absolutely demoralizing.

Q. That has been the effect when the Indians are mixed with the whites?—A. So far as I have had any experience it has.

Q. Since the treaty of 1866 have not the various tribes been moving out of Kansas into that country on that account?—A. Yes, sir.

Q. Were not the Delawares driven out?—A. Yes, sir, and also the Miamis.

Q. The Shawnees, too?—A. The Shawnees, Poncas, Kaws, &c.

Q. They could not stand the pressure in Kansas under the State government?—A. No, sir.

Q. Have the Poncas been moved?—A. Yes, sir.

Q. The Pawnees?—A. Yes, sir.

Q. You spoke of the Indians advancing in civilization. From your observation of the Indians generally, don't you think they are progressing in civilization as rapidly as any other people could under the same circumstances?—A. I think they are advancing very perceptibly. I think it would be visible to anybody who would visit them from year to year.

Q. Are not some of those blanket Indians reducing their traditional governments to a written form, and are they not trying to have a written government?—A. Yes, sir; but it is very crude in its form; they are starting in that direction, and they are gradually substituting, from time to time, written laws to govern them.

Q. Have they not their laws in writing like the civilized tribes?—A. Yes, sir; the Osage Indians have.

Q. From your observation, don't you think if the proper means were brought to bear upon these other blanket Indians they could be reclaimed in the same way?—A. My understanding is that they are advancing also.

Q. Do not some of the blanket Indians, besides the Osages, have crude written governments?—A. I do not know but that they have.

Q. Have you not understood so? Take, for instance, the Comanches, Wichitas, and Caddoes?—A. Those Caddo and Wichita Indians have very excellent forms of government, but I do not know about their being written forms of government.

Q. Are not the masses of those Indians, that are called wild Indians, beginning to farm and raise stock, cattle, &c.?—A. I so understand.

Q. Are you acquainted with the Keokuk chief?—A. I am.

Q. Please state to the committee how many cattle he has?—A. I think he has a herd of about five hundred.

Q. Five hundred of his own?—A. Yes, sir; they belong to him.

Q. Are not the Osage Indians improving in that business?—Yes, sir; they are started, and they are doing something at it.

Q. Have not some of the Kaws, Comanches, &c., also?—A. Yes, sir; I understand so.

Q. Now, if this country was flooded by white emigrants, is it not reasonable that these Indians would be broken up?—A. I do not think they are able to cope with white people. I think it would be utterly demoralizing to them. That is my opinion about it.

Q. Are not the Indians, from your knowledge or your general information in regard to them, generally centralizing or coming together in that Indian country?—A. Yes. New tribes are being added every year.

Q. Do the children of the blanket Indians learn upon an average as fast as white children?—A. I think they learn as fast, quite as fast as white children would under the same circumstances, having a foreign language to learn. I think they get along quite as fast.

Q. The standard language taught in those tribes is the English language, is it not?—A. Yes, sir; the English language.

Q. All those tribes have schools, have they not?—A. I think all the tribes in the Territory have schools.

Q. Don't you think that, within a few years, they will all more or less understand the English language?—A. That is the tendency now.

Q. Have you ever visited the Creeks, Seminoles, Cherokees, &c.?—A. I have been there. I have an acquaintance with the civilized tribes. I have been there a number of times.

By Mr. HEREFORD :

Q. What proportion of the Osage Indians are blanket Indians; all of them?—A. No, sir; about three-fourths are blanket Indians.

Q. How many of the Osage Indians are there; about how many?—A. A little less than 2,500, I think. My last roll, made just previous to my coming here, was between 2,300 and 2,400.

Q. Are they increasing or diminishing in number?—A. That is very

difficult to tell. There was an enrollment when I went among the Osages, of about three thousand. I am not able to say they are decreasing. I think they were overnumbered in the first place. There were some two or three hundred Quapaws among them. I think my rolls will show three hundred decrease; but I think it results from over-numbering. There is a general disposition among them to overnumber themselves than otherwise. I think they would number upward of 2,500, however.

Q. Have you any idea of the number in the agency ten years ago?—A. No, sir; I know nothing about them ten years ago. Since I have known about them, I think they have not very materially changed in actual numbers. Perhaps they have lost a few upon their removal farther south.

Q. You know nothing of them historically, then?—A. Not worthy of testimony.

By Mr. ADAIR:

Q. Did they not decrease when in the State of Kansas?—A. As I have before stated, personally I cannot say about that, but my understanding is, as they have been moved from place to place, they have decreased.

Q. Is it not your understanding that when they were in the States with the white people that they decreased, and that the white people went in and took possession of their lands?—A. I think the pressure in the State of Kansas, and the claim that was made upon their lands, forced them to leave it. It was not their desire to leave Kansas.

Q. Were they not in the Cherokee Nation for two years before the treaty was made?—A. I understand so.

Q. They could not stay at home?—A. I suppose so. They did not.

By Mr. SAUNDERS:

Q. For what reason?—A. For the reason I have given, and the same rule would apply to the Miamis and the Kaws.

By Mr. ADAIR:

Q. From your observation—

The WITNESS. The same rule applies to the Black Bob Shawnees.

By Mr. ADAIR:

Q. Did they take possession of the Black Bob Indians?—A. Yes, sir.

Q. Don't you know there was a little band of New York Indians, some twenty-six families, who had their lands allotted to them?—A. I knew of them.

Q. You understand it from the public records?—A. I do.

Q. The settlers have those lands now?—A. I so understand it. I understand there was some proposition to pay those Indians.

Q. Have not the New York Indians that were run off out of the State of Kansas come down into the Indian country?—A. I know but little about the New York Indians; but it is my understanding that they were driven off their lands.

Q. In consequence of that did not Congress pass an act allowing the settlers to take them and pay them for them, called an act in regard to the New York Indians, &c.?—A. There is an act in reference to the New York Indians, I believe.

Q. The Black Bob Shawnees had their lands also allotted to them?—A. Yes, sir; I believe so.

Q. Were they not run off of them and are they not trying to get pay for them?—A. Yes, sir; they were, the last I knew of them.

Q. These refugee Indians that have been run off, don't they find refuge in the Indian country?—A. Yes, sir; they generally come into the Indian country.

Q. From your personal knowledge and from historical facts, how many tribes have been driven out from the State of Kansas into the Indian Territory?—A. I suppose there are a half-dozen within my knowledge.

Q. You have stated from your observation of the Indians that they are increasing and advancing in education and adopting the English language as the standard language?—A. Yes, sir; gradually adopting the English language as the standard language.

Q. Are they not dropping their old laws and traditions and picking up the ideas and principles of law of civilized nations?—A. The Osage Indians are very anxious to have a code of laws to govern them, as the Cherokee Indians have. They quote the Cherokees to me frequently, and ask assistance in the formation of similar laws to govern themselves. They are taking steps in that direction.

Q. From your observation of the other blanket Indians, are they not doing likewise?—A. They are following in the matter of education, &c., but I do not know about their written laws.

Q. They have an idea of the law of justice that approaches the white man's law—the law of the United States?—A. Those tribes there generally look forward and back to the time of the Okmulkee council. They were very anxious to attend it. They inquire whether there is to be a council of Indians at Okmulkee—the big council, as they call it.

Q. That is the council that is provided for in the treaty of 1866, and established in the year 1869?—A. Yes, sir; I think about the year 1869.

Q. Did you ever attend that council?—A. I never did. I have frequently transcribed the proceedings for Mr. Hoag, for whom I was clerking.

Q. Mr. Hoag, for whom you were clerking, generally presided over that council, did he not?—A. Yes, sir; he was the *ex-officio* president of the council.

Q. They usually printed the proceedings of that council every year, did they not?—A. They did.

Q. Did you notice that not only the civilized tribes, but all the other tribes were represented to the number of thirty-two in all to that grand council?—A. Yes, sir; many of them were.

Q. The Comanches and the Kaw Indians being represented in that council, got an idea as to how white people make their laws?—A. They seemed to have an idea and seemed to be very much interested in that grand council.

Q. Very much pleased with it?—A. Yes; very much pleased with it. I think they got as much of an idea of written government by attending that council as they ever got any other way.

Q. Do you not think it was a real source of benefit to these tribes?—A. Yes, sir; I do.

Q. In a printed report of speeches made in the council have you not read speeches delivered by the wild Indians in which they took the ground that they wished to civilize themselves like the civilized Indians?—A. Yes, sir.

Q. And they desired the government to encourage them to do it?—A. Yes, sir.

Q. From your observation in regard to this council are you not satis-

fied that if that council had been maintained it would have done a great deal toward civilizing those Indians?—A. I think it would be especially beneficial to the wild tribes. They could come in there and get an idea that they had not previously had. I think it has been a benefit to them.

Q. They got these ideas from the civilized tribes?—A. Yes, sir.

Q. Don't they take lessons from the civilized tribes better than they do from the whites?—A. They seem to; the Osage Indians especially. They have got more confidence in them and will follow them sooner than the white men. I think if you will take them together, white men and civilized Indians, and let each follow his own way, I think the wild Indian will follow the civilized Indian rather than the white man, generally speaking.

Q. Since that grand council was established has not peace among the Indians increased between them and the whites?—A. I do not know of any exception at present.

Q. I speak generally.—A. I do not know of any exception as to peace.

Q. There is peace there now, in the Indian Territory?—A. I think so. I do not think so far as the Osage Indians are concerned that a depredation outside of their reservation can be found on the files of the department since I have been their agent.

Q. The Osages were originally blanket Indians, were they not?—A. Yes, sir; they are blanket Indians now.

Q. I mean all of them?—A. Well, I do not know, but three-fourths wear the blanket now.

By the CHAIRMAN:

Q. They are the ones for whom you are the agent?—A. Yes, sir.

By Mr. ADAIR:

Q. Then in the matter of intelligence don't you find that the Indians are generally inclined to embrace the present Christian orthodox religion of the people of the United States?—A. I think civilization and the Christian religion are very apt to go together. They have within themselves, colonel, a religion of their own. I think they are quite as religious within themselves as any class of people I ever saw.

Q. As a general rule when citizens of the United States go through that country they are treated very kindly by the Indians, are they not?—A. I know of no exception of late years.

Q. That is especially true among the civilized Indians?—A. Yes, sir; there have been no depredations committed within the last five or six years except some of the cattle-men were murdered within the Indian country.

Q. That was away out west?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Is the Osage reservation sectionized?—A. Yes, sir.

Q. Into what?—A. Into quarter-sections.

Q. How long since it was sectionized?—A. I think three or four years ago.

By Mr. SAUNDERS:

Q. Was that done by the Government of the United States?—A. Yes, sir.

By the CHAIRMAN:

Q. Why was that part sectionized and not the rest?—A. I do not know. It was done before I went there.

By Mr. BOUDINOT:

Q. If it were possible for the United States Government in its wisdom to assign to each member of the Osage Nation his due proportion of land in severalty, giving him a fee-title inalienable for a term of years—say twenty years—do you believe that the country would thereby be overrun with white settlers?—A. Not if you would move the white settlers out.

Q. If you give every man, woman, and child his, her, or its due proportion of land in fee-simple and use the power of the United States Government to protect them in the use and occupation of it, would it be possible for white settlers to swarm in there and crowd them out?—

A. You seem to make one possibility contingent upon another. I never knew of an instance where the United States Government has protected them under such circumstances.

Q. Don't you know some ten thousand Indians are in the States of Iowa and Michigan?—A. I have no knowledge about those tribes. I think, in this connection, if it was the same as in some of the Eastern States, if the reservation was subdivided and apportioned among the Indians in severalty, the case would assume a different shape from what it does from the teeming, flowing, migrating class of people pressing westward.

Q. You think the laws would protect them east of the Mississippi River when they won't do it west of the Mississippi River?—A. I think so. I think they might do it in Massachusetts.

Q. You spoke of certain Osage Indians taking their reservations in severalty in the State of Kansas. Do you know what kind of protection was given them?—A. I do not know the condition of those Indians at all. It occurred before I was agent. It is mere hearsay, but it is a matter of record.

Q. Do you know any thing about the condition of the Osage lands?—A. Not particularly.

Q. Do know anything about certain Cherokees?—A. That has not come within my knowledge.

Q. How many white people are there in the Osage Nation to the best of your knowledge?—A. Very few. There are a few married in there.

Q. Is there not a greater number of white men among the Cherokee Indians than among the Osage Indians?—A. There are very few white men among the Osage Indians.

Q. How many do you think there are among the Osage Indians?—A. It is a little difficult to tell. It would be a mere estimate, because as soon as they marry into the tribe they are allowed to remain.

Q. Can you give an approximate idea?—A. Well, there are not over twenty-five. There are white men who come in there frequently, but I am speaking now of residents. There are not more than twenty-five.

Q. Are you acquainted with the Delaware Indians?—A. I know something of them.

Q. Do you know whether there is dissatisfaction among them?—A. They are divided among themselves. There is a portion of Delawares under Journey Cake who are dissatisfied. Then there is a portion under Ketchum, a chief over the Grand River, who appears to be very well satisfied.

Q. Do you the cause of the dissatisfaction among the Delaware Indians? What is the alleged cause of this dissatisfaction?—A. Journey Cake claims that they have not had their rights as Cherokees which they ought to have had in settling in the Indian Territory. Ketchum

claims there is no difficulty; that the evil exists with the part of the Delawares.

Q. Something was said about their laws, privileges, customs, and religion; have not the Osage Indians a custom of sending out "mourning parties"? If so, please tell the committee what you mean by "mourning parties."—A. On the death of a near relative, especially if the relative has been a distinguished man—a chief—it used to be an idea among the Indians that they must have a scalp, ordinarily a white man's scalp, sometimes an Indian scalp of another tribe, and they sent out these "mourning parties" to get it. It used to be a custom to take the first man of any tribe or white man they met and take his scalp; perhaps it was done to appease the Great Spirit.

By the CHAIRMAN:

Q. Suppose they did not come across anybody?—A. Well, they used to keep on until they did.

By Mr. BOUDINOT:

Q. Were you the agent when one of these "mourning parties" killed a chief of the Wichitas?—A. I was not.

Q. Do you know anything about that?—A. I know something about it.

Q. State what it is.—A. Well, a "mourning party" went out and met a Wichita chief; they killed him and took his scalp.

Q. What was done about that? How was it settled?—A. They settled the case by paying the relatives \$1,000, and gave the Wichita Nation some ponies, some blankets, and some guns.

Q. It was settled in that way?—A. Yes, sir; it was settled in that way.

Q. Then there is no law that would restrain or punish them?—A. I suppose there would have been a law if it had been a white man. It was a case between the Indians alone. It was some four years ago.

By the CHAIRMAN:

Q. You say there is no law to punish murder among the Indians?—A. I think the United States law does not reach it. It has been claimed that they have laws of their own among the civilized nations, but this was among the wild Indians.

By Mr. ADAIR:

Q. Had not the Wichitas and Osage Indians been at war?—A. Yes, sir.

Q. Do you remember that the Wichitas and the Osages met in council, and the Wichitas sent a delegation over?—A. Yes, sir.

Q. But previous to that time had not the Wichitas and the Osages had a fight since the war?—A. I do not know that.

Q. Were they not connected with the Cheyennes and Arrapahoes, or had not the Wichita Indians affiliated with the Cheyennes, and had they not been at war with the Osage Indians?—A. I do not know.

Q. I wish to show you this, Mr. Beede, that General Sherman employed the Osage tribe, previous to that time, to go and fight the Cheyennes and Arrapahoes, and that the Wichitas and all the other tribes of the plains were against the whites, and affiliated with the Arrapahoes and Wichitas, and the Osage Indians were employed to go out as scouts?

The WITNESS. It was before this circumstance occurred, but I might state that that murder was amicably settled and finally adjusted, and

the tribes are on perfect terms of friendship now and have been ever since.

Q. They made a treaty there after this Wichita chief was killed, and settled the matter under their own customs and laws?—A. They did.

Q. The Wichitas said that if the Osages would pay so much for the support of the widow and children of the murdered chief annually, besides paying the nation a certain amount, then they would be friends?—A. That is the way it was settled.

Q. And it was approved by the officers of the government?—A. Nothing more was ever said about it. I made that report myself.

Q. Then again, there is one thing that may be stated, I believe, that the Osage Indians disclaimed all knowledge of who the party was when they killed this Wichita chief, and it was proved that they had made a mistake and supposed it was a wild Indian?—A. Yes, sir.

Q. This custom of mourning for the dead and taking revenge is done away with among the Osage Indians, is it not?—A. I have known of no mourning parties to go off of the reservation within the last two years; I have not known of their making any attempt to take any scalps within two years. I think there was one party that went across the Arkansas, but when they were sent for they came back.

Q. They are abandoning that idea of mourning parties?—A. I think there has been no case of the kind within the last two years.

By the CHAIRMAN:

Q. Have any of the other tribes got any such custom as that?—A. I understand it is so to some extent with the other tribes; some kill a horse, some shoot a dozen horses, for the purpose of accompanying the spirit of the departed to the "happy hunting ground."

By Mr. ADAIR:

Q. Do you remember four years ago that a party of Osage Indians were hunting buffalo, having their women and children with them, a number of Kansas militia killed four of them, taking their ponies, &c.? If so, please tell the committee what you know about that.—A. I understood a party of Osage Indians were out upon a hunt and they were in the State of Kansas, but on their own reservation that was not paid for by the government, and they were peaceably there; they were attacked by the Kansas militia, and I think four were killed and their ponies taken. The government has since made an appropriation of \$5,000 to pay them, but they have not got it yet.

Q. Did not they take the ponies away from the women and children?—A. Yes, sir.

Q. Have you any knowledge about the circumstances of the killing of those four men? If so, please state to the committee how it occurred.—A. They came up to them; the Osage Indians were unsuspecting at that time; they invited them by signal, and the first one that came up was disarmed, and the second one came unsuspecting still, and he was disarmed like the first one; he handed up his weapons for examination, when another got up and was disarmed, and then the others were frightened, and they started to flee, and they killed these men whom they had disarmed, four of them, I think.

Q. After capturing and disarming them?—A. Yes, sir; after disarming them.

Q. You spoke of the Osage lands being surveyed. Did not the Cherokee treaty of 1866 require the lands west of the ninety-sixth meridian to be surveyed?—A. Yes, sir; I think so.

Q. And ascertain the way the country was to be divided, and the amount the Osage Indians were to pay the Cherokees for the same?—
A. I do not know exactly what it is.

Q. They could not tell the number of acres the Osage Indians were required to pay the Cherokees for unless surveyed?—A. No, sir.

Q. Have the lands been allotted to the Osages yet?—A. They have not. A large portion of those lands all through the Indian Territory are not really tillable.

Q. You spoke of the Osage and Cherokee lands being surveyed; about how long could they hold these lands if the country was opened to settlement?—A. I think the whites would fill the country up just as fast as they could get there.

Q. Do you know anything about the Cherokee land on the border of Kansas?—A. I understood it was taken up, but not having come in my jurisdiction I do not know anything about it.

Q. You know they were placed in the Central Superintendency for certain purposes?—A. Yes, sir.

Q. Have you not heard that there is a great many people who have picked out fine places for themselves in the Indian country as soon as these Oklahoma bills are passed, so that they can go in and get them?—
A. Yes, sir.

MAY 17, 1878.

GEORGE W. STIDHAM recalled and examined.

By Mr. ADAIR:

Question. Judge, state if you were present at the making of the treaty of 1866, and if you are familiar with and understand the sentiments of the Creek delegation that signed that treaty?—Answer. Yes, sir.

Q. And you are familiar with the understanding with which the Creek council ratified that treaty of 1866?—A. Yes.

Q. Was it not understood that that treaty of 1866 reaffirmed the former treaties and provided for a general Indian council or confederation, and that it prohibited the establishment of a Territorial government over that country?—A. My understanding and the understanding of the Creeks was that the government insisted upon bringing them under a Territorial form of government at that time; and these treaties were to be made for that purpose. All the Indians' representatives at that time opposed it strenuously, and an Indian council was substituted to be organized and carried on entirely as an Indian council.

Q. State to the committee what your understanding is from the reading of the treaty—from the words of the treaty?—A. I do not see any one could understand it differently from what I do, and from what the Creeks do. It provided that there was to be a general Indian council established whenever they favored it. The treaty says: "The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. The Creeks also agree that a general council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as are hereinafter described." That is what the tenth article of

the Creek treaty says. Now, all the Indians understand it, and so I understand it, that all these bills that have been introduced looking to the organization of a Territorial government of the United States over that country as entirely foreign to the meaning and intent of the tenth article of the Creek treaty. I would like to see the man who could show me how a Territorial government could be established over the Territory without interfering with or annulling their present tribal organization, rights, laws, customs, &c., as is provided in the tenth article of the treaty. (Creek Treaty, art. 10, 14 U. S. Stat., p. 788.) It cannot be done without interfering with their local organization. It is impossible.

Q. This council to which you have alluded has been established for several years, and at the same time while that has been in operation, there has been no Territorial government over that country?—A. There has been no Territorial government there.

Q. It is just a confederation of the Indians?—A. Just a confederation of the Indians.

Q. With the doors open for other Indians to come in?—A. Yes.

Q. And with the doors closed against citizens of the United States, who have no right there?—A. Yes.

Q. You think if a Territory was established and the country opened to settlement, it would be flooded with white settlers?—A. My understanding of a Territorial government is this: If it is established as a Territory of the United States, I do not see how Congress could prevent the emigration of citizens of the United States into that Territory of the United States. This, of course, is entirely different from what was intended in the tenth article of the Creek treaty.

Q. I hold in my hand a memorial signed by the signers of the treaties of 1866, and the witnesses to the same. Have you read that memorial? If so, tell the committee if that is not the understanding of the Indians generally in that country, so far as your knowledge goes?—A. I have read two or three memorials from the grand council.

Q. I hand you the statement signed by the signers and witnesses to those treaties, showing substantially how they understood them at the time, and ask you to tell the committee if that is not the understanding of the Indians generally in that country?—A. Yes, sir; I have read this one put in by the signers of the treaties as being their understanding of the treaties of 1866 at the time. I have read that; I am familiar with it, and that is my understanding, as they have stated it there. The memorial is as follows:

MEMORIAL SHOWING THE MEANING OF THE TREATIES OF 1866.

WASHINGTON, D. C., February 9, 1874.

To his Excellency U. S. GRANT, the President, and to the Congress of the United States:

We, the undersigned, beg leave very respectfully to represent that we are, respectively, citizens of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations of Indians, in the Indian Territory, and the most of us are at present the legal representatives of these nations before the Government of the United States.

We desire still further to say that in the year 1866 we were also legally constituted delegates, and with those who were then our colleagues we represented before the government the several nations to which we belong, respectively, for the purpose of adjusting the unsettled affairs then pending between our nations and the United States. We were the

signers of treaties of that year (1866), and made between our several nations and the government. *We fully understood the purport, intent, and scope of these treaties at the time they were made, as they were repeatedly interpreted and fully explained to us by the United States commissioners, and were discussed by us in detail, article by article.*

Yet we see, with deep regret, that strenuous efforts have been repeatedly made to misrepresent and distort the meaning and intent of the articles of these treaties which provide for the organization of a general council of the nations and tribes inhabiting and to inhabit the Indian Territory. We are satisfied, however, that these efforts at misconstruing our treaties have been made, and are still being made, by those who are either ignorant of the real design of these treaties or by those actuated by selfish motives. The result aimed at by these men would be alike injurious and unjust to the Indians and dishonorable to the government. We, therefore, feel it to be a duty which we owe to our own nations and to the government to *protest*, as we now do, against the misconstruction of our treaties referred to, and in that connection to state what was our distinct understanding, at the time we signed them, of the several articles in the treaties of 1866 relating to the 'general Indian council.' In the respectful performance of this duty, we do hereby most solemnly and emphatically declare that the articles of the treaties of 1866, which authorize the establishment of a 'general council' of the Indians, *do not authorize the formation by Congress of a Territorial government of the United States over the Indians of the Indian Territory.*

On the contrary, the agreement on our part in assenting to the establishment of said council was entered into for the very purpose of obviating the alleged necessity of such a Territorial government. We well knew that that country had been set apart by the act of Congress of May 28, 1830, and by subsequent Indian treaties, *as an Indian country exclusively*, and that the lands therein, belonged to the Indians, having been purchased by them from the government for a valuable consideration, which purchase is evidenced by the highest title the government can confer, viz, *patents in fee-simple*, which are of record in the General Land Office of the government, and that therefore the country was not a Territory of the United States, nor were its owners, the Indians, citizens of the United States. Hence we held that that country was exclusively an Indian country, as contradistinguished from a Territory of the United States, and we treated upon that basis, each nation therein having its right of soil and self-government, and its boundaries marked by well-defined lines, and all being circumscribed by a general exterior boundary, marked by permanent landmarks, and situated outside the limits of any State or Territory of the United States.

It was our understanding that Congress had the right, secured to it by former treaties, to regulate trade and intercourse between the Government of the United States and its citizens, on the one hand, and the Indian governments and their citizens, on the other; and with that understanding we reaffirmed our treaties of 1866, the obligations of these prior treaties, and specified among other things that Congress might legislate for the better administration of justice and the protection of persons and property within the Indian Territory. In order to restrict such legislation to the matter of trade and intercourse, we provided especially that such legislation should *not in any manner interfere with or annul our present tribal organizations, rights, laws, privileges, and customs.*

The scheme contemplated by the Territorial bills now before Congress were proposed to us in 1866. *We unanimously rejected them.* Our reasons

for so doing were substantially the same as those that subsequent delegations from our respective nations have urged upon Congress year by year.

If you organize a Territorial government over us, you will do so simply by virtue of your superior power, and without the shadow of authority from any concessions made by us. We agree to a general Indian council, or a confederation of Indians tribes and nations, then in and to come into the Indian country, *for the purposes specified in the treaties of 1866, and for no other purpose, and with the distinct understanding that no Territorial government should be placed over the Indians without their express consent.* We also agreed that other friendly Indians, who were located within the limits of the States or Territories of the United States, might be settled in this Indian country, and be confederated with us in the said general council, and for that purpose we agreed to specific provisions in our treaties. Accordingly, from year to year, such Indians have been located in said country and become a part of said confederation, which has been established for several years. It was established by order of the President and has been indorsed by Congress from year to year.

As another matter altogether separate and distinct from the general council or confederation above named, we also inserted in our treaties of 1866 articles providing that Congress might establish a United States court or courts in the Indian country for the administration of justice; but it is especially provided that such court or courts shall not have the power to interfere with our local or national governments; neither can such courts be vested with power to affect our rights of soil. But neither the right to establish these courts, nor the right to regulate trade and intercourse, had any connection with the establishment of any Territorial government over us. They were considered as distinct propositions and cannot, without manifest violation of our treaties, be used as a pretext for the extension of a Territorial government over us.

We, the signers of the treaties of 1866, certainly understood the purport and intent of those treaties, and it was with our interpretation of them that the people of our nations received them as the supreme law of the land. Now, in the name of our people, and in their behalf, we do most solemnly and firmly protest against any perversion of these treaties, whereby they may be construed as authorizing the establishment of a Territorial government over our respective nations and tribes unless it be with the express consent of these nations and tribes.

We have the honor to be, very respectfully, your obedient servants,

JAMES M. C. SMITH,
COWEETA MICCO,
D. N. McINTOSH,

Signers of Treaty 1866, with Creeks.

JOHN B. JONES,

Signer of Treaty of 1866, with Cherokees.

JOHN CHUPCO,

Seminole Chief, and signer of Treaty of 1866, with Seminoles.

ROBERT JOHNSON,

Interpreter of Seminole Treaty, 1866.

P. P. PITCHLYNN,

*Signer of the Choctaw and Chickasaw Treaty of 1866,
and at the time Chief of the Choctaws.*

I was a witness of the Creek treaty of 1866, and at the time understood the meaning of that treaty as it is expressed in the foregoing statement.

W. P. ADAIR.

I was a witness of the treaty of 1866, between the government and the Choctaw and Chickasaw Nations of Indians, and my understanding of that treaty was as stated in the foregoing statement of the signers of the treaty of 1866.

ALFRED H. JACKSON.

I witnessed the Choctaw and Chickasaw treaty of 1866, and my understanding of the meaning of that treaty at the time was the same as that set forth in the foregoing statement.

C. S. MITCHELL.

My name was attached as a witness to the Cherokee treaty of 1866, and I participated in aiding to make it, in all its stages, and I know that the above statement correctly represents the parties to that treaty, and that they made it with that understanding.

WM. A. PHILLIPS.

WASHINGTON, D. C., *May 13, 1878.*

I was one of the signers of the Cherokee treaty of July 19, 1866, and wrote some of the provisions of the same, and know the foregoing statement, as to the understanding of the parties, to be strictly correct.

D. H. ROSS,
Cherokee Delegate.

By Mr. ADAIR:

Q. I have here a protest that was gotten up by the general Indian council against the establishment of a Territorial government; and, also, a memorial asking Congress to repeal the land-grants granted to certain railroad corporations in 1866 by acts of Congress. I see they are certified by Mr. G. W. Grayson. Mr. Grayson is your son-in-law, is he not?—A. Yes, sir.

Q. Mr. Grayson was secretary of the council, was he not?—A. Yes, sir.

Q. Do you know anything about that memorial as representing the views of the tribes composing that council?—A. Yes, sir; I understand it does.

Were you ever a member of that council?—A. I was of the first council.

By Mr. PORTER:

Q. For the first four years?—A. Yes, sir.

By Mr. ADAIR:

Q. You met in that council not only representatives from the civilized tribes, but also the representatives from the wild tribes, did you not?—A. Yes, sir.

Q. Were they not all opposed to any change of government?—A. Yes, sir; the councils I have attended were unanimously opposed to it. I never saw a man there who favored a Territorial government.

Q. This memorial represents their views?—A. Yes, sir; it represents their views, and is as follows:

PROTEST AGAINST INDIAN TERRITORIAL GOVERNMENT.

Protest of the general Indian council of the Indian Territory, organized under the treaties of 1866, to the President of the United States, protesting against a Territorial government being established over the Indians without their consent.

OKMULKEE, C. N., December 6, 1873.

To His Excellency the President and the Congress of the United States :

We, your memorialists, representing the eighteen (18) nations and tribes assembled in this general council of the confederated tribes and nations of the Indian Territory, would respectfully represent that the lands comprised in what is known as the Indian Territory were purchased from the United States, paid for in other lands, and *patents* covering the greater part of said lands issued to the Indians owning them; that, in addition to the patents which have been decided by the Supreme Court of the United States in a recent case, of *Joy vs. Holden*, to be valid *fee-simple* titles, the United States have given, repeatedly, the most solemn guarantees that the political rights of said nations should never be impaired, but that they should be protected forever in their rights of self-government.

In conveying to the Cherokees the lands upon which they now reside, the United States gave a *pledge* that said lands should be to them "a permanent home, which shall, under the most solemn guarantee of the United States, be and remain theirs forever; a home that shall never, in all future time, be embarrassed by having extended around it the lines or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State." (See preamble and article 1, Cherokee treaty, ratified May 28, 1828.) Again: "The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State; nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same." (See Creek treaty, August 7, 1856, U. S. Stat., page 700; see also Choctaw and Chickasaw treaty of June 22, 1855.) These guarantees of the right of nationality are as important to these Indian nations as the title to their lands. The failure of either would be equally fatal to them. It has been well said *there is no good government but self-government*. Self-government is a question of great interest to all people and nations, but to the Indians all experience demonstrates it to be a question of *existence*. The unrestrained commingling of Indians and whites in the same community and under the same laws, has always been followed by one *unvarying* result, that of the rapid degradation and extermination of the Indians. While this has been the testimony of the great mass of the Indian population in the United States—and they have wasted away tens of thousands per year—the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, when not decimated by great national misfortunes, such as the forced removal from the east to the west of the Mississippi River, accompanied with the devastating ravages of small-pox and other contagious diseases, and by the ravages of the late war, have advanced in population and civilization as rapidly

as any white race ever did under any circumstances. All of our tribes and nations here represented, as we learn from the various reports just received, are at peace with all men, and are increasing in prosperity and are all improving in farming and stock-raising and other habits of civilized life; and without exception, all are making efforts to educate their children. No change in the government or relations with the United States is required by any Indian interests, but their most important interests forbid it. The sacred obligations of the United States forbid it. Territorial government is demanded only by the interests of railroad corporations, and by those who have been misled by the sophistry and misrepresentations of those thus interested, and cannot be effected without bad faith and the infliction of a great wrong, the beginning of a near end to the Indians. But these corporations, and those working in their interests, assert that several of the nations concerned agreed to a Territorial government by terms of treaties made in 1866. Such is not the fact. They agreed to an international "council" and government; but they never intended that it should be any other than an Indian government. In all the treaties agreeing to the establishment of this council there are provisions wherein the United States stipulates to keep white persons out of the country; a rather strange Territory of the United States, certainly, into which her own citizens are forbid to go or remain, both by treaties and acts of Congress, save by express permission of the government or its agents. The council provided for by the treaties has been established and in operation four years, and is under said treaties invested with power ample to develop and maintain a government of Indians, sufficient for the interest of the confederated tribes and nations.

Your memorialists are the members of this "general council" representing the nations confederated in said government. The United States have recognized this government for four years past, by making annually appropriations to defray the expenses thereof, in accordance with the treaties of 1866 above referred to. This government can soon be developed into all that is required by Indian interests if permitted. There would have been much more progress had it not been from the continual dread of Congressional interference. This council has already been the means of saving a hundred times its cost to the government by its influence in preserving peace on the plains, and we are confident of its ability for great usefulness in the same field in the future. All of our tribes are competent and are willing to control and govern their own citizens, and this council is well fitted to harmonize and regulate all international affairs. But we are told there is no adequate means of punishing white desperadoes, who take refuge in this country. This difficulty is already provided for by the treaties, in authorizing the establishment by the United States of a court or courts in this Territory to enforce the "Indian-intercourse laws," and any other laws of Congress in force here. That such courts do not exist, is *not the fault of the Indians*.

We are told continually that through the West and at Washington the cry of the corporations interested, as it were, fills the heavens with demands that a Territorial government be placed over us, and that the United States Government certainly will give way before the pressure, and that already many good men express a desire that Congress should yield to these demands. We cannot believe it will be done. We hope we commit no offense and are not in error when we place unreserved confidence in the honor and the integrity of the American Congress and Government.

A free republican government should be a fair representation of the aggregate honesty and moral sentiment of the whole people, and is properly looked to as an index or standard of morality among the masses. A great national crime, therefore, reacts directly upon the nation.

MEMORIAL OF GENERAL INDIAN COUNCIL, ASKING REPEAL OF RAILROAD LAND-GRANT, &C.

OKMULKEE, CREEK NATION,
December 5, 1873.

To His Excellency the President and Congress of the United States :

Pursuant to a resolution of the general council of the Indian Territory, of the 3d instant, your memorialists, the confederated nations and tribes in council assembled at Okmulkee, would respectfully but earnestly call your attention to the following facts :

First. That Congress has "power to dispose of and to make all needful rules and regulations respecting the territory and other property belonging to the United States." (See Constitution of U. S., art. 4, sec. 3.)

Second. That in May, A. D. 1830, the United States was owner of and in undisputed possession of the country known as the Indian Territory.

Third. That on the 28th day of May, 1830, Congress authorized the President to make treaties with the various Indian nations east of the Mississippi River for an exchange of lands, giving for lands east of the Mississippi lands situated west of said river and outside of any organized Territory or State, and to grant patents to said Indians for said lands.

Fourth. That by authority of said act of Congress of May 28, 1830, the exchange of lands was made, and patents issued to the several Indian nations now residing upon the said lands.

Fifth. That the Supreme Court, in the case of *Joy vs. Holden*, has decided that these patents are valid fee-simple titles.

Sixth. That after the said lands were sold to the said Indian nations for a valuable consideration, and patents issued for the same to said Indians, the purchasers, acts were passed by Congress granting the same lands to aid in the construction of railroads, to wit, on the 25th, 26th, and 27th days of July, 1866, contingent upon the extinguishment of the said Indian titles. Though the United States had *guaranteed said titles forever*, the corporations interested in the contingent land-grants have belabored Congress incessantly to take steps to break down the Indian nationalities to which the titles of these lands were made in order to reach the lands.

These corporations claim that as the titles are made to the nations, a destruction of their identity as organized political communities is all that is necessary to perfect their own inchoate titles. If the faith of the United States Government should prove weak enough to give way before these attacks of the corporations, the lands would go into their hands without consideration to the Indians, and settlers receive no interest in them save at railroad prices. Can a great, intelligent, and Christian nation afford to enact so great an injustice? We, your memorialists, in full view of these above-stated facts, and the fate of all Indians who have lost their lands and their houses, of the pauperism, the degradation, and ruin to our people which must follow such a disaster, appeal to your sense of honor as our only defense and only hope

in this extremity, to repeal all clauses in the acts of Congress above referred to, or any other acts making grants of lands situated in the Indian Territory to aid in construction of railroads, by passing House bill 1132, 42d Congress, 2d session, introduced into the House of Representatives by Hon. J. P. C. Shanks, or some bill of similar import.

I certify that the foregoing is a correct copy of the action of the committee on relations with the United States, as reported to the general council of the Indian Territory of December, 1873, and as adopted by the same.

G. W. GRAYSON,
Clerk of Council.

Q. Did the Creeks, in their past experience east of the Mississippi, try the experiment of allotting their lands; if so, what was the result of that experiment?—A. A large portion of the Creeks were settled in Alabama, and when they emigrated west, the portion that went numbered about 3,000, probably a little less. The main body remained east at their old homes. They made a treaty in 1832, on the 24th day of March, in which they agreed to take reservations. The chiefs were to have one section each; all the other heads of Creek families were to have half a section each. Those reservations were to be reserved from sale for the term of five years unless sooner disposed of. At the expiration of five years they were to have patents for it, but the conveyances were to be made under the direction of the President. He was to direct in what manner they should dispose of their land. There was a man to be appointed to survey the tracts, and even after it should be done it was not to be—

The CHAIRMAN. Is not all that in the law, so the committee can see it without taking the opinion of the witness?

Mr. ADAIR. Yes, sir; that is in the law, but we want it published.

The CHAIRMAN. Well, ask him the effect of the law, not what the law itself is.

By Mr. ADAIR :

Q. What has been the effect or the result of that law?—A. The result was that they got sold out by the land speculators. They never got anything for their land. I do not know what proportions were sold from under them, but they were sold and the owners knew nothing about it. There is a man living in my neighborhood—one of the men concerned in that. He was talking to me about it just before I left home. He said they bought a pony and rode until they came to a fine portion of land, and then hired an Indian and took him around to personate the reservees, and they bought it in that way. They paid this Indian for personating the owner of the land ten dollars. This man proposed to give me a certificate certifying to this fact, because I was coming here to look after the balance of the reservations. That was what brought me here. He proposed to give me a certificate to the effect that they paid ten dollars in every instance where they could get a man to personate another. They paid him the whole purchase-money before the surveying agent, and then they took it back all but ten dollars, after they left the agent. That was the way the reservations went in Alabama.

Q. As the result of this kind of thing, did not the Creeks have to go west?—A. Yes, sir; they had to seek another home.

Q. They could not hold their lands in the State?—A. No, sir.

Mr. PORTER. The government made a thorough examination of that whole matter, and there is a report on each case in the Indian Office which shows that a great many reservations were gotten by personating

the reservee, and were transferred in that way, afterwards driving the owner off by ejectment or some process of law.

The WITNESS. If permitted I would like to state that I touched upon this treaty the other day and I would like to place myself right. In the tenth article of the treaty of 1866 with the Creeks it is provided that the Creeks agree to such legislation as the President and Congress may deem necessary, &c., and that seems to be the plea taken to legislate a Territorial government over us ever since that treaty was made. Well, it does not mean a Territorial government, and it is as clear as day-light.

The CHAIRMAN. That is a construction of law, not testimony.

By Mr. ADAIR :

Q. The Creeks do not consider themselves bound by the Choctaw treaty, but by their own treaty?—A. No, sir; they do not consider themselves bound by any other treaty than their own. If they make a treaty, no matter how much they may regret it, they stick to it, and they would like the government to stick to it as well as they do.

Mr. ADAIR. I have here a memorial signed by the several Indian delegations here against the establishment of a Territorial government of the United States over the Indians, and we would like to file that as a part of the record here.

The memorial is as follows .

MEMORIAL OF THE DELEGATES FROM THE INDIAN TERRITORY.

To the Senate of the United States :

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

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

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

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

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

All of which propositions are in violation of numerous treaty stipulations and guarantees, especially of the fourth article of the Choctaw treaty of eighteen hundred and thirty and the fourth article of the Cherokee treaty of eighteen hundred and thirty-five, which provide that no part of the lands granted to either nation shall ever be included without their consent in the limits of any State or Territory, and secures to them forever the right to be governed by their own laws. The fourth article of their treaty of eighteen hundred and fifty-six contains a similar guarantee to the Creek and Seminole tribes of Indians.

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

The same guarantee, in nearly the same words, is given to the Creeks and Seminoles in the fifteenth article of their treaty of eighteen hundred and fifty-six. The first article of the Cherokee treaty of eighteen hundred and forty-six provides that the Cherokee lands "shall be secured to the whole Cherokee people for their common use and benefit."

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

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

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

The third article of the two treaties, one with the Creeks, the other with the Seminoles in 1866, contains similar provisions. Their lands are to be held by each nation, in the one case, "as a home for said Creek Nation," in the other as the "national domain of the Seminole Indians." All the treaties of 1866 with the five nations referred to in this memorial reaffirm the provisions of former treaties not inconsistent therewith.

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

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

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

The detailed statement on page 14 shows that the foregoing remarks apply chiefly to the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, as distinguished from twenty-one other enumerated bands, con-

stituting more than one-fourth of the population, the proportion of wealth, acres cultivated, grain produced, schools, teachers, and scholars being overwhelmingly in favor of the five nations, and that too notwithstanding the fact noted by the commissioners on page 13, that they "had their lands devastated and their industries paralyzed during the war of the rebellion in the same relative proportion as other parts of the South, and have not fully recovered from the effects."

They add that "the partially civilized tribes (the five nations), numbering about 50,000 souls, have in proportion to population more schools, and with a larger average of attendance, more churches, church members, and ministers, and spend far more of their own money for education than the people of any Territory of the United States. Life and property are far more safe among them, and there are fewer violations of law than in the other Territories."

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

Without going into detail, it is sufficient for the purposes of this paper to refer to two of these accounts. One is the treaty, on pages 839-852 of the Revision. Previous treaties having made the Wyandottes and Ottawas citizens, with allotments in Kansas, the preamble virtually declares the experiment a failure, the object of the treaty, so far as they are concerned, being to restore them to their former tribal condition as Indians, and to provide homes for them in the Indian Territory, to be held not as individuals, in severalty, but as tribes in common. The other is the summing up by the Commissioner of Indian Affairs, in his report for 1876, page 25, of the results in the case of the Pottawatomies, "who, after becoming citizens, squandered their substance, and have now returned as Indians depending upon the bounty of the government." It is the conviction that disastrous consequences would result from the proposed changes which causes the nearly unanimous opposition to such measures on the part of the five nations. Their own experience tells them exactly what the system of allotment and citizenship means. Provisions for that purpose were made in the treaties of 1817 and 1819 with the Cherokees; of 1830, with the Choctaws; and of 1832, with the Creeks. Hundreds of Indians entitled to patents for land under those treaties have never secured a single acre. Many more whose rights were recognized by the government were shamefully wronged by the whites, and have to this day been unable to obtain relief or redress. The mischievous working of that system under those three treaties induced President Jackson to prohibit the introduction of similar features in other treaties made during his administration, and it is believed that no treaties containing such provisions were made under his successors until the accession of President Pierce. Since then the experiment has been frequently reported, with results in the main such as those above indicated in the case of the Wyandottes, Ottawas, and Pottawatomies.

Another serious objection to the proposed system of allotment and citizenship is found in the litigation on which, in case it is adopted, must necessarily result from the land grants to railroads running through the Indian Territory, to take effect "whenever the Indian title shall be extinguished by treaty or otherwise."

The Indian title is held by each nation over whose lands the railroads pass. It will of course be contended, first, that when any one of those

nations by the dissolution of its tribal relation ceases to exist, or, second, when its title is transferred from the nation holding in common to individual members, holding in severalty, who have become citizens of the United States and have thus practically ceased to be Indians, that the "Indian title" will necessarily be extinguished.

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

But whether those grants are repealed or not, the undersigned feel confident that the courts will never decide that the Indian owners can be deprived of the soil without their own consent. Whatever words may occasionally have been used in describing the Indian title, on carefully sifting the controlling decisions they will be found to concur in the opinion that the government interest in Indian lands is simply a right of pre-emption or rather of purchase, and the history of the country from its earliest settlement shows that such lands have almost invariably been acquired by purchase from the original owners.

The transfer of the main body of the Southern nations to their present homes was preceded by the act of Congress of May 28, 1830, authorizing an exchange of territory based upon the idea of perpetual possession, with the assurance to the "tribe or nation making the exchange that the United States will forever secure and guarantee to them and their heirs and successors the country so exchanged." The same idea runs through the treaties made immediately before and after that act. The preamble to the treaty of 1828 expresses the "anxious desire" of the government to secure to the Cherokees "a permanent home which shall under the most solemn guarantees remain theirs forever."

The preamble to the Creek treaty of 1833 states its objects to be to establish boundaries which will "secure a permanent home to the whole Creek Nation and to the Seminoles," and the same idea is expressed in the third and fourth articles of the treaty. The Choctaw title rests on the same basis of perpetuity, though its history is materially different. Their country was acquired by the second article of the treaty of 1820, which makes an unqualified grant, without limitation or restriction of any kind. (7 Statutes, 211.) In 1837 they sold an undivided interest in the same to the Chickasaws.

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

Before this transfer to the "members of the Choctaw and Chickasaw tribes," two patents had been issued to the Choctaw Nation, one by President Jackson, the other by President Tyler, under the treaty of 1830, which provides for a special conveyance of the country previously granted in 1820. These patents conform to the treaty under which they

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

The qualifying words in the Choctaw and Chickasaw treaty, and in the other treaties herein referred to, as applied to their title, obviously mean nothing more than the general principle under which, in the absence of legal representatives, land always reverts to the State, and by which it may be lost through a failure to occupy. The history of Indian legislation, from the first settlement of the country, shows that the restrictions upon alienation were meant for the benefit of the Indian, having their origin in the desire to guard against danger from the designs of evil-disposed white men. The wisdom of retaining those restrictions and the ancient safe-guard of tenure in common as a protection against fraudulent devises, the undersigned cannot doubt, will be appreciated by every member of Congress who carefully examines the subject. Such examinations cannot fail to show the evils of the allotment system and of the proposed disintegration, by making citizens of such tribal members as may desire it, which can only serve to stimulate efforts in behalf of a few individuals to divide national funds held for the good of the whole. The Indians constituting the five leading tribes have felt that the various evils pointed out in this paper could be made known, and by making them known could be averted only through the active agency of delegations at Washington. The expense incurred, however heavy it may be, counts for nothing in their estimation, compared with the ruin threatened in the bills annually introduced in Congress.

P. P. PITCHLYNN,

Choctaw Delegation.

W. P. ADAIR,

DANL. H. ROSS,

Cherokee Delegation.

JNO. R. MOORE,

P. PORTER,

D. M. HODGE,

YAR-TE-KER HARJO,

Creek Delegation.

JOHN F. BROWN,

THOMAS CLOUD,

Seminole Delegation.

I fully indorse the foregoing memorial this 13th day of May, 1878.

B. F. OVERTON,

Governor of Chickasaws.

Mr. BOUDINOT. I desire to ask a few questions of Judge Stidham.

Q. Judge, you stated you had been a delegate to the grand council for four years?—A. Yes, sir.

Q. Were you a delegate when they adopted a constitution for ratification by the people?—A. That was the first year.

Q. In 1869?—A. Yes, sir.

Q. Did you vote for that constitution?—A. Yes, sir; I voted for it.

Q. That constitution contemplated the organization of a civil government over the Territory, did it not?—A. Yes, sir; but it was to be a government of the Indians.

Q. With all the constituent parts of a government—courts, legislative assembly, &c.?—A. They proposed to have a government of their own.

Q. Have you a copy of that constitution?—A. I have not.

The CHAIRMAN. What nation was that for?

Mr. BOUDINOT. For all the nations.

The CHAIRMAN. When was that voted for?

Mr. BOUDINOT. In 1869.

By Mr. BOUDINOT (to witness):

Q. By what vote was that constitution adopted?—A. I do not recollect.

Q. Do you remember the number of delegates in the council?—A. No, sir.

Q. All the civilized tribes were represented?—A. Yes, sir; all the civilized tribes except the Chickasaws. They were not represented there.

Q. Were not the Chickasaws represented; are you sure about that?—A. I recollect now, the Chickasaws were there.

Q. How many delegates had the Creeks?—A. Thirteen, I think.

Q. Did they all vote for that constitution?—A. I do not remember.

Q. When you voted for that constitution to organize a civil government over that country, you were pretty well satisfied at that time that some kind of a government should be established without interfering with your customs, &c.?—A. I do not know that we considered it necessary. We had something that we called a compact, and it was upon the same plan as that that we were trying to get it up, in accordance with the treaty of 1866.

Q. You were trying to organize a civil government upon the basis of the treaty of 1866?—A. Yes, sir.

Q. Was not that constitution sent to the President for his approval?—A. I do not know about that. The proceedings of the council were sent on, but the constitution was not ratified.

Q. It was referred to the several councils of the nations?—A. Yes, sir.

Q. Did the Creeks ratify it after it passed the grand council?—A. They did.

Q. Did the Choctaws?—A. They did.

Q. Did the Seminoles?—A. I believe the Seminoles rejected it.

Q. How about the Chickasaws?—A. They did not act upon it.

Q. Nor the Cherokees?—A. No, sir.

Q. Now, that constitution provided for a general civil government over your Territory upon the basis of the treaty of 1866?—A. Yes, sir; as we so understand.

Q. Provided for a legislature to pass laws for the government of the Territory?—A. Yes, sir; international laws.

Q. With all the constituent parts of a civil government?—A. Yes, sir.

Q. Then your objection is not so much because it would organize a government for the general legislation of your country, as it is you are opposed to a United States Territory, which you believe would interfere with the tribal organizations of your people?—A. It certainly would. You certainly know it would. I do not see how any man can look at it in any other way.

Q. Now this grand council was a legislative body, having legislative power, such as the treaties provided it should have?—A. Yes, sir.

Q. By whom were these delegates paid; by the United States?—A. By the United States.

Q. How much per day?—A. Four dollars a day.

Q. By whom was the secretary paid?—A. All the expenses were paid by the government. The treaty so provides.

By Mr. ADAIR:

Q. The expenses were paid according to the treaties?—A. Yes, sir; according to the treaties.

By Mr. BOUDINOT:

Q. You say it was purely an Indian government. I believe you stated in your former examination that there were 2,500 colored people in your nation. They are eligible to serve in the council?—A. Yes, sir; I said there were 1,800.

Q. Now, you are acquainted with the Cherokee Nation. All white men and colored men in that nation are eligible to membership in that council, are they not? I mean those who are married there.—A. Yes, sir.

Q. Then that government which you say was to be purely an Indian government might possibly be composed of white and colored men?

Mr. ADAIR. That is provided for in our laws, and that is one of the reasons why I made the motion to have our laws put in.

The CHAIRMAN. Do you call the negroes Indians?

Mr. ADAIR. In our laws they are so considered.

By Mr. BOUDINOT:

Q. Have you any white men in your employ?—A. Yes, sir.

Q. How many?—A. One.

Q. Has he a family?—A. Yes, sir.

Q. How many?—A. A wife, a daughter, and two sons.

Q. Is he employed as a laborer on your farm, or is he in the store?—A. He is on the farm.

Q. Is it not usual and almost universal for educated Creek Indians to employ white laborers who are citizens of the United States?—A. A great many do, and some of the Creeks who cannot read and write employ white men too.

Q. They mostly have families, do they not?—A. A great many have.

Q. When you employ them, what authority do you give them to remain in the nation?—A. They remain twelve months.

Q. By permit?—A. We take out a permit.

Q. Who issues that permit?—A. The treasurer of the nation.

Q. Does the agent have anything to do with it?—A. He indorses it.

By the CHAIRMAN:

Q. Can he remain only twelve months?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Do you renew the licenses?—A. We renew them.

By the CHAIRMAN:

Q. As often as you want?—A. Yes, sir.

By Mr. ADAIR:

Q. Is not that done according to the treaty?—A. Yes, sir.

Q. This general council was organized upon the basis of the Cherokee treaty?—A. Yes, sir.

Q. Does not that treaty provide that the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President?—A. Yes, sir, I believe it does.

Q. It was in this view that this attempt was made to extend the council; not to break it up?—A. Yes, sir.

Q. And to make the confederation stronger?—A. Yes, sir.

Q. And not make a Territorial government?—A. Not make a Territorial government.

Q. Mr. Boudinot asked you if that instrument was not brought to this city. Don't you remember Senator Harlan introduced into the Senate entirely another matter providing for a Territorial government?—A. Yes, sir.

Q. Was not that the reason why the Indians opposed it?—A. Yes, sir; he substituted an entirely different matter. Well, it was a regular Territorial government that he introduced.

Q. Introduced this thing and changed it altogether?—A. Yes; entirely.

By the CHAIRMAN:

Q. How did that instrument get here?—A. According to the treaty it was to be approved by the Secretary of the Interior, and it was sent here for that purpose. I suppose the Secretary submitted it to Congress; the treaty said nothing about Congress.

By Mr. ADAIR:

Q. You mean they sent it to the Secretary of the Interior?—A. Yes, sir.

Q. Did not Senator Harlan introduce into the Senate of the United States, in place of this constitution that passed the grand council, a bill so as to change its nature from an Indian government into a Territorial government of the United States?—A. Yes, sir.

Q. And the Indians opposed it?—A. Yes, sir; opposed it.

By Mr. GRAFTON:

Q. Were the proceedings of that council changed or altered?—A. Another was substituted entirely.

By the CHAIRMAN:

Q. But it was not presented as coming from the council, was it?—A. No, sir.

Q. On the other hand, Senator Harlan drew up a bill providing for a Territorial government predicated upon the idea that your people by that action wanted a Territorial government, but did not take your instrument?—A. He substituted one of his own for the one we got up claiming to carry out the treaty of 1866. But I never have been able to see what part of this treaty allows a Territorial government to be established over that country.

Mr. ADAIR. I now desire to read the following request upon the part of the delegates here as being the wish of the people whom they represent, and ask that it be printed in the proceedings of to-day. I read as follows:

D.

WASHINGTON, D. C., May 3, 1878.

Hon. J. J. PATTERSON, *Chairman,*
And Members of the Committee on
Territories of the Senate of the United States :

GENTLEMEN: We understand that your honorable committee has under advisement in its investigation, ordered by the Senate resolution of February 25, the question as to whether, in the course of your investigation, you will visit the Indian Territory. Should you determine to visit that country we respectfully ask that you ascertain the sentiments of the people of that country as to a 'change of government,' by submitting the question to the people of each nation and tribe to be affected by such change, if the testimony of their representatives is not satisfactory to you. In order to do this effectually, we suggest that you call a general convention (through our executive departments) of the people of each tribe or nation separately, providing for one general convention for each tribe or nation, or more, if your committee deem it advisable. *But if you should visit our country on this question, we insist that our people have a full hearing on it.*

But if your honorable committee should determine not to visit the Indian country, then we ask the privilege of naming representatives, and responsible persons, to be brought from that country before your committee to testify as to the subject-matter of the Senate resolution of February 25. We make these suggestions respectfully and ask that they be considered.

We have the honor to be, with great respect, your obedient servants,

JNO. R. MOORE,
 PLEASANT PORTER,
 DAVID M. HODGE,
Creek Delegates.

W. P. ADAIR,
 D. H. ROSS,
Cherokee Delegation.
 D. F. HARKIN,
 P. P. PITCHLYNN,
Choctaw Delegates.

MAY 17, 1878.

B. C. BURNEY, having been duly sworn, testified as follows :

By the CHAIRMAN :

Question. State your name.—Answer. B. C. Burney.

By Mr. GRAFTON :

Q. Please state your age.—A. Thirty-four years.

Q. To what nation do you belong?—A. I am a member of the Chickasaw Nation.

Q. What office, if any, in that nation do you hold?—A. I am treasurer of the nation.

Q. How long have you been treasurer?—A. It will be four years next September.

Q. How much money does your nation receive from the United States as interest on the trust-funds?—A. About seventy-one thousand dollars.

Q. Per year?—A. Yes, sir.

Q. How much is applied to school purposes?—A. About forty-five thousand; probably a little over that is applied to school purposes.

Q. How is the balance applied?—A. To meet our national expenses.

Q. Have you ever known, within the last five years, any of this money being diverted from the school funds after it had been appropriated for school purposes, for the support of delegates in this city?—A. No, sir; none. We have no regular school fund. That balance of the general fund is appropriated to meet the expenses of the delegation, &c.

Q. But you have never known any of the money appropriated for school purposes being diverted after having been appropriated for school purposes to maintain your delegate here?—A. No, sir.

By the CHAIRMAN:

Q. You say you have no regular school fund?—A. Yes, sir; we make appropriations for our schools every year.

By Mr. GRAFTON:

Q. What is the sentiment of the people of your nation in regard to the formation of a territorial government there as contemplated in these various Oklahoma bills now pending before Congress?—A. The sentiment of the people is that they do not wish a change in the present form of government. They are satisfied with the present form of government.

Q. How is it in regard to the title to the lands; are the people satisfied with the present title?—A. Yes, sir; they think the titles are just as secure as if they held the lands in severalty.

Q. Do you not think it is more secure?—A. I do.

Q. Please state why you think so.—A. Well, from the fact if the land in our country was divided up in severalty the country would be flooded with white men from the different States, and it would not be two years before we would be overrun and crowded out.

Q. You think you could not hold your homes?—A. Yes; because a majority of our people are ignorant and they could not hold the lands.

Q. Do any of them live by hunting and fishing?—A. No, sir; none.

Q. All farm and raise stock?—A. Yes, sir; generally so.

Q. Don't you think it is better for them to have their lands in common by reason of their being a stock-raising people, than to have them divided in severalty?—A. Yes, sir.

Q. How many schools have you in your nation?—A. We have four academies; one in each county. We have several neighborhood schools.

Q. Are not the neighborhood schools brought within the reach of all the people?—A. Yes, sir.

Q. How much per capita do you expend for educational purposes per year?—A. We spend about one hundred and sixty dollars for each scholar per year.

Q. For each scholar who attends the academies?—A. Yes, sir.

Q. How many are in attendance in these various colleges?—A. I do not recollect the number. I think about one hundred and fifty.

Q. What branches are taught?—A. The higher English branches.

Q. How are your moneys disbursed in payment to these schools?—A. Spent under the direction of contractors for schools, semi-annually. When the money becomes due we make payment to these contractors semi-annually as the money becomes due.

Q. Explain to the committee how it was the people of the Chickasaw Nation petitioned the government in 1865 or 1866 to have their lands divided in severalty.—A. It had been and was then being represented to our people, by our delegation, that that was the only show that we

had—that that was the only show for us; that if the people did not do that they would be in danger of losing it all.

Q. It was after the war, was it not?—A. Yes, sir.

Q. And you did not know what your relations with the government would be?—A. Yes, sir; we did not know what our relations would be.

By the CHAIRMAN:

Q. Was that owing to the fact that they had been in the rebellion?—A. Yes, sir.

Q. Was it after the treaties were made?—A. Yes, sir; after the treaties were made in 1866.

By Mr. GRAFTON:

Q. Was not that delegation engaged in appropriating a large amount of money that was due the nation to their own private use—that particular delegation known as the Latrobe delegation?—A. I remember they got an appropriation of \$100,000 from the nation, and that they claimed that they had to use that amount in order to get through a certain claim we had here.

Q. That was in negotiating your treaties?—A. Yes, sir.

By the CHAIRMAN:

Q. Had to expend it where?—A. Here in Washington.

Q. When was that?—A. I think in 1867.

Q. Did they get the \$100,000?—A. Yes, sir.

Q. And brought it here?—A. Yes, sir.

Q. Do you know what they did with it?—A. I do not know what they did with it.

By Mr. GRAFTON:

Q. Who were those delegates?—A. Holmes Colbert, Robert Love, Colbert Carter, and Winchester Colbert.

Q. Did they claim that they used all that in one year?—A. Yes, sir.

Q. Did the Chickasaw Nation repudiate this delegation afterward?—A. Yes, sir.

Q. Is it not understood that they were engaged in robbing your people?—A. Yes, sir,

Q. The people were under the influence of that delegation when they petitioned for a division of the lands, &c.?—A. Yes, sir.

By the CHAIRMAN:

Q. Have they lived in the nation since?—A. Yes, sir.

Q. To whom did they say they paid this money?—A. John H. B. Latrobe, of Baltimore, their attorney.

By Mr. GRAFTON:

Q. Are not your people satisfied with their present title to the lands?—A. Yes, sir.

Q. They think it is good enough?—A. Secure enough; yes, sir.

Q. Have not representations been made to your people by railroad men and others who desired to obtain charters and franchises from your council, and those who desire to get your lands, that your present title is insecure, and that you would be more secure if the lands were divided in severalty?—A. Yes, sir; we think it is good enough, and are satisfied with our present form of government, and do not want any change.

By the CHAIRMAN:

Q. Do you know of any money being appropriated by the nation to

pay the expenses of the delegates here?—A. Yes, sir; I know the whole amount appropriated.

Q. How much has been appropriated?—A. Last year there was \$4,500 for our delegation.

Q. How many delegates have you here?—A. Three.

Q. Was that for the whole year?—A. Yes, sir.

Q. How much has been appropriated this year?—A. There has been no appropriation made for this year. Our legislature does not convene until next September.

Q. How do you pay them?—A. We give them \$1,500 each for the year.

Q. For the year?—A. Yes, sir.

Q. And that is to cover all expenses?—A. Yes, sir.

Q. Has that been the case since you have been treasurer of the nation?—A. Yes, sir.

Q. That much every year?—A. No, sir; not that much every year; sometimes it is less than that.

Q. That comes out of the general fund?—A. Yes, sir.

By Mr. GRAFTON:

Q. You mean that comes out of the \$71,000 interest on the invested funds?—A. Yes, sir.

Q. What proportion of your people can read and write?—A. Well, about one-third.

Q. Everything is going on very well now?—A. Yes; everything is going on smoothly.

Q. There is no breach of the peace?—A. No, sir.

Q. No lack of security to person and property?—A. None at all; no more so than here.

By the CHAIRMAN:

Q. That is for Indians?—A. No, sir; for anybody.

Q. Suppose an American goes in there to live?—A. He is just as safe as he would be here.

Q. Except he cannot acquire property?—A. Yes; he can acquire property.

Q. He cannot raise stock?—A. No, sir.

Q. What kind of property can he acquire?—A. He can make money.

Q. How?—A. By farming.

Q. How by farming?—A. He can rent land. We have farms which we rent to citizens of the United States.

Q. He paying rent for the farm?—A. Yes, sir.

Q. Can he get land as you can?—A. No, sir.

Q. Can he own stock?—A. No, sir.

Q. Then how can he carry on his farm without stock?—A. He is allowed enough stock to carry on his farm.

By Mr. BOUDINOT:

Q. A certain number of horses and cattle?—A. Yes, sir.

By Mr. GRAFTON:

Q. You have had a permit law in your nation, have you not?—A. We have one.

Q. Explain to the committee the operations of that law—that is, the purport of it—and state when your council passed it.—A. Our council passed it a year ago last September.

Q. This law provided that each citizen of the United States who desired to come into your country should pay \$25?—A. Yes, sir.

Q. Is that being enforced now?—A. No, sir.

Q. How long has it been suspended?—A. Ever since the decision of the Secretary of the Interior.

Q. Do you know whether your local courts have attempted to enforce it since the decision of the Secretary of the Interior?—A. No, sir; I have not heard of a single case.

Q. Do you know upon what information the Commissioner of Indian Affairs decided that this law was being enforced now?—A. No, sir.

Q. Have you ever heard Colonel Boudinot say it was being enforced?—A. No, sir.

Q. Are you receiving your annuities regularly now?—A. We have until very recently. They have been stopped on account of this permit law.

Q. Who stopped the payment of the annuities?—A. The Secretary of the Interior.

Q. On what ground did he stop them?—A. On the ground that we were not abiding by his decision in regard to that law.

Q. That question is pending in the Senate of the United States?—A. Yes, sir; so I have been informed since I have been here.

Q. It is before the Judiciary Committee of the Senate?—A. Yes, sir.

Q. You propose to abide by that decision when rendered?—A. Yes, sir.

Q. You have no disposition to do otherwise?—A. None at all.

Q. What will be the result if these funds are withheld the coming year?—A. It will come to this: we will have to suspend our schools. We have no other mode of carrying them on.

Q. Your council does not meet until September?—A. No, sir.

Q. If an extra session was called it would be at great expense?—A. Yes, sir.

Q. Is there any determination at all to enforce this permit law at present?—A. There is none.

Q. Is there any desire to enforce it pending this final decision by the Senate?—A. No, sir.

By Mr. BOUDINOT:

Q. Do you not know that the judges have instructed the grand jury to find bills of indictment against those who refuse to pay this tax?—A. Not that I know of.

Q. Have you ever heard of anything of that kind?—A. No, sir.

Q. You stated that this delegation of 1867 was repudiated by the people after that contract was made by them. Was not Holmes Colbert a delegate here several years after that contract was made with Latrobe?—A. Yes, sir.

Q. Was he not a delegate at the time the contract was made?—A. Yes, sir.

Q. Was he not a delegate up to the time of his death?—A. I do not remember the date of his death.

Q. In 1872 he died. Was not that contract made in 1867?—A. Yes, sir.

Q. And he served up to 1872?—A. Yes, sir; I think so.

Q. Have you a farm?—A. I have a small farm of one hundred and sixty acres.

Q. Do you employ white laborers?—A. Yes, sir.

Q. How many?—A. Five.

Q. They farm for you?—A. Yes, sir.

Q. They have families, do they?—A. Yes, sir.

Q. How many altogether with their families?—A. I think in all about thirteen.

Q. In what county do you live?—A. Pickens County.

Q. Can you form any idea of the number of white laborers there are in Pickens County?—A. I do not know the number.

By Mr. GRAFTON :

Q. How are those delegates who made that contract, in 1867, looked upon by your people?—A. They are looked upon as not being responsible men, and are left out by the people.

By Mr. BOUDINOT :

Q. Are they not now all dead?—A. No, sir; all but two are dead.

By Mr. GRAFTON :

Q. The people have lost confidence in them?—A. Yes, sir.

Q. Was it not on account of that transaction?—A. Yes, sir.

Q. Has not the council repudiated that contract?—A. Yes, sir.

FRIDAY, May 24, 1878.

Committee met at 10.40 a. m. Present, Messrs. Saunders, Hereford, and Grover.

CHARLES JOURNEY-CAKE, having been duly sworn by Mr. Saunders, chairman *pro tempore*, testified as follows :

By Mr. BOUDINOT :

Question. What is your name?—Answer. Charles Journey-Cake.

Q. Are you an Indian?—A. Yes, sir.

Q. Of what tribe?—A. Delaware by blood.

Q. Citizen of the Choctaw Nation?—A. Citizen of the Choctaw Nation.

Q. How many of your people are citizens of the Choctaw Nation?—A. There were about 736 or near that number somewhere.

Q. Where did you remove from?—A. We removed from the north-eastern part of Kansas.

Q. In what year did you remove?—A. In 1869.

Q. In 1869?—A. Yes, sir.

Q. Did all those 736 move down into the Indian Territory at the same time?—A. Yes, sir.

Q. Did all your people remove to the Choctaw Nation about that time?—A. Yes, sir.

Q. Was it by the provisions of one of your treaties that you became incorporated among the Cherokees?—A. Yes, sir.

Q. What treaty?—A. The treaty of 1866 or 1867.

Q. About how many do your people number now?—A. At present, about 736.

Q. About the same number that there were then?—A. No; there were about 1,000 in the year 1869.

By the CHAIRMAN *pro tempore* :

Q. What time was it that your people numbered 1,000?—A. In the year 1869.

By Mr. HEREFORD :

Q. You say that in the year 1869 the Delawares numbered 1,000, and that now they number between seven and eight hundred; will you

please state the reason of the decrease in their numbers?—A. My mind is that the change of climate caused it. We found the climate, after moving from Kansas to that location, did not agree with us.

Q. It was caused by the change of climate, after having been moved from Kansas to that location?—A. Yes, sir; after having been moved from the northeastern part of Kansas.

Q. That is one cause of the decrease?—A. Yes, sir.

Q. What other reason, if any?—A. The decrease by killing.

Q. You say by killing; what do you mean by killing—the fighting among yourselves or killed by outsiders?—A. Some by the Cherokee neighbors.

Q. Some by the Cherokees?—A. Yes, sir.

Q. Those are the only causes you know of?—A. Yes, sir.

Q. Is there, to any extent, any illicit cohabitation among your people, or are they lawfully married, the same as among the whites?—A. Yes, sir; exactly as among the whites.

Q. About the same proportion?—A. Yes, sir.

Q. There is no more illicit cohabitation among your people than among the whites?—A. No, sir.

Q. But still you are gradually decreasing in numbers?—A. Yes, sir.

Q. So that out of all of the Delaware Indians to-day, there are not more than seven or eight hundred?—A. That is all.

Q. Why do you decrease in number since the war, while the Cherokees since the war have increased?—A. I suppose because—

By Mr. BOUDINOT :

Q. What position do you occupy among your people?—A. Well, sir, I have been promoted as chief, since 1854.

Q. How much Indian are you, Mr. Journey-Cake?

The WITNESS. How is that?

Mr. BOUDINOT. How much Indian blood have you?

A. My mother was three-fourths white. My father was a full-blood Indian.

Q. Will you tell the committee what the object of your visit to Washington is?—A. Well, my object is to file a claim before the government—a Delaware claim against the government for non-fulfilment of the treaties.

Q. To prosecute some claims in behalf of your people against the government for not complying with the treaty stipulations?—A. Yes, sir.

Q. Have you any power of attorney from your people to represent them?—A. Yes, sir; the people gave me full power to act for them.

Q. The people gave you full power to act for them?—A. Yes, sir.

Q. Have you got that power in writing?—A. Yes, sir.

Q. Have you got that paper with you?—A. No, sir; it is at the office of the Commissioner of Indian Affairs.

Q. How many signatures of your people are signed to that paper?—A. I do not remember; nearly 600, I think.

Q. About 600 out of the 736 have authorized you to act for them?—A. Yes, sir.

Q. What is the feeling among your people in regard to holding your lands in severalty and dividing them, and allotting them among yourselves?

The WITNESS. Well, there is another thing that I—

By the CHAIRMAN *pro tempore*. You can answer that question whether they are in favor of holding their lands in severalty, or in common, as

heretofore; what proportion are willing to have them divided up in severalty?—A. Our people desire, if it could be done, to get protection from the government for our lives and property.

By Mr. BOUDINOT:

Q. Do you mean from the Government of the United States?—A. Yes, sir; from the Government of the United States.

Q. You think you are not sufficiently protected in life and property as you now are?—A. No, sir.

By Mr. ADAIR:

Q. The question was, what do your people want? Do you want your land sectionized; that is the question?—A. Well, sir, I do not know much about that; they would like to have a separate reservation from the Cherokees the same as before, some years back.

By Mr. BOUDINOT:

Q. If it is possible for the government to give you ample protection for life and property, and give you your lands separate from the Cherokees, would you prefer that, or would you prefer to live as you are now, subject to the jurisdiction of the Cherokee Indians?—A. No, sir; I would not, at all.

Q. You would prefer to live subject to the jurisdiction of the Cherokee Indians?

By the CHAIRMAN *pro tempore*. (To witness.) You do not understand Colonel Boudinot. If I understood you correctly, I understood you to say they would like to be separate from the Cherokees. Now, do you think the Delawares would be better satisfied if they were set off from the others and still hold their lands in common?—A. Yes, sir.

By Mr. ADAIR:

Q. They want to hold their lands in common, but they want to be separate from the Cherokees—do they still want to hold their lands in common?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Does not the treaty of 1866 provide for holding lands in severalty and having them divided up among you?—A. I do not remember about that.

Q. You say your people are not properly protected by the Cherokee authorities in their lives and property?—A. No, sir; they are not.

Q. There is a great deal of killing by the Cherokees?—A. Yes, sir.

Q. Could you give any idea of how many have been killed or murdered by the Cherokees since you moved down there among them?—A. Seven men have been killed.

Q. Have any of the murderers ever been punished?—A. No, sir; there is no law there to protect us.

By Mr. HEREFORD:

Q. Are your people farming?—A. Yes, sir.

Q. All of them?—A. Yes, sir.

Q. Living in houses?—A. Living in houses.

Q. Have their lands under cultivation?—A. Yes, sir.

Q. What do you raise, cattle and hogs?—A. Yes, sir; cattle, horses, hogs, &c.

Q. Also grain, corn, wheat, &c.?—A. Yes, sir; grain, corn, and potatoes.

Q. Are your children going to school?—A. Yes, sir.

Q. Have you good schools?—A. Yes, sir; district schools.

Q. Most of the children going to school?—A. Yes, sir.

Q. Have you churches?—A. We did have a church—only one.

Q. Only one church?—A. Yes, sir.

Q. Have you any now?—A. No, sir.

Q. You have no building?—A. We have no buildings—the building was blown down.

Q. Why do you not build another church?—A. The people are not satisfied; they cannot do anything towards it.

Q. Have you no funds with which to build a church?—A. We can raise the funds, but do not know whether to build it again or not. We do the best that we can. We have meetings in the school-houses which we built ourselves.

Q. What denomination do most of your people belong to?—A. Mostly Baptists.

Q. What proportion of your people are full blood Indians?—A. There are not many full-bloods.

Q. Is the mixture mostly white?—A. Yes, sir.

Q. Is there any intermarrying between your people and the Cherokees?—A. I do not know of but one or two such cases.

By the CHAIRMAN *pro tempore*:

Q. About what number of whites are married into your tribe?—A. Only a very few.

By Mr. ADAIR:

Q. You stated there were several Delawares killed; during what length of time was that?—A. Since 1869.

Q. During nine years?—A. Yes, sir.

Q. Please name the men that were killed.—A. Well, there is Love, Snake, Henderson, Howslop, Jacob Easy, Isaac Journey-Cake, and Wilson Sarcoxie.

Q. Are you certain these Delawares you have named were killed by the Cherokees?—A. Not all.

Q. About how many are you certain were killed by the Cherokees?—A. Four.

Q. Name them.—A. Henderson, Easy, Journey-Cake, and Wilson Sarcoxie.

Q. Were not these men killed in difficulties or feuds among yourselves? If so, state to the committee all about it.—A. The evidence was presented to Major Marston, the agent.

Q. The question was whether these men were not killed in difficulties of some sort or other arising among yourselves?

The WITNESS. I do not understand—

By the CHAIRMAN *pro tempore*:

Q. Were they killed in any quarrel or something of that kind?—A. No, sir; not at all.

By Mr. ADAIR:

Q. Was there not some misunderstanding between the parties?—A. I know Easy was shot close to my house, and the man that shot him I do not believe ever saw him or learned his name; he just rode up about dusk and shot him right there at his tent.

Q. Who was the man?—A. Frank Rodgers.

Q. Has Frank Rodgers since been killed by the Delawares?—A. Yes, sir.

Q. Have these Delawares who killed Frank Rodgers ever been tried?
—A. Their trial came off last Monday.

Q. They were tried last Monday?—A. Yes, sir.

Q. Were they acquitted?—A. I do not know. I have not heard from there.

Q. Were they all tried, or just one or two of them?—A. I do not know.

Q. Was it not a mob of Delawares that killed Frank Rodgers?—A. One man killed him.

Q. There were several along?—A. Yes, sir.

Q. Now, Mr. Journey-Cake, you alluded to one man; who killed those other three men?—A. I cannot say.

Q. You cannot say?—A. No, sir; Henderson was killed in the woods. I do not know who killed him. I saw the bullet-holes.

Q. You do not know whether a Cherokee or Delaware Indian killed him, do you?—A. No, sir. I know there were Cherokee scouts riding through there at the time.

Q. A good many Cherokees ride through that country, do they not?—A. A few live scattered around. Isaac was killed by Calvin Croker.

Q. Was Croker tried by a jury of his country?—A. Yes, sir.

Q. Was he acquitted?—A. Yes, sir.

Q. Who was Calvin Croker's father?—A. John Croker.

Q. Did John Croker have his house burnt up?—A. I heard that was so.

Q. Don't you know that there was some Delawares along when that was done?—A. No, sir.

Q. Was not one of them Jourdan Journey-Cake?—A. I do not know, indeed.

Q. Was not Jourdan Journey-Cake along?—A. I do not know; he might have been.

Q. Was it not generally understood he was along?

(The witness made no response.)

Question repeated by Mr. Adair.

The WITNESS (to Colonel Adair). How is that?

Colonel ADAIR. Was it not generally reputed that Mr. Jourdan Journey-Cake was along when John Croker's house was burnt up—was not that generally understood and believed?

(The witness made no response.)

Mr. ADAIR. I hate to prove these things, but it becomes necessary from your statements in regard to it, and I want to say that I have no feeling about it, and I simply want to ask if it was not generally understood that Jourdan Journey-Cake, your nephew, was along when they burnt up Croker's house and everything else he had?

The WITNESS. I recollect that he was arrested for that, but was acquitted.

By Mr. ADAIR:

Q. He was a Delaware and acquitted?—A. Yes, sir.

Q. How many of these Delawares are on trial for killing Frank Rodgers?

(The witness made no response.)

Q. You stated that they were to be tried last Monday; how many of them were to be tried?—A. I don't know. Only one was arrested.

Q. How many more are there that have not been arrested who are charged with being implicated in that killing?—A. From what I heard then I think John Sarcoxie.

Q. Were not some of the Delawares charged with having killed a Cherokee, a white man, and a Spaniard?—A. I do not know.

Q. Did not some of the Delawares there, on one Sunday, pursue a Cherokee by the name of Brown, and a white man, and I think a half-breed Osage or a Spaniard, and run them off, follow them, and kill them?—A. I don't know.

Q. Was not that your understanding? Of course you were not right there when the killing took place?—A. They took several men, and tried them for that.

Q. Did not a part of the Delawares jump on their horses and run after a Cherokee by the name of Brown, and one half-breed Osage, and a white man; and did not Brown get away, and did not the Delawares kill the white man and the half-breed Osage?—A. I do not know.

Q. The last you heard of them they were after them, were they not, with their guns, &c.?—A. I do not know that the Delawares had guns.

Q. Don't you know they had guns, and that they shot somebody?—A. They had revolvers.

Q. What they called six-shooters?—A. Six-shooters.

Q. What I want to get at—and I am sorry that this thing has been entered into, but as we have got into it we may as well go through with it—did not the Delawares who followed these men have fire-arms?—A. I don't know that they had.

Q. Who were the men that were followed?

(The witness made no response.)

Q. Was not Brown one of them, and did not the Delawares follow them somewhere over on Caney or Little Verdigris River, and the men have never been heard of since?—A. I do not know.

Q. Is it not generally understood that the Delawares overtook those men and murdered them?—A. I suppose that is the rumor by the enemies of the Delawares.

Q. Did not the Delawares follow them?—A. I learned from the evidence that was given at the court-house that Sarcoxie, Eugene White, and John Marshall were the ones.

Q. The ones that followed them?—A. The ones that followed them; it was said John Sarcoxie did not go but a short distance.

Q. Sarcoxie did not go but a short way?—A. Yes, sir.

Q. From the evidence what were the names of the men who were killed?—A. I declare I do not know. I cannot call their names; one was called James.

Q. Was he a white man?—A. Yes, sir.

Q. What was the other one's name?—A. The other one they were after was a half breed Osage.

Q. You have forgotten his name?—A. Yes, sir.

Q. And the other one's name was Brown, was it not?—A. Yes, sir.

Q. Did not Brown say that the Delawares captured the other two men—the white man and the half-breed Osage?—A. I do not know.

Q. Did not you hear so?—A. I heard that Brown got away.

Q. Brown got away?—A. I do not know; I heard so.

Q. You have never heard of those other two men since?—A. No, sir.

Q. Have you ever heard that the United States deputy marshal for the western district of Arkansas has been trying to ferret out that murder and inquire into it?—A. I do not know.

Q. Have these men you have named, that followed this white man and the half-breed Osage and killed Frank Rodgers, been tried?—A. They were to have been tried last Monday.

Q. They have never been tried for killing the white man and the half breed Osage?—A. I believe they were tried and acquitted.

Q. Tried and acquitted?—A. Yes, sir.

Q. How many Cherokees or Cherokee citizens have been killed around up in there by your people since you have been there?

The WITNESS. By our people?

By Mr. ADAIR:

Q. Yes, sir; you spoke of one Frank Rodgers; do you know of any more?—A. Yes, sir; a man by the name of James Croker was killed there.

Q. Do you not know that another Rodgers was killed up there—a young man?—A. No.

Q. You have lost seven men during the last nine years, and the testimony shows that one was killed by the Cherokees. Who killed the other six men? Do you know?

The WITNESS. One, you say, killed by the Cherokees?

Mr. ADAIR. Yes, sir.

The WITNESS. I think there were three.

By Mr. ADAIR:

Q. You stated there were four, but did not explain about the matter.—A. Isaac, Sarcxie, and Henderson were found killed in the woods.

Q. You do not know who killed them?—A. No.

Q. Have these men been tried and acquitted who were charged with having killed these men to whom you have alluded?—A. Yes, sir.

Q. The Delawares, who were charged also with killing the Cherokees, were tried and acquitted, were they not?—A. Yes, sir; only one. I do not know about these last ones. I do not know what they are going to do about the matter. The one that killed Croker was acquitted. That is a good while ago. His name was Brown.

Q. There has been no one hung for that crime?—A. No, sir.

Q. In that particular they stand about like the Cherokees, don't they?—A. Not much difference.

Q. There have been no Cherokees hung, have there?—A. I believe not.

Q. These difficulties between these families, are they not a sort of personal difficulties? Are they not family feuds or difficulties between individuals, and are they not confined to those families?

(The witness made no response.)

Q. There are some Delawares up on Caney, and on the Grand River, and around that country. Now, are these difficulties not a sort of family feud existing between them?—A. I think not.

Q. The Delawares, as a general rule, farm as much as the Cherokees, do they not; for instance, you farm there as extensively as the native Cherokees?—A. Pretty much so.

Q. Do not the Delawares, as a general thing, have bigger farms and more live stock, cattle, horses, hogs, &c., than the Cherokees do in that country?—A. No, sir.

Q. They have about the same, do they not?—A. No; I should think they have less than the native Cherokees have there.

Q. There is not much difference, is there?—A. Yes; some difference.

Q. Do not the Delawares have bigger fields than the Cherokees?—A. No, sir.

Q. Don't the Delawares cultivate from four to five hundred acres?—

A. No, sir; there are very few who have farms that large.

Q. Are there not very many Cherokees cultivating fields that big that you know of?—A. O, yes.

Q. You are permitted to farm as much as you want, are you not; and

you are permitted to have as much ground as you want without being molested, are you not, the same as the Cherokees?—A. Yes, sir; that is so.

Q. You have the same privileges to the schools, to our common schools, that the other Cherokees have, don't you?—A. Yes, sir.

Q. Your live-stock has the same privilege and runs in the same range or common with the stock of the Cherokees?—A. Yes, sir.

Q. What induced you to leave Kansas; was it not because you had your lands sectionized, and the white folks run over, and you had to leave?—A. No, sir; we understood there was to be a Territory established; the old chiefs said the Cherokees, Chickasaws, Choctaws, Seminoles, and Creeks are our grandchildren; we made peace with them many years back, and renewed our friendship, and they desire that we should go there and unite with them and hold that country with them as one people. That is what started us, and they examined the Cherokee treaty with the government in 1866, and based their amount upon that. They say their grandchildren are civilized, educated, and have churches and schools of their own. We will go there. All we can do is just to take our families there and be as the Cherokees, and raise them up toward civilization.

Q. Don't the Cherokees treat you very well right around that neighborhood there, away from the neighborhood where you have your difficulties?—A. Yes, sir.

Q. And wherever you go through the nation you have been well treated?—A. Yes, sir.

Q. The same way with the other Delawares when away from that scene of difficulty where you have not had family difficulties?—A. No, sir.

Q. There are a great many Delawares upon Cabin Creek; you have heard of no difficulties in that country?—A. Once in a while.

Q. And once in a while you hear of them in the States?—A. Yes, sir.

Q. And down all about that country?—A. Yes, sir.

Q. You came down into the Cherokee Nation in the hope of getting a better home than you had in the State of Kansas?—A. Yes, sir.

Q. And you are now a Cherokee?—A. Yes, sir.

Q. You spoke of having a paper authorizing you to come here?—A. Yes, sir.

Q. Who signed that paper?—A. The Delawares.

Q. Where did they sign it, and who were present when they signed it?—A. The paper will show; I wish I had it here.

Mr. HUBBARD. If that power of attorney is to be put in, I shall ask that the powers of attorney of all the other delegates to be put in.

Mr. ADAIR. O, yes; we do not object.

By Mr. ADAIR:

Q. Who was present when this letter or authority was signed?—A. Just the Delawares.

Q. Where was it signed?—A. I think up on Caney. I believe they say it was at Delaware Charley's house, and then they took it somewhere up around on Grand River and got the rest of the names.

Q. When was it signed at Delaware Charley's, and how long since it was signed?—A. I do not remember what time it was.

Q. About how long ago since it was signed?—A. Well, they signed one last year.

Q. Last year?—A. Last year.

Q. That is the one you have now?—A. No; when they brought it to me I handed it to the agent.

Q. That is the one signed last year?—A. Yes, sir; and sent it on to Washington City requesting the government to allow me to come on.

Q. What did the government do about it?—A. The government said I could come at my own expense.

Q. The government did not invite you, then, under that authority?—A. No, sir; in the spring they commenced again, and I wish they would send somebody else.

Q. You stated to the committee that you have a paper authorizing you to come here, and that you filed it with the Commissioner. I want to know at about what time that paper was fixed up and signed by the Delawares that sent you here?—A. I think along in March or April.

Q. March or April a year ago?—A. No; this year.

Q. Well, this paper authorizes you to come here and collect some claims against the government?—A. Yes, sir; that is it.

Q. That is the reason you have it filed before the Interior Department?—A. Yes, sir.

Q. Were you not informed that a good many Delawares objected to your coming here on that business?—A. No, sir; I did not so understand.

Q. You never was advised—never received any letters to that effect?—A. No, sir.

Q. I believe you stated that the Delawares did not want their lands sectionized or divided up, but that they merely desired to be separated off by themselves?—A. If they could.

Q. They want to go back to their original tribal relations?—A. Yes, sir; that is what they want.

Q. They are opposed to having a Territorial government established over them?—A. Yes, sir.

Q. They want to retain their tribal organization, &c.?—A. Yes, sir.

Q. They are opposed to a Territorial government?—A. Yes, sir; it they do not get protection, then they would like to have it the other way.

Q. Which way?—A. Have it sectionized, or some law, any way, to protect them.

Q. The treaty of 1866 provides for sectionizing the lands. Do they want a Territorial government over them or the country opened?—A. No.

By Mr. HEREFORD:

Q. Suppose you were set off from the Cherokees and separated away from them, then would you want the country opened to white settlement?—A. That is a hard question.

Q. What is your wish?—A. I wish to have our lands set apart so we can govern ourselves.

By Mr. ADAIR:

Q. Set apart for the Delawares?—A. Yes, sir; for the Delawares.

Q. The Senator's question was, Do you want the whites mixed up with you?—A. No, sir; I mean only for the Delawares.

By Mr. HEREFORD:

Q. For yourselves, without any interference by the United States or the Cherokees?—A. Yes, sir.

Q. That is what you want?—A. Yes, sir.

By Mr. ADAIR:

Q. Do all the Delawares entertain the same views that you do on this subject?—A. No, sir; there are a few who do not.

Q. Do not James Ketcham, J. Croker, and some others in that neighborhood, wish to remain as they are?—A. Yes, sir.

Q. Do not the Cherokee laws provide that the Delawares shall have one representative in the council; for instance, the Coo-wis-coo-wee district, don't they usually run a Delaware for the council?—A. Yes, sir.

Q. Don't the law require it?—A. It may be, but they get beaten every time.

Q. Was not Mr. Bullet elected once as a Delaware?—A. Yes; once in ten years.

Q. Was not some other Delaware elected before Mr. Bullet?—A. Not that I know of.

Q. Was not James Conner elected before Mr. Bullet?—A. I believe so.

Q. Was not another by the name of Thompson, a very clever man, elected also?—A. It may be.

Q. Are you not pretty certain he was? You recollect him, don't you?—A. Yes, sir; I recollect him.

Q. Was he not elected a member of the council, and served in the council; you recollect that?—A. Yes; I recollect that.

Q. Then Mr. Bullet was elected, making three Delawares who have been elected to the council?—A. Yes, sir.

Q. That was for six years, each having been elected for one term of two years.

WITNESS. What good did it do?

Mr. ADAIR. I only wish to show you have a voice in the government.

The WITNESS. It does not show anything. We are pulled around; and I should like to leave every one to take his choice. If I am doing well, I would stay; but those who cannot stay without protection, let them leave.

By Mr. ADAIR:

Q. Then you think every man who gets mad ought to leave?—A. Yes.

Q. The law does not compel him to stay, if he wants to go?—A. No; but if they leave they must leave their funds, too, and they ought to be paid for their improvements.

Q. That is, when they do not like the way things are conducted?—A. Yes.

Q. If a man runs for office like I did, and gets beaten, you think he ought to get up and leave; and would you think he would be a good citizen?—A. No, sir; but here are two nations come together. We came here in good conscience to unite with the Cherokees and help them get along, as far as we can, in order to civilize our children. Owing to the terrible manner in which the Delawares are treated by the Cherokees there can be no peace.

Q. You have stated you have been treated very cordially and kindly away from that fussy neighborhood?—A. I mean the law.

Q. The law is very good?—A. It may be, but it does us no good.

Mr. Adair submitted the following instructions from the nation to its delegates, and asked that it be printed.

Mr. Hereford ordered that it be put in as part of the record.

AN ACT instructing the delegation to Washington City.

Whereas the national council has passed an act, approved November 28, 1877, entitled "An act authorizing the appointment of a delegation to Washington, D. C., of two persons, to represent the Cherokee Nation before the Government of the United States upon such subjects and with such powers as may be conferred by law;

And whereas W. P. Adair and Daniel H. Ross have been duly constituted such delegation: Therefore,

SECTION 1. *Be it enacted by the National Council*, 1st, That the before-named W. P. Adair and D. H. Ross be and they are hereby empowered and instructed to proceed, without any unnecessary delay, before the Government of the United States, at the city of Washington, D. C., to represent the Cherokee Nation before the said government, in the discharge of their duties as delegates aforesaid. The said delegation are hereby instructed to protest against and oppose, by all lawful and available means, the passage through the Congress of the United States of any bill or measure for the establishment of any sort of a Territorial government or provincial government of the United States over the Cherokee Nation or people, or over the Indian country, or the adoption of any measure, either by the Congress of the United States or by the departments, that will impair or interfere with, in any manner, the rights of soil and self-government secured and guaranteed to the Cherokee Nation and people by the Government of the United States. * * *

December 7, 1877. Approved.

CHARLES THOMPSON,

Principal Chief of the Cherokee Nation, Ind. Ter.

This is to certify that the foregoing is a true copy of the original as on file in this office. In testimony whereof I have hereunto set my hand and the seal of the Cherokee Nation (there being no other seal of office), at Tahlequah, Cherokee Nation, on this the 8th day of December, 1877.

[SEAL OF THE CHEROKEE
NATION.]

W. L. G. MILLER,
Executive Secretary.

DISTRICT OF COLUMBIA,

County of Washington, ss :

This is to certify that the foregoing is a true copy of an extract from a certified copy of an act of the Cherokee National Council instructing the delegation of the Cherokee Nation, the original of which is on file in the executive department of said Cherokee Nation.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 24th day of May, 1878, at Washington, D. C.

[SEAL.]

CHAS. S. LUSK,
Notary Public in and for the District of Columbia.

FRIDAY, May 31, 1878.

Committee met pursuant to adjournment. Senators present: The chairman and Mr. Saunders; delegates and counsel all present.

GEORGE A. REYNOLDS recalled. Examined by Mr. Grafton.

Question. Have you any knowledge of any bonds of the Missouri, Kansas, and Texas Railroad Company or of the 35th parallel railroad having been used by those companies, either directly or indirectly, for the purpose of securing legislation by Congress?—Answer. No, sir; I have never had any knowledge of those matters at all; know nothing about them or about any bonds being used for any purpose.

Q. Do you know of any money having been used for that purpose?—A. No, sir.

Q. Have you any knowledge of any money having been used by the Missouri, Kansas, and Texas Railroad Company for securing the passage of an act granting a subsidy to these railways?—A. No, sir; I have no knowledge of anything of that sort.

Q. Have you any knowledge of any money having been used by that railroad for the purpose of securing the passage of the Oklahoma bill?—A. No, sir; I know nothing of the expenditure of money other than for legitimate expenses.

Q. Please state what those expenses are?—A. I suppose for such attorneys as represent them here. I refer to Judge Ruggles and Mr. Hubbard, whom I understood were employed by the company; but that I do not know personally.

Q. Do you know whether they have any other attorneys employed here?—A. No, sir.

Q. Have you any knowledge of the disbursement of money or checks or any other thing of value having been given to the press for the purpose of aiding these Oklahoma measures?—A. No, sir; I have no knowledge of it at all.

By Mr. BOUDINOT:

Q. I believe you reside in the State of Kansas?—A. Yes, sir.

Q. Are you acquainted with that portion of the State of Kansas occupied by the Delawares previous to the treaty of 1866, and previous to their removal into the Indian country?—A. Yes, sir.

Q. Do you know whether a portion of those Indians took lands in severalty?—A. I understood there were a portion of the Osages, some of the Delawares, some of the Pottawatomies, and Ottawas. I do not recollect all of them.

Q. Did any portion of them get lands in fee-simple?—A. Yes, sir; I suppose they got patents. They got evidences of patents to enable them to sell to other parties.

Q. Can you state from your own knowledge or acquaintance with these Indians, the condition of those titles—how those Indians fared who took titles in fee-simple?—A. So far as I know they fared as everybody else does; they sell when they get ready at such prices as they can get in the market.

Q. Do you know of any Indians who sold their lands while holding them in severalty?—A. One or two.

Q. To what tribe did they belong?—A. The Osage.

Q. He took it in severalty?—A. Yes, sir.

Q. How much did he have?—A. I do not know.

Q. Do you know what he got for the land?—A. I refer to Ogeese Captain; he had a farm on the Verdigris River.

Q. How much did he sell it for?—A. Fifteen dollars per acre. It was a nice farm, containing from 80 to 100 acres.

Q. Do you know of any Indians who took lands in severalty and who got fee-simple titles to them who were driven off of them?—A. No, sir; I know they got full equivalents for them—their title is just as good as that of anybody else—just as good as mine.

By Mr. GRAFTON:

Q. You refer to their legal rights?—A. Yes, sir.

By Mr. ADAIR:

Q. Do you know how many of the Osage Indians took reservations?—A. No, sir; I do not.

Q. Was it not generally understood that most of the Osages that took reservations had to leave them; that they were run off and went down into the Indian Territory. Don't you recollect the settlers took possession of their reservations as soon as surveyed?—A. Indeed I do not.

Q. Did not you hear of it?—A. No, sir.

Q. Don't you recollect Mr. Beede testified about it?—A. Yes, sir; I recollect that, but I have no recollection about the matter myself.

Q. Did not you hear about three Osage Indians being wounded and one killed on that account; that they were ousted from their lands, &c.?—A. If I ever heard of it I have lost all recollection of it.

The WITNESS (to Colonel Adair). Do you remember the years?

Mr. ADAIR. I do not recollect the year; I think it was in the year 1867 or 1868.

The WITNESS. I was then the agent of the Seminoles.

By Mr. ADAIR:

Q. Did not the people of the State of Kansas go upon the land?—A. Yes, sir; I heard that they rushed upon them; I think they did.

Q. As the result of that did not the Osages go down into the Indian country, for instance, into the Cherokee Nation, upon the Verdigris River?

The WITNESS (to Colonel Adair). As a result of that?

Mr. ADAIR. Yes, sir; they could not live there in peace.

The WITNESS. Well, I do not know; it may have been so. I remember that they moved down upon the lower end of the reservation and they had about eight million acres.

Q. Speaking about the Delaware Indians, have you any idea what made them leave the State of Kansas?—A. Well, I suppose to better their condition—for the same reason that I would go there if I had the right—at least they thought it would be benefited.

Q. Did not many of them, from your knowledge of the facts, and general rumor, take reservations and could not hold them?—A. No, sir.

Q. You never heard of it?—A. No, sir; never heard of it.

Q. Are you acquainted with what are known as the New York Indians?—A. Yes, sir, somewhat; they have land lying about Fort Scott.

Q. Did not they have lands allotted to them by the government for thirty-two families or about that number?—A. I do not know about that. It may be so; I presume it was so.

Q. Have you not understood that squatters went upon that land and took it away from them after they got their certificates of allotment, so they were compelled to leave, and whilst leaving were shot, wounded, and killed?—A. No, sir.

Q. You never heard of that?—A. No, sir.

Q. Have you any recollection of an act passed in the year 1873 for

the benefit of those Indians, to pay for the lands?—A. I remember there were parties in Washington seeking that kind of legislation.

Q. You do not know the reason why they were seeking that kind of legislation?—A. No, sir.

Q. Have you any knowledge of the number of tribes that had to leave the State of Kansas and go down into the Indian Territory as soon as the treaty of 1856 was made? If you have, just state the number of tribes?—A. I do not know the number. I know there were several.

Q. Just name the tribes.—A. Well, the Pottawatomies, the Kaws, the Osages, the Delawares, the Ottawas, the Shawnees and a number of little tribes.

Q. What about the Black Bob Indians?—A. Yes, sir; the Black Bob also; I know there has been a great deal said about the Black Bob land, but it is a question of which I do not know the merits.

Q. Do you know anything about the Mandans and the Poncas?—A. Yes, sir; I know about the Poncas.

Q. The Pawnees?—A. Yes, sir; the Pawnees never lived in Kansas, nor the Poncas.

Q. These Indians were moved from the State down into the Indian Territory to better their condition, were they not?—A. Yes, sir; they made treaties for that purpose, I suppose.

Q. You know a good deal about the Black Bob Shawnees?—A. No, sir; I do not. I know where they live, but I do not know about the merits of that case.

Q. Do you not know that they took certificates of allotment to their lands and had to give them up?—A. No, sir; I do not know it.

Q. Don't you know they kicked up a row about five years ago in the Interior Department about them?—A. I know there has been a good deal of investigation about that matter and that an act of Congress was sought to be passed by persons interested in the Black Bob lands.

Q. For the last seven years since they have been ousted from their lands have not acts been introduced in Congress for the benefit of these Black Bob Shawnees?—A. Yes, sir; I have noticed bills of that kind frequently.

Q. That was done to give them indemnity for their lands, was it not?—A. I suppose so.

Q. How long have you known the Indian character generally, and how long have you lived among the Indians?—A. Since 1865. I know their character quite intimately.

Q. How long were you an Indian agent?—A. Nearly five years; more than four and a half.

Q. In the light of your experience with the Indians and their relations with the white people, is it not your opinion that the Indians do better when taken out of the States and put among themselves; as they are, for instance, in the Indian Territory?—A. No, sir; I do not think the Indians would be civilized unless by being brought in contact with white people.

By Mr. SAUNDERS:

Q. Unless how?—A. Unless they come in contact with white people.

By Mr. ADAIR:

Q. Don't you think sending them down into the Indian Territory gives them the necessary contact with the white people to enable them to become civilized?—A. Well, if their contact is good in one degree it ought to be in all; they should have full contact with white people. I do not

suppose they come into contact with but a limited number of white people in the Territory.

Q. How is it then that you say these tribes were moved to better their condition; what do you mean by that?—A. I mean these treaties were made for their removal elsewhere, and it was done because the State of Kansas was rapidly increasing, and these were small reservations and a large portion of them government lands. And the rapid increase of the population of Kansas was detrimental to the Indians; and they would better their condition by going to the Territory just as I would better my condition if I should sell my farm in Kansas, and had a right to go to the interior where I could get more and better land.

Q. You spoke of the rapid increase of Kansas being detrimental to the Indians; was it caused by smothering them up and flooding them out?—A. I said the treaties were made with the Indians more upon the fact that the number of white people was rapidly increasing and that these reservations in Kansas were so small that it was desirable that the Indians should be moved to the Indian Territory.

Q. Did not your people petition Congress, from time to time, to pass an act authorizing the removal of these Indians from their midst?—A. Yes, sir; it was the general desire of the people to have these treaties made.

Q. In order to get rid of the Indians?—A. Yes, sir.

Q. Do you not think from your experience with the Indians that if the barrier were removed and the flood-gates of emigration opened for every citizen of the United States who might choose to go there, such a state of affairs would be injurious to the Indians; that it would disturb their present condition?—A. No, sir; I think if their lands were given to them in fee-simple and they had individual titles to their land, I think the Indians and the people of the United States would be better off. I think the Indians are capable of taking care of themselves.

Q. If the Indians had their titles in fee-simple and at the same time the country should be opened for emigration and the white population should crowd in there, don't you think the result would be the same as it was in the State of Kansas with those Indians?—A. No, sir; I think not.

Q. Why not?—A. I think they are a different class of Indians from what they were when I went to the State of Kansas; they are further advanced and I think they are prepared to have their lands divided in severalty.

Q. Have they not advanced since they have been moved down into the Indian Territory?—A. Yes, sir.

Q. Have they not done better than when in the States?—A. They have been under the civilizing influence of the whites and have adopted the Christian principles for the last fifty or sixty years. I speak of the five civilized tribes.

Q. Has there been any barrier imposed by these Indians to the introduction of Christianizing influences?—A. No, sir.

Q. Have they not encouraged Christians coming among them?—A. Yes, sir.

Q. Have not all the orthodox Christian churches been established throughout that country?—A. All denominations are represented there.

Q. Do you not think they are advancing as fast as the people in the States?—A. I think they are.

Q. Do you not think their civilization compares favorably with the civilization of the neighboring States?—A. I do.

Q. Then, if that is the case, why do you think they would be better

by being crowded with the whites?—A. They would have that many more advantages, and then they would have an incentive to make greater improvements if they had their lands in severalty.

Q. The Indians have no other country they can possibly go to?—A. No, sir.

Q. They do not own any land in the adjoining States or Territories from the Atlantic to the Pacific?—A. No, sir.

Q. If all the barriers or restrictions to the emigration of the white people were removed, and the citizens of the States of Kansas, Missouri, Arkansas, Colorado, Texas, and the other States should be invited to emigrate to that country by legislation, and it should be tolerated, and the whites should rush in there from those States indiscriminately, all together, and throw the Indians out of their houses and homes, like it has been done heretofore, what do you think would be the result?—A. The result would be, if it did take place, to destroy the Indians.

Q. Don't you think there would be a little fighting take place beforehand?—A. No, sir; I do not think there would be. I do not understand it is proposed in these bills to have the Indians leave that country.

Q. Don't you think if they were to oust them from their homes somebody would get hurt?—A. Yes, sir; certainly I think so.

Q. If the Indians are prospering under the plighted faith of the government, as you have stated they are, don't you think it would be wise to let them alone?—A. Well, that is a question for the government to determine.

Q. Your experience among the Indians entitles your opinion to some respect and it should be of some weight; now, for instance, take the Seminoles (you were the agent for them a long while), from your knowledge of those people are they not marching rapidly towards civilization; are they not becoming Christianized rapidly? I will illustrate my question: take, for instance, John Jumper; has he not embraced the Christian religion?—A. Yes, sir; I believe him to be a devoted Christian man.

Q. Have not all the others erected churches at their own expense?—A. I know James Factor erected a church at his own expense.

Q. When the Seminoles were forced out of Florida, is it not historical that when they were carried to the West they were an ignorant people who knew very little about civilization?—A. Yes, sir; that is the truth about it.

Q. That is historical?—A. Yes, sir.

Q. Is it not a fact that they lost about one-third of their people on account of their removal?—A. Well, I think that is a fact. They were treated badly I have no doubt.

Q. Since they have gone out there and got to themselves they have become an educated people, have they not?—A. Yes, sir; they have five district schools which they support, besides a missionary school.

Q. Schools which they support without any expense to the United States Government?—A. Yes, sir; supported exclusively by Seminole money.

Q. They have rapidly increased in their church membership, have they not?—A. Yes, sir; I think their church membership is more general than that of any other people I ever knew.

Q. Is it more general than in your own State?—A. Yes, sir; a good deal larger.

Q. In your intercourse with those people while agent they treated you very kindly?—A. Yes, sir.

Q. They have great confidence in you as is evidenced by their having employed you to attend to some of their business?—A. Yes, sir.

Q. While there did you not, from time to time, have considerable sums of money in your custody?—A. Yes, sir.

Q. Did you not carry it out there, and did not they all know it?—A. Yes, sir.

Q. You never had a dollar stolen?—A. Never.

Q. Never heard of any robberies?—A. Never.

Q. In view of the facts you have stated, and in view of the former unfortunate condition of the Seminoles, don't you think they are vastly better off to-day than they were in Florida?—A. I have no doubt about it.

Q. You have no doubt about it?—A. No, sir.

Q. Don't you think those remaining in Florida should be removed out among their brethren in the West where they would be better off?—A. Yes, sir; I have urged that they should be removed.

Q. You have recommended that?—A. Yes, sir; corresponded with the authorities of Florida and with the department, and urged it in every way I could.

Q. The principles you have applied to the Seminoles hold good with the Indians generally, do they not?—A. Holds good with the civilized tribes.

Q. Don't it hold good with the uncivilized tribes?—A. Yes, sir.

Q. Don't it hold good with the Indians generally?—A. Yes, sir; it holds good with the Indians subject to the proper influence. It holds true and applies to wild Indians, as well as others, because they are capable of advancement and civilization. Their capacity for education is as great as any other people.

Q. These civilized Indians in that country have exercised a very marked influence upon the wild tribes on the plains, in the matter of civilization, by precept and example, have they not?—A. Well, I do not know that I know all about it.

Q. You know as much as almost any man. You are a man of good sense. You have been among them a great deal. Now, from your observation and from your historical knowledge of that western country for the last fifteen years, have not the civilized Indians exercised a very wholesome influence over these wild fellows?—A. Undoubtedly they have; yes, sir.

Q. Are not the Indians there in that country at peace with the adjoining States and Territories?—A. Generally, I understand so.

Q. Have not the civilized tribes, through the medium of the grand council that was established under the treaty of 1866, sent, from time to time, delegations from these civilized tribes out among these wild Indians in order to talk to them and reclaim them?—A. I understand so; yes, sir.

Q. Have they not been in that way drawn in—these wild Indians, the Comanches, the Shawnees, the Cheyennes, the Arapahoes, &c.?

The WITNESS. You refer to the Ockmulgee council or grand council?

Colonel ADAIR. Yes, sir.

By Mr. ADAIR:

Q. Have you ever attended any of the sessions of that grand council?—A. Yes, sir.

Q. Have you ever heard those wild Indians that were there say that they wished to follow in the footsteps of the civilized tribes towards civilization?—A. Yes, sir; I have heard them say that they would like to be like the civilized tribes.

Q. You have heard them say that?—A. Yes, sir.

Q. Have those wild Indians, the Comanches, the Cheyennes, the Arapahoes, &c., gone to farming and stock-raising, &c.?—A. Yes, sir.

Q. All that is attributable to the civilizing influences that have been brought to bear upon them by the civilized tribes?—A. Yes, sir; I think they have been influenced by the civilized Indians.

Q. Are you acquainted with the treaties of 1866?—A. Yes, sir; quite well.

Q. You were here when they were made?—A. Yes, sir.

Q. Don't those treaties foreshadow the policy of the government in this, that that country shall be set aside for the Indians in order to get the Indians out of the States and Territories—for instance, as those taken from your State?—A. Yes, sir; the provisions of the treaty say that inasmuch as it is desirable to locate friendly Indians in the Territory, &c., and then goes on to make provisions for the Kansas and other friendly Indians, &c.

Q. I want to show that there is a system in this matter, and that it works as well it now stands. You spoke of the Indians in Kansas having their lands allotted in severalty. Was not that done by their consent, and did they not want it done?—A. I presume they wanted it done.

Q. Was not that generally understood at the time?—A. I suppose so.

Q. Does not the Cherokee treaty provide that whenever the councils or legislative bodies of those nations shall so request that then the government shall survey and allot our lands in severalty; is not that the provision of the treaty?—A. I think there is a provision of that kind running through the treaties.

Q. Under the treaties, therefore, the consent of these Indians is made a condition precedent to the allotment of their lands under the treaties?—A. I am not familiar enough with the provisions of the treaties to state whether that is true or not.

The CHAIRMAN. Do not the treaties show that? This is not a question for the witness to answer. If the question went before the Senate, the Senate would not care for the opinion of a witness, but would take the treaties.

The WITNESS. I do not like to answer because I am not as familiar with the treaties as I was some time ago.

Mr. ADAIR. I appreciate the position taken by the honorable committee, but in view of the fact that the treaties provide that sectionizing the lands in that country cannot take place without the consent of the Indians, it occurred to me that we had a right to ask witnesses questions on that point, and that such testimony would be proper. This testimony is to be published and we want to get the treaties before the public; of course the treaties will show it to the committee, but it will not reach the public. If the committee please, one rule of construing treaties is to construe them as the parties understood them at the time the treaties were made. Major Reynolds was a witness to these treaties, and it is material to show what his understanding of their provisions was at the time. But if the committee object, I will not insist upon the witness answering that question.

Mr. SAUNDERS. I do not think it is proper to go into those things in that way. We have a duty to perform under the resolution. I think it would be better to get down to the facts and ask questions that will show the facts. What we want to show is whether the Indians are disposed to become civilized and hold their land in severalty. That is one thing; that is legitimate and proper. Then to show if there has been any

money used wrongfully; but this thing of running off on little points of asking a witness his opinion as to whether the treaties say thus and so, that does not have anything to do with this investigation, and I do not think we ought to incumber the report with it. There has been a disposition to give great latitude, but we are here to get the facts and lay them before the Senate.

Mr. ADAIR. Mr. Chairman, then I am to understand that you will publish the provisions of the treaty on these points.

The CHAIRMAN. Certainly, that can be done.

Mr. ADAIR. The provisions of the treaty are as follows:

“ARTICLE 5.

“The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and, also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the government of the same.

“ARTICLE 10.

“The President of the United States shall invest in some safe and most productive public stocks of the country, for the benefit of the whole Cherokee Nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee Nation west of the Mississippi, the following sums as permanent fund for the purposes hereinafter specified, and pay over the net income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee Nation to receive the same, and their receipt shall be a full discharge for the amount paid to them, viz, the sum of two hundred thousand dollars, in addition to the present annuities of the nation, and constitute a general fund, the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to constitute an orphans' fund, the annual income of which shall be expended toward the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars, in addition to the present school-fund of the nation, shall constitute a permanent school-fund, the interest of which shall be applied annually by the council of the nation for the support of common schools and such a literary institution of the higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' fund, the council of the Cherokee Nation, when required by the President of the United States, shall make a report of the application of those funds, and he shall at all times have the right, if the funds have been misapplied, to correct any abuse of them, and direct the manner of their application for the

purposes for which they were intended. The council of the nation may, by giving two years' notice of their intention, withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest. The United States also agree and stipulate to pay the just debts and claims against the Cherokee Nation held by the citizens of the same, and also the just claims of citizens of the United States for services rendered to the nation, and the sum of sixty thousand dollars is appropriated for this purpose, but no claims against individual persons shall be allowed and paid by the nation. The sum of three thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoiliations of every kind that have been already satisfied under former treaties.

"ARTICLE 11.

"The Cherokee Nation of Indians, believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition, hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; their present school-fund, amounting to about fifty thousand dollars, shall constitute a part of the permanent school-fund of the nation.

"ARTICLE 20.

"Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States.

"ARTICLE 21.

"It being difficult to learn the precise boundary-line between the Cherokee country and the States of Arkansas, Missouri, and Kansas, it is agreed that the United States shall at its own expense cause the same to be run as far west as the Arkansas, and marked by permanent and conspicuous monuments, by two commissioners, one of whom shall be designated by the Cherokee national council.

"ARTICLE 22.

"The Cherokee national council, or any duly appointed delegation thereof, shall have the privilege to appoint an agent to examine the accounts of the nation with the Government of the United States, at such time as they may see proper, and to continue or discharge such agent and to appoint another, as may be thought best by such council or delegation; and such agent shall have free access to all accounts and books in the executive departments relating to the business of said Cherokee Nation, and an opportunity to examine the same in the presence of the officers having such books and papers in charge.

"ARTICLE 23.

"All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as hereinbefore provided for,

shall be invested in the United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee Nation, and shall be applied to the following purposes, to wit: Thirty-five per cent. shall be applied for the support of the common schools of the nation and educational purposes, fifteen per cent. for the orphan fund, and fifty per cent. for general purposes, including reasonable salaries of district officers; and the Secretary of the Interior, with the approval of the President of the United States, may pay out of the funds due the nation, on the order of the national council, or a delegation duly authorized by it, such amounts as he may deem necessary to meet outstanding obligations of the Cherokee Nation, caused by the suspension of the payment of their annuities, not to exceed the sum of one hundred and fifty thousand dollars."

By Mr. GRAFTON (to witness):

Q. Are you in favor of these Oklahoma bills?—A. Some, I am.

Q. Are you in favor of dividing the Indian lands in severalty?—A. Yes, sir; giving them a title in fee simple, without the right of alienation for a term of years. The balance to be sold and the funds invested for their benefit.

Q. All the gentlemen representing the railroads have favored that bill—the Franklin Oklahoma bill?—A. I do not know whether they have favored the provisions of the Franklin bill or not.

Q. Why do they favor these bills?

Mr. HUBBARD. Would it not be better for them to state themselves? If the witness knows from his own knowledge he may answer, but I object to his stating rumors.

The CHAIRMAN. What is the question?

Mr. GRAFTON. I want the witness to state the grounds upon which the railroads favor the Franklin bill.

The WITNESS. I will answer that question by saying I do not know.

By Mr. GRAFTON:

Q. Have you ever had any conversation with their representatives upon the subject?—A. Some.

Q. Have they never expressed to you the opinion that if that country were settled by white people their property would be more valuable?—A. They have expressed this opinion: That if there were a different form of government there they would have greater protection for their property; that the property would be more valuable by being improved, &c.

Q. There would be more trade?—A. Yes, sir.

Q. By improving the property you mean they would get in a class of white people there?—A. I mean better for their property if white settlers get in there.

Q. You mean if white people get in there it will make a market for freight, &c., by increasing the population?—A. Yes, sir; creating more business.

Q. Was it not true that all these Kansas Indians had to leave their country because the whites wanted their lands?—A. No, sir; that is not true.

Q. It was very desirable on the part of the people of the State that it should be done; and is it not true that the people of Kansas are writing letters to their representatives seeking their influence to open that Indian country to settlement?—A. Yes, sir.

Q. Why do they want that done?

By the CHAIRMAN:

Q. Do you know it?—A. I stated I thought—

The CHAIRMAN. We do not want your thoughts.

By Mr. GRAFTON:

Q. Did any of them ever tell you so?—A. I have seen such letters.

Q. Have you any knowledge of any money having been paid out by the Missouri, Kansas and Texas Railroad, or of any other thing of value having been given to secure influence, &c.?—A. No, sir; I believe I have answered that question about four times.

Q. Well, I would like to have you answer it another time.—A. No, sir.

By Mr. HUBBARD:

Q. State, as concisely as you can, the methods that have caused the Seminoles to improve since emigrating to that country.—A. Well, the work of the missionaries, the general intelligence and advancement of the country around them, their contact with white people since the war, and the system recently inaugurated since the war of educating their children in the English language instead of their own.

Q. Then just as fast as they come in contact with civilization just so fast do they improve?—A. Yes, sir; they improve faster as they come in contact with civilization; and the wild tribes improve as they come in contact with the civilized tribes.

Q. And the civilized tribes improve as they come in contact with the white people?—A. Yes, sir.

Q. That is true of the Seminoles?—A. Yes, sir.

Q. You have stated that they have been educated by Seminole money; where did that money come from?—A. From the sale of their lands.

Q. Raised out of their lands sold east of the Mississippi River?—A. Yes, sir.

Q. To the United States?—A. Yes, sir.

Q. That money is invested by the United States for them?

Q. Do you know anything about the New York Indians?—A. Do you mean the Indians in New York? I know something of their condition.

Q. Do you know anything about their condition?—A. They are improving, I believe.

Q. They lie up in the Alleghany Mountains?—A. Up in the Alleghany Mountains.

Q. Are you acquainted with the policy of the British Government toward the Canadian Indians?—A. I understand they are citizens of the English Government.

By Mr. BOUDINOT:

Q. You were asked in regard to the Indians in Kansas, about their taking their lands in severalty. Do you know of your own knowledge or information of a single instance where an Indian took land in severalty, and got a title in fee-simple in Kansas, that he was deprived of his land without his consent?—A. No, sir.

Q. Do you know of any instance of an Indian being deprived of his land where he took his title—not his certificate of allotment, but title—in fee-simple, and received a patent from the government to his land?—A. I know a good many have sold just as anybody else would.

Q. You were asked about the Black Bob Shawnees. Do you not know they never received patents for their lands, and that they are withheld by the department?—A. I do not know anything about that. I

stated in Colonel Adair's examination that I did not know about the Black Bob Shawnees.

Q. You were here when the Seminole treaty was made?—A. Yes, sir.

Q. You were the agent of the Seminoles at that time?—A. Yes, sir.

Q. How much land were they possessed of?—A. It is estimated to be 2,169,080 acres.

Q. How much did they sell to the government?—A. They sold that amount.

Q. At what price per acre?—A. Fifteen cents per acre.

Q. How much land have they now?—A. About 200,000 acres.

Q. How many Seminoles are there?—A. 2,500.

Q. How much land would each Seminole have if the land were divided up and allotted in severalty so that he would possess it in fee-simple?—

A. About seventy acres apiece.

By Mr. HUBBARD :

Q. How much would that be to a family?—A. About seventy acres to each individual.

Q. To a family of four persons, how much would that be for the family?—

A. To a family of four, 280 acres.

By Mr. BOUDINOT :

Q. If those lands should be surveyed and divided up so that each man, woman, and child would be given a patent in fee-simple for that seventy acres, do you think any citizen of your State would feel authorized to settle upon those lands?—A. No, sir.

Q. Or any number of men be authorized to go and take those lands that were thus patented to individuals?—A. Of course not.

Q. You have been asked your opinion about a good many things; let me ask you this: If those Seminoles, instead of selling their lands at fifteen cents an acre in 1866, had petitioned the government to survey their lands, and the government had allotted them to them and allowed them to take their lands in severalty, is it not your opinion that they would have been better off to-day than they are?—A. Of course they would.

By Mr. ADAIR :

Q. If that country should be turned into a territorial government, and the Seminole land be flooded with whites, and the Seminoles robbed of their lands, do you think their condition would be better?—A. I do not anticipate any such thing as that. If such a thing should happen, of course their condition would not be better.

Q. I believe you stated the Seminoles are doing better than any of the other tribes?—A. Yes, sir; I think they are.

Q. Have they not got fewer whites among them? If they have more than one white man among them, name them.—A. As citizens, they have but one white man; but there are traders, &c., there.

Q. They have decidedly fewer whites among them than any of the other civilized tribes?—A. They are purer blooded than the other tribes.

Q. They have fewer whites among them than the Chickasaws or Cherokees have?—A. So far as the tribe is concerned there are fewer whites among them than among the other tribes.

FRIDAY, *May* 31, 1878.

JAMES P. ROBINSON, having been duly sworn, testified as follows:

By the CHAIRMAN:

Question. Please state your name?—Answer. James P. Robinson.

Q. Where do you reside?—A. New York City.

By Mr. GRAFTON:

Q. What is your business?—A. Civil engineer.

Q. Have you been connected with the Missouri, Kansas and Texas Railway?—A. Yes, sir; in its early history.

Q. During what years?—A. I think in 1868, perhaps.

Q. How long did you remain in the employ of that road?—A. I have not been in its employ. The Missouri, Kansas and Texas Railroad is the outgrowth of the Atlantic and Pacific branch, of which I was one of the original corporators.

Q. Have you been an officer in that?—A. At that time I was.

Q. When did you cease to be an officer?—A. I think in 1868 or 1869.

Q. Have you any knowledge of the disposition of the bonds of that road?—A. I have not.

Q. Do you know whether any of the bonds of that road were used for any other purpose than for the construction of the road?—A. I do not.

Q. What was the plan of constructing that road?—A. The original fund that was created was about one million and a half—a plain, absolute money subscription—and I think it was constructed partly by the sale of its securities.

Q. Used as a construction fund?—A. Yes, sir.

Q. Have you any knowledge of any bonds, money, or other thing of value having been given to any Indians to secure legislation for the benefit of that railroad?—A. I have not.

Q. Or to the friends of the delegates or to the friends of any member of Congress to secure votes?—A. I have not.

Q. Are you connected with the present management of the road?—A. I am not.

Q. How long since you ceased to be connected with its management?—A. Since 1868 or 1869.

Q. You are a stockholder?—A. Yes, sir.

Q. Do you own any of these bonds?—A. I do not. I got rid of them very early.

Q. You had had experience in railroads before, I suppose?—A. I think so.

By Mr. ADAIR:

Q. You have no knowledge of the disbursement of money by the Missouri, Kansas and Texas Railroad?—A. I have no knowledge of that kind.

Q. Nor of the Atlantic and Pacific Railroad?—A. I have no knowledge of that kind.

Q. Have you kept the books in which the accounts of the disbursements of bonds are kept?—A. I am not the bookkeeper.

Q. Who is the bookkeeper?—A. I presume the treasurer is the bookkeeper. I understood the inquiry to be in reference to the Missouri, Kansas and Texas Railroad. I did not suppose you were asking about the Atlantic and Pacific.

By Mr. GRAFTON:

Q. In regard to the Atlantic and Pacific, have you any knowledge

of the disbursement of money by that company, in the employment of attorneys, &c.?—A. I presume there has been money expended for the employment of attorneys; but for what purpose I do not know.

Q. Do you know how much?—A. I cannot tell you.

Q. Do you know how much has been expended here in Washington?—A. I cannot tell you.

Q. Are you familiar with the books of the company?—A. Not intimately. I have access to them, but I have not given my special attention to it.

Q. You know there have been disbursements of that kind made?—A. I say there has been money expended for the employment of attorneys, but for what purpose they were employed I have no special knowledge.

Q. Do you know how these attorneys are paid; whether in bonds or money?—A. I think in money as it is usually the case that attorneys prefer money.

Q. How much money has been expended here for attorney fees?—A. I said I did not know that any had ever been expended here.

Q. Did you not say money had been expended?—A. I said it had been expended for attorney fees, but for what purpose I cannot say.

Q. Do you know whether they arrived in Washington?—A. I cannot tell that; as a rule, attorneys in the employ of corporations generally find Washington sometime.

Q. As an officer of the road, you would not want to know about that?—A. Yes, sir; I think so.

Q. Do you own any of the Atlantic and Pacific bonds now?—A. I do.

Q. Does your company pay Colonel Boudinot?—A. I do not know that it does.

Q. Do you know that it has not?—A. I do not.

Mr. GRAFTON. Colonel Boudinot is here and would know if you were to ask him.

By the CHAIRMAN:

Q. Mr. Robinson are you an officer of the Atlantic and Pacific Railroad Company?—A. I am, sir; I am the president of the company.

WEDNESDAY, *June 12, 1878.*

Committee met at 10.45 a. m. Senators present, the chairman and Mr. Grover. Counsel and delegates all present.

B. F. OVERTON, governor of the Chickasaws, sworn by the chairman and examined by Mr. Grafton.

Question. Please state your name, age, and residence.—Answer. My name is Benjamin Franklin Overton; will be forty-two years old on the 2d day of November next. I live in Pickens County, Chickasaw Nation.

Q. Are you a member of the Chickasaw tribe?—A. I am.

Q. What office do you hold in that nation?—A. I am now exercising the chief executive office.

Q. You are governor?—A. Yes, sir.

Q. Please state how much money has been spent by your nation in maintaining delegates here in Washington City.—A. About ten thousand dollars.

Q. Has any of it been taken from the school fund?—A. No, sir; we have no school fund.

Q. What I mean is, after your council has appropriated money for

the support of the schools, has any of that been diverted to the support of delegates here?—A. The money used for the payment of the expenses of the delegates is money taken out of the unappropriated funds in the hands of the treasurer. No money appropriated for any other purpose could be used to pay the expenses of the delegates.

Q. Has there ever been any deficiency in the school fund after it was appropriated by the council?—A. No, sir.

Q. Do you know J. D. James, Winchester Colbert, Colbert Carter, Holmes Colbert, and R. H. Love?—A. Yes, sir.

Q. Are they in favor of a territorial form of government?—A. Yes, sir.

Q. When were those men in office in your country?—A. Well, most of them went out in the year of 1874; the reins of government changed hands about that time; some held on about a year afterward.

Q. What office did they hold?—A. Colbert was elected to the senate, Mr. James was acting school superintendent, and also delegate, or what we call commissioner, and representing the interest of the Cherokees.

Q. How long had they been in office previous to 1874?—A. Ever since my recollection.

Q. What was the issue in 1874 upon which they were defeated?—A. Well, I suppose the people wanted to set up an honest administration; they are opposed to the territorial measure or any measure tending to open up our country to white settlement. Mr. Harris was known as in favor of those measures, and he had been bought up, and it was proven before a committee of the United States Congress. That was the issue.

Q. Was there any issue or question of economy or reform in your public expenses?—A. Of course, I counted that in honest administration.

Q. Were there any charges against this delegation for appropriating large amounts of money?—A. Not only charged, but proven.

Q. How much?—A. Some \$300,000.

Q. Was there any question at all in that canvass antagonizing the different elements in your country, that is to say, the full-blood Indians and the adopted citizens—any issue of that kind, or was there any issue between the full-blood Indians and the half-breeds?—A. No, sir; nothing of that kind; the only opposition to the present administration comes from this ring—the old delegation.

Q. When were you first elected governor?—A. I was elected governor in 1874 and served two years.

Q. When did your first term expire?—A. Two years ago; expired in September, 1876.

Q. When were you again elected?—A. In 1876.

Q. What was your majority in the last election?—A. I do not know. My opponent got 62 votes in the whole nation.

Q. You got the balance?—A. Yes, sir, I got the balance.

Q. How many academies are there in your nation?—A. Four; one in each district.

Q. What branches are taught in these academies?—A. The higher English branches.

Q. How many neighborhood schools are there?—A. Nine.

Q. Are they not well provided with school facilities?—A. Yes, sir.

Q. The school facilities extend to all the people?—A. Yes, sir; they are within the reach of every one; and the Chickasaw people who do not wish to send their children to school there can send them to the States, and by presenting a certificate of the teacher, showing the

actual attendance, money is always appropriated, not only for their tuition, but also for their board.

Q. Are you in favor of changing the present system of government of your people?—A. No, sir; I am not.

Q. Do you oppose these territorial forms of government?—A. Yes, sir, I do.

Q. Upon what grounds?—A. Well, I do it upon the ground that it cannot be legally done without violating our treaties. That is one of the grounds.

Q. What evil would flow to your people if it were done?—A. It would ruin the Indian race, because the Indians are not capable of competing with the white men. We would have no other resource if that country is opened up. We would be bound to go to the wall.

Q. Do you oppose the division of the lands in severalty?—A. I do.

Q. Upon what grounds?—A. Well, the Indians look upon it as the first step toward territorializing the country and opening it up to white settlement.

Q. At one time the question of dividing the lands in severalty was submitted to your people, was it not, under the treaty of 1866, and it was voted down? Will you please state all the facts in connection with that?—A. In the year 1866. I believe it was in the fall, in ratifying the treaty of 1866, it was represented at that time by the delegation that the government had offered these terms by which all could have a home and that upon their failure to accept the proposition of the allotment of the lands they would be left homeless; and that there would be no other provision made for them. The people did not seem to exercise any choice in the matter; they accepted that in ratifying this treaty here because they had an idea that if they did not they would lose all of their lands.

Q. Upon these representations made by your old delegation they had the house and senate elected to suit their convenience and then only carried it by one majority in your council?—A. Yes, sir.

Q. Was it ever submitted to the people?—A. No, sir.

Q. Who were the delegates at that time?—A. Winchester Colbert, R. H. Love, Colbert Carter, Holmes Colbert, Edmund Pickens.

Q. They belonged to the old ring?—A. They constituted the old ring itself.

Q. They were connected with the \$300,000 fraud, were they not?—A. Yes, sir.

Q. They stole above \$300,000?—A. Yes, sir; that is the reason they wage war against me, because I would not allow them to steal the lands, &c.

Q. Do you know J. Elliott Condict, of Philadelphia, Pa., who appeared before this committee, April 19, 1878, and testified, upon page 139 of this record?—A. I cannot say that I know him personally. I have been introduced to him and have had some conversation with him.

Q. You know him by sight?—A. Yes, sir.

Q. When did you form his acquaintance, and under what circumstances?—A. It was in the year 1872. At that time I was a senator in our legislature and Mr. Condict came there representing the Thirty-fifth Parallel Railroad. He came with Mr. Barnes, of Texas.

Q. General Barnes, of Texas?—A. Yes, sir.

Q. He had this railroad in charge?—A. Yes, sir; he was using his influence to obtain a charter from the Choctaw council, granting lands, I think, six miles to the alternate section. I have heard Mr. Condict's business was to go up and get the Choctaws to concur in this measure.

As the nation holds the lands in common they did not consider the charter of any value unless the Chickasaws indorsed the action of the Choctaws.

Q. What means did he use to pass that bill?—A. He certainly used various means there. I do not know that I can answer you specifically upon that question. I can tell you what I know and believe about it. Mr. Condict, when he first made a proposition to pass this railroad measure, had not a single advocate in the senate. No one seemed to favor it. Mr. Love and Mr. Reynolds were opposed to the passage of this charter, but in a few days—I do not know how long—but within a week, they were strongly in favor of passing Condict's bill. He (Condict) maneuvered around and thought he had the strongest men of the senate, but afterward he told me he had learned that in order to get his bill through he would have to obtain my influence in the senate, and that he had come to that conclusion.

Q. What did he say to you in regard to obtaining your influence in the council?—A. He said the company had authorized him to use his influence with his friends who favored this bill and to tell them that they would be placed in comfortable situations if they voted for this charter.

By the CHAIRMAN:

Q. Who said that?—A. Mr. Condict. I do not know that those are his exact words, but that is the sum and substance of what he said to me. He offered me a nice position on the road. I said, "Mr. Condict, I am not an article or merchandise; I want you to understand that I will not do that." He said, "You do not understand me. I wish to present my friends with some presents." I said, "Your company have not got money enough to pay me to betray my people." That was the experience I had with Mr. Condict.

By Mr. GRAFTON:

Q. Did Mr. Condict present any members of the council with presents?—A. I know of some little presents he gave; he gave Mr. Bourland, a white man of influence, a nice set of big harness, which he said cost \$100.

Q. Was Mr. Bourland connected by marriage with any member of your council?—A. I suppose so; he married into the Love family. Mr. Bowland's wife was a cousin of Overton Love.

Q. He was a friend of Senator Love?—A. Yes, sir; a relative. Then he presented Mr. Reynolds with a six-shooter that cost \$35.

Q. Is that Mr. Reynolds Lem. Reynolds?—A. Yes, sir.

Q. Was he a member of the council then?—A. Yes, sir; and I think he gave him more than that. I think he had some cash or its equivalent and he gave other members pistols of a smaller kind.

Q. He gave Lem. Reynolds one of the largest?—A. Yes, sir.

Q. And to the other members of the council smaller ones?—A. Yes, sir; members of the council and gentlemen assisting outside as lobbyists.

Q. Did the bill pass?—A. No, sir; it did not. When put upon its final passage, Mr. Love and Mr. Reynolds voted for it; it never got any further than that.

Q. It was never voted upon in the house?—A. No, sir. That is the extent of my acquaintance and experience with Mr. J. Elliott Condict, of Philadelphia, Pa.

Q. Have you any knowledge of a paper published in the Choctaw Nation known as the "Star Vindicator"?—A. Yes, sir.

Q. Do you know the editor?—A. Yes, sir; I know him very well.

Q. What is his name?—A. McPherson.

Q. Is he a citizen of the nation?—A. I understand that he claims a bogus citizenship there.

Q. By what name is that newspaper commonly known in your country?—A. It started there under the name of the Oklahoma Star. It was run then at Caddo, and was understood to be a Cooper organ, and an advocate of the old ring; and then afterwards it went to McAlister, for certain reasons which I will state, and assumed the name of the Star Vindicator. Not long after it moved I was at Caddo to see Mrs. McPherson to make some inquiries why McPherson left Caddo, and she said Mr. McPherson had published an article showing up alleged frauds against Mr. Harkins, the national agent of the Choctaw Nation. This article had been written by Mr. Boudinot. She ought to know, for she was the assistant editor of that paper at that time. She objected to its being published as an editorial, and said it would get him into trouble, but he put it out and charged Harkins with stealing of some kind. Mr. Harkins went to his office and gave him a cowhiding, and she left McPherson and said she would not live with a man who would take a cowhiding and said his friends had gone back on him just as she said they would. That caused him to leave that section of the country. I was speaking of his bogus citizenship. He has married a white woman in the Choctaw country who was said to have lived with a Choctaw Indian, but it has never been known whether she was lawfully married or not. There is one fact known, that she was not lawfully divorced from that Indian; they simply separated and McPherson married her. After McPherson left home on account of Harkins cowhiding him, he exchanged photographs with this woman and they were married by a kind of telegraph or something in that way. I suppose she had an idea she would be a big squaw down there.

Q. So his claim to citizenship is on account of his having lived with a Choctaw Indian?—A. Yes, sir.

Q. But it is not known whether they were lawfully married or not?—A. No, sir.

Q. Mr. Marston has been authorized to investigate his citizenship, has he not?—A. I do not know. I suppose his investigation has proven very satisfactory. I have a letter from a gentleman in my country, he says "Old Mack is very much pleased at the investigation of Mr. Marston." The writer of this letter says he wonders if Marston heard of or had the statement of his first wife. I do not know anything about the parties, but it is understood that he has no legal right in the country.

Q. Please state as briefly as possible the provision of the permit law.

The WITNESS. Would it not be better to refer to the law?

Mr. GRAFTON. You can state it briefly.

The WITNESS. The provisions of the permit law are, that no white man or any other person who is not a citizen can enter in and live in the territory for the period of twelve months in the employment of our citizens without a permit from the clerk of the county in which he wishes to reside, and for which he pays the sum of twenty-five dollars.

Q. When was that law passed?—A. In 1874. It is the only condition upon which a white man can come into our country.

Q. Was it passed in 1874 or 1877?—A. 1874 or 1876, I think. Look and see; my memory is not very accurate as to dates, but I think it was on the 17th of October, 1876.

Q. What was the prime object of that law?—A. Well, sir, it was to

rid the country of a loafing floating class of white men who had come in there only to stay temporarily for their own convenience. They were renegades from Texas, Missouri, Arkansas, Kansas, and the other border States, who have always tried to make the Indian Territory a harbor for the purpose of evading justice. They come in there and locate in a corner of a fence. They cannot protect their women and children from the snow and rain. They occupy little vacant cabins throughout our country, and under the old system they could pay two bits and remain, and they would probably remain during the winter, and steal a horse or two horses and get out, and that is the class that we were trying to get rid of by the operation of the permit law.

Q. Did you ever apply to the United States authorities before the passage of this permit law to eject this class of floating people from your country?—A. We have numbers of times.

Q. Did the United States Government eject them?—A. No, sir.

Q. Did the United States Government fail to comply with the treaties?—A. Yes, sir. We applied to the agent, and he issued an order, but they would not be obeyed. Then we referred to the department.

Q. Were these people skilled in agriculture, &c.?—A. No, sir. I will take an oath that a majority of them could not run a straight furrow.

Q. Could they put a handle in a hoe?—A. No, sir; not if they had to make it.

Q. Did they produce anything?—A. No, sir; nothing.

Q. They were simply consumers?—A. They were consumers, not producers. In very many instances they acted as call-boys for these gentlemen who want to divide up our country.

Q. On page 22 (Forty-fifth Congress second session, Senate Ex. Doc. No. 74) I see a letter of S. W. Marston, United States Indian agent, in which he says:

"I understand that B. F. Overton was elected chief or governor by the full-blood element of the nation, under the pledge that he would have every white man removed out of the nation, and so when the council met last October the tax on United States citizens for working as farmers for the Chickasaw Indians was raised from 25 cents to \$25, as you may see by a copy of the law in my letter of February 19, 1877.

"I consider this law unjust to the Indians who depend upon white labor for the cultivation of their farms, and if it be enforced I am afraid there will not be grain enough raised among the people this year for their own sustenance. Thousands upon thousands of acres that are now under fence will be left to grow weeds instead of producing corn and cotton, as it would if the Indians could have the privilege of employing white men to work their land for them.

Now, I want to ask you whether there was any such issue as that in your canvass for governor?—A. I will state Mr. Marston made that report upon hearsay.

Q. Was he ever in the country?—A. No, sir; only as he passed over it on the railroad which runs over eight miles of our country, passing into Texas and back. He was never in that country to visit our people so as to know the condition of the Indians.

Q. This railroad passes over a little neck of land in your country lying in the extreme southeast corner of the nation?—A. Yes, sir.

Q. So you think he had no personal knowledge as to the condition of your people?—A. He has no personal knowledge of the country.

Q. And never visited the capital of the nation?—A. No, sir. When I was running for governor in 1874, it had been reported that I had promised that I would drive every white man out of the country. When

I visited the different county-seats of my nation to set forth my programme, if elected, I was asked that particular question if I had made any such promise. I denied it like a gentleman from the fact that I had not made any such promise. I did promise this: That I would move from the country that class of men who were in there for no particular purpose and having no particular business, who were intruders in the nation.

By the CHAIRMAN:

Q. Who were "carpet-baggers"?—A. "Scalawags"; that class of people.

Q. Who was to decide who was to go and who was to remain?—A. I called the agent's attention to the fact that these men were intruders and asked him to remove them, and when he failed then I acted.

Q. Then you have no laws upon the subject?—A. We have no law regulating it. We have laws regulating our citizens.

Q. Do you mean to say every white man is an intruder?—A. Yes, sir; unless he complies with the laws and the treaties. Under the treaty of 1855 we have the right to legislate as to who shall remain in our nation.

Q. Does it give you the right to execute this permit law?—A. That is the question between the Secretary of the Interior and me now. I claim the right to execute these laws. We have the right to execute them; somebody must have that right.

By Mr. ADAIR:

Q. Does not the treaty provide that no intruder shall remain in our country without the consent of the Chickasaw Nation?—A. Yes, sir; no person can remain there without the consent of the nation.

Q. It is a treaty provision?—A. Yes, sir; the treaty says under such rules as we may deem proper for their admission.

Q. And under this provision of the treaty you claim the right to say who shall remain and who shall not?—A. Yes, sir.

Q. And under that provision of the treaty you claim the right to protect yourselves from this class of intruders?—A. Yes, sir; certainly, under that provision of the treaty we do.

Q. And so you claim the right to execute the permit law?—A. Yes, sir; and our permit law provides who shall remain. The question between the Secretary of the Interior and me is whether we had the right to enact that law. Our law covers that case and points out who is an intruder, and if the county officers cannot enforce it, then I have the right to call upon the military to carry it into effect.

Q. The point I wish to get at is that you consider you have the right to execute your treaty provisions?—A. I do. That was the action we took.

Q. Was there any considerable suffering among your people by reason of the execution of the permit law?—A. Not a bit.

Q. Do your people all produce sufficient produce, and raise stock, &c., for themselves?—A. Yes, sir.

Q. Is it not true that it is largely owing to this permit law?—A. Certainly.

Q. Do you not think that the faithful enforcement of that law would have a tendency to promote industry among your people—among the native Indians?—A. Well, I would think so. If you want to advance the Indians, and get them acquainted with the arts and sciences, you have got to make the people apply themselves. So long as you can get somebody else to work for them they will not take hold. So long as

somebody else does the work they will not do it. My idea is to let them understand it by practice.

Q. By following the plow?—A. Yes, sir; and handling the hoe.

Q. You want to promote industry?—A. We want men to teach them the arts and sciences, but we do not want a class of people more degraded and ignorant than the Indians themselves.

Q. Do you know of any person who was skilled in agriculture who left the country rather than pay the \$25 tax?—A. No one I have ever heard of. It is a protection, for they do not have to watch the thieves who flood that country.

Q. On page 25, Ex. Doc. No. 74, there is a letter sent up here from W. C. Robert, addressed to the Commissioner of Indian Affairs; do you know him?—A. Yes, sir; I know him.

Q. What kind of a man is he?—A. Well, sir, he is strictly nobody. He is one of those fellows who left Texas and came into our country and stopped with one of our citizens and acted as his clerk. He never did any work; he is one of those sharp fellows—a gentleman—who know how to live without working, and he defied the operation of our laws, and said that we could not put him out; that we had no authority to put white men out after they got in there. He was neither a farmer nor a school-teacher; he was too smart to be either of those, and I invited him to leave. He refused to obey the order. The citizen did not have business for a clerk; he hadn't a gentleman to prune up the orchard, but Mr. Robert was to advise and tell him what the laws of his country were. He was not particularly calculated for anything but to create trouble and excite the people. I went and removed the gentleman across the river myself. I issued an order to an officer, but he was afraid he would be resisted; so I went myself and marched him across the river, and saw him go over. He asked permission to come back to get his trunk, which I allowed him to do. His statement that he had to walk ten miles, from Bad River to Dexter, Tex., is all a lie.

Q. Is it a hardship to walk ten miles in that country?—A. No, sir; there are a great many people who walk that far frequently. I walk that far every day about my farm attending to my stock, &c. But Mr. Robert, who has nothing to do, who is nobody, looks as big on paper as any other man who represents the agricultural interest of our country.

Q. Who is J. D. Harris, who writes a letter printed on page 30 of Ex. Doc. 74?—A. He is a Chickasaw who lives down in Tishomingo County.

Q. Was he connected with the frauds of 1866?—A. Yes, sir; it is generally understood that Barnes bought him and owns him, and that he belongs to Barnes.

Q. Is he the man who got the harness?—A. No, sir; he is connected with the old ring, and is a defaulter.

Q. What office did he hold?—A. He was holding the funds of our nation, and was called the national treasurer.

Q. When was he such officer?—A. I do not remember the date. It seems he went out of office about 1872; probably earlier; I think about that time.

Q. When he went out of office there was a deficiency in his accounts, was there?—A. O, yes; a large one. He stands to-day a defaulter under our constitution. That is, he is held so until he pays up every dollar he owes the nation.

Q. Is he not a citizen?—A. No, sir. He has the privilege of paying back what he owes the nation.

Q. I see he sent a letter (page 30) and states: "I would most respect-

fully represent that B. F. Overton, governor of the Chickasaw Nation, says he won't recognize the late order of the Secretary of the Interior, declaring the late permit law taxing white labor \$25 each, and in an informal speech (outside of legislative hours) that he wanted no change in the permit law, and that if the people would back him with means and their influence he would still collect the \$25 permit tax; further states that the governor never laid the decision of the Secretary of the Interior before the legislature for their action." Now, governor, state all the facts in connection with this matter.—A. Mr. Marston ruled that we had no right to pass the permit law without first obtaining his approval to the act. I knew better than that, for there is no law authorizing the Indian agent to approve the acts of our legislature. He has the right to approve of the person that we admit. He had that right, but not the act governing the person admitted. He issued an order that I should not carry into effect this law, which order I did not recognize. I claim there are two sides to the question, and I represent one side. I think it was in April or March the Commissioner of Indian Affairs ruled that I had the right to enforce the act, and he set aside Mr. Marston's decision, and the only way to evade it was to move out of the country. Then I had Mr. Smith's backing, and went on executing the law. Last fall there came an order from the Secretary of the Interior, ordering me to stop further enforcement of this permit law, and revoking the order of Mr. Smith.

Q. Well, has it been revoked?—A. I thought I would appeal to higher authority than Mr. Smith. I promised my people, if they would hold still, and take no action, and back me in it, I would appeal to higher authority, and, if possible, try to sustain myself in the position I had assumed, which I had a right to do.

Q. And which you have done?—A. So far, yes, sir.

Q. When you first came to Washington, you filed a petition in the Senate, and you have secured a resolution of the Senate to inquire into it?—A. Yes, sir; a resolution instructing the Judiciary Committee to inquire into the matter.

Q. Since that time has the law been enforced?—A. No, sir; no man has paid a dollar.

Q. It has remained in abeyance until this issue can be reheard and settled?—A. Yes, sir.

Q. Mr. Marston states, in a letter to the Commissioner of Indian Affairs, November 8, 1877, that he is informed, upon what he considered good authority, that you were going to Washington with a delegation from your nation, among other things to bring influences to bear upon the Commissioner and Secretary to enable you to go on and enforce the so-called permit law of the Chickasaws, and, failing in that, to reassemble the legislature on your return and recommend the passage of a bill to enforce a fine of \$100 (instead of the \$25, the present law) on all Chickasaw citizens who employ United States citizens without paying the tax; and says further in his letter that "the governor, I understand, will start for Washington in a few days, and when he arrives will doubtless be able to explain the whole matter better than I could possibly do by writing." Please state what you did do, if anything.—A. Well, I submitted my argument to the Secretary, trying to show he was in error.

Q. That is all there has been of it?—A. Yes, sir; and this move to get it before the Committee on the Judiciary of the Senate.

Q. You simply asked Senators to introduce this resolution and have it referred to committee?—A. Yes, sir; that is the only influence I have

brought to bear. I have simply presented the case and asked that it be decided in accordance with the treaties. If we fail there we shall be compelled to yield the point.

Q. Referring to J. D. Harris, did he pay, or persons in his employ pay, the tax?—A. I do not know of his special case. The most of the tax has been paid by the citizens of the nation, or a part at least has.

Q. Did you take anybody off of his plantation?—A. No, sir.

Q. None of Harris's employes have been removed?—A. No, sir.

Q. B. F. Colbert, on November 2, 1877, writes to the department as follows: "I own and operate a ferry on Red River, on the main thoroughfare between the Northwestern States and Texas, for which I have a charter from the State of Texas and the Chickasaw Nation. I am a citizen of the Chickasaw Nation by blood. I desire to know if the authorities of the Chickasaw Nation are competent to enact a law requiring me to pay a permit-fee for hands necessary to operate said ferry? Last spring it was necessary for me to become surety for my ferryman to prevent him from being removed for want of a \$25 permit. Governor Overton says he will enforce the law; I am willing to pay it if right." Did Mr. Colbert, in fact, pay that tax?—A. Last year; yes, sir.

Q. Has not paid it this year?—A. No, sir; has not paid it this. He has reported the number of men in his employ, stating if it was established that we had a right to collect this tax he would pay for the permit. The people are reporting the number of employes in their employ. That is the condition it is in; they are all reporting the names of their employes, but no money has been paid.

Q. The law requires them to report the names of the employes?—A. Yes, sir.

Q. Under your law regulating the employment of white labor, how long do you allow a man to remain in your country?—A. Not over twelve months, unless he renews his contract and gets a new permit at the end of the year.

Q. The effect of the law is this: Where a man owns land and desires to employ white labor, all that he has to do is to report the men in his employ and get a permit for the men in his employ, and they can remain there for a year, and then he must renew his permit?—A. Yes, sir; if he fails to report them he is fined for not reporting.

Q. That is, the man who employs these white laborers?—A. Yes, sir.

Q. The object is to locate every man, in order to ascertain whether he is in the country in accordance with the treaty stipulations?—A. Yes, sir.

Q. Have you ever delivered up any fugitives from justice?—A. Yes, sir; upon requisitions for both Indians and whites. I have always honored the requisitions of governors of the States.

Q. Whenever the requisitions called for the delivery of a person you have delivered him up?—A. Yes, sir; let him be a Chickasaw or white man, or anybody else.

Q. When charged with criminal offenses?—A. Yes, sir; the official documents are on file to show this.

Q. Has there ever been any complaints upon that score?—A. No, sir. Governor Coke has made two requisitions and Governor Hubbard four, and I have honored them.

Q. On pages 32 and 33, Ex. Doc. 74, there appears a petition setting forth certain complaints, signed by the following people: Lem. Reynolds, senator Chickasaw Nation; J. A. Reynolds, member house representatives; Charley Sheco, member house representatives; Simon Kemp, member house representatives; C. A. Bussis, J. D. Harris, J. C. McCoy,

Amos Tow-was-tubby, R. M. Harris, Albert McKinney, Alex. Cravat, George W. Hawkins, James Allen, W. H. Bourland, Robert H. Love, G. D. James, S. D. James. Who is Lem. Reynolds?—A. He is a Chickasaw.

Q. Was he a senator at that time?—A. Yes, sir. He is a senator now.

Q. Is he the same man who got the big pistol from Condict?—A. Yes, sir.

Q. J. A. Reynolds; who is he?—A. Cousin of Lem. Reynolds, and a member of the house.

Q. Relative by blood with the old ring?—A. Yes, sir.

Q. Who is Charles Shenco?—A. He is a farmer, member of the house, and a very respectable man. He is the most reliable gentleman on that list.

Q. Simon Kemp; who is he?—A. Member of the house; relative of Reynolds.

Q. What kind of man is he?—A. A man of no force in our country. Through Reynolds's influence he is generally elected to the council.

Q. Is Lem. Reynolds a full-blood?—A. No, sir; I do not know exactly what he is; quarter, I think.

Q. Who is C. A. Bussis?—A. I do not know him.

Q. Who is Mr. J. D. Harris?—A. We have discussed him.

Q. Who is J. C. McCoy?—A. He is a young strip of a chap there; has no influence.

Q. Does he own a farm?—A. No; his brother does. This young man never has time to work upon a farm; he cannot stick at anything long enough to work.

Q. Amos Tow-was-tubby?—A. He died before that petition was signed and sent up here. He died the day before that petition was gotten up.

Q. Who is Bob Harris?—A. Son of J. D. Harris, the defaulter; a young swell of the country.

Q. Who is Albert McKinney?—A. I will put him down "ditto."

Q. Who is Alex. Cravat?—A. He is a young man, nephew of Harris. He never made forty bushels of corn in his life.

Q. Probably never will?—A. I do not think he will unless we can carry out the permit law.

Q. Who is G. W. Hawkins?—A. He is a Choctaw who married a Chickasaw.

Q. Does he farm?—A. No, he does not. He lives with his mother-in-law, and is a lawyer.

Q. Does he have any cases?—A. He gets divorce cases, hog cases, cows, &c. The people have no respect for him.

By the CHAIRMAN:

Q. He is what?—A. He is a lawyer who advocates divorce cases, &c.; and even that class of people have no confidence in him now.

By Mr. GRAFTON:

Q. He lives off of his mother-in-law?—A. Yes, sir, and the community generally.

Q. Who is James Allen?—A. He is a young chap who attends store for James.

Q. He is a cow boy?—A. Yes, sir.

Q. W. H. Bourland?—A. Mr. Bourland is a son of Luke Bourland, a harness man, who received that fine set of harness from Condict, of Philadelphia. He was national secretary under Harris.

Q. Was Governor Harris related to J. D. Harris?—A. No, sir; no relation.

Q. Robert H. Love; who is he?—A. A Chickasaw who lives in my section of the country.

Q. Is he a man of any influence in the country?—A. No, sir. All the influence he has ever exerted has been a very bad one.

Q. In what way?—A. Well, he has always recommended this territorializing the country, and opposed to the Indians retaining their nationality.

Q. G. D. James; who is he?—A. He is a half Choctaw or Chickasaw, who lives at Tishomingo. He was interested in this big steal of the old delegation. After Holmes Colbert died he was appointed by Harris administrator to represent Colbert and the Chickasaws here at Washington. Bob Love has forty-two white men nominally employed who stay at his place. These men have families. Then they have comers and goers from Texas; I suppose in all some two hundred or three hundred connected with these forty-two whom he has employed. They come in and give him from fifty to one hundred dollars a year, some probably more, for the privilege of locating upon our domain under his protection. He has nothing to do but act as a cloak for them, with the understanding that if the country is opened up they get the land they are on. They pay him a bonus for this privilege. He has a nice farm up there.

Q. That is a means used by Mr. Love to enable these parties to evade your laws?—A. Yes, sir; one of the parties had a lease for ten years; lives or stops there on a little strip of land about the width of this room; that is his farm.

Q. Has Mr. Love any right to this land for the term of ten years to lease them?—A. No, sir; that is a violation of our law.

Q. Who is S. D. James?—A. Son of G. D. James; clerk in his father's store; has a farm in Pickens County.

Q. There is a petition in Ex. Doc. 74, filed in the Interior Department, signed by Lem. Reynolds, delegate from the farmers of the Chickasaw Nation. Is there such an organization as that in your country; and can you say what the extent of that organization is?—A. They are all on the paper as signers.

Q. That is the extent of his farmer constituency?—A. Yes, sir.

Q. Those are the only ones he represents?—A. Yes, sir.

Q. None others?—A. None; Mr. Colbert, one of the most prominent farmers in the country, a man who has more at stake than any one else, refused to sign that paper.

Q. Does there seem to be any uneasiness in regard to this permit law—the execution of it?—A. No, sir; the uneasiness is in this way: The people believe if Mr. Schurz's decision is sustained that that will be worse than the Franklin Oklahoma bill; that the country will be flooded, and that they will lose their lands.

Q. Is it not true that Mr. Marston has issued a large number of permits, allowing persons to come into the country?—A. I suppose that is true. I never saw one. I have heard gentlemen say that Lem. Reynolds got permits for his men, and that Marston had extra men employed issuing permits at the rate of 300 a day. I do not know this of my own personal knowledge, however.

By the CHAIRMAN:

Q. To whom were they given?—A. To white men.

Q. That must increase your population very rapidly?—A. Of course; and it would ruin us.

Q. Are there that many coming in?—A. I do not know; but our country has been filling up ever since Secretary Schurz made this decision.

By Mr. GRAFTON:

Q. What is the character of the people who farm, &c.?—A. We have some very good men there who farm exclusively. They pay the permit without any question or complaint. The complaints are from that class that comes there for no particular purpose.

Q. For no other purpose except to evade justice in other States?—A. Yes, sir.

By the CHAIRMAN:

Q. Does the agent issue permits to such persons?—A. Yes, sir.

Q. What evidence have you that that is true?—A. I said I had heard it said that Reynolds was getting them.

Q. You do not know the facts yourself?—A. No, sir.

By Mr. GRAFTON:

Q. Do you know any of these people?—A. No, sir.

By the CHAIRMAN:

Q. Do you know any who are fugitives from justice?—A. Yes, sir; a good many. When I left home the sheriffs from the States were going from county to county to find them. I sent out our constables to advise with them and try and aid in getting persons known to be in the country.

Q. Did they come in under permits?—A. Yes, sir.

Q. From this man Marston?—A. I do not know from him, but this is the class of men that come in.

Q. Where do they get permits?—A. From the nation, and now it is reported Mr. Marston is issuing them.

Q. Is there no way for you to know whether he does issue permits or not?—A. Yes, sir.

Q. Do you know he does for certain?—A. I do not, only from hearsay. I suppose, Mr. Chairman, you could find out from Mr. Hayt, and learn whether the department has authorized Mr. Marston to do so.

By Mr. GRAFTON:

Q. On page 44 the decision of the supreme court is signed by Associate Justice Abijah Colbert and William Harkins. They seem to sign by making their marks; have you supreme judges who cannot write their names?—A. No, sir; they all write a better hand than I do.

By the CHAIRMAN:

Q. Then why do they sign by making their marks there?—A. I do not believe they made them.

Q. Who made them for them?—A. I suppose the man who made that document.

By Mr. GRAFTON:

Q. I suppose the same gentleman made their marks who signs "J. A. Burris, clerk"?—A. I do not know.

By the CHAIRMAN:

Q. Does he make his mark too?—A. No, sir; he writes very well. Mr. Harkins is a good scholar, and when you come down there, Mr. Chairman, I will have him come before the committee and write his name.

By Mr. GRAFTON:

Q. Who is W. P. Brown?—A. He is a Chickasaw.

Q. Who is Eastman Harney?—A. He is a farmer and stock-raiser. He has a very nice little farm. He is a man who does not read and write.

Q. On pages 48 and 49 there is a letter dated January, 1878, addressed to the Commissioner of Indian Affairs, in regard to this permit law, signed by a large number of gentlemen: Geo. W. Harkins, J. D. Harris, Eastman Harney, W. H. Bourland, S. D. James, G. D. James, James Dulin, R. M. Harris, Wm. Jackson, Chas. Stewart, Wm. Moore, Noah McGill, James Harkins, Anderson Davis, John S. Howell, D. B. Cotten, Benj. Robinson, Jno. J. Cravens, Thos. S. Barker, B. F. Greenwood, Jno. M. Webb, Allen Latta, Joel Kemp, Jackson Kemp, McKinney Colbert, John Mashburn, N. W. Rider, McKinney Cobb, J. J. Self, Eastman James, C. P. Harris, J. C. McCoy, G. G. Gardner, A. T. McKinney, D. O. Fisher, Cornelius McGee, Robert Colbert, D. W. Colbert, James Cheadle, Benj. Kenny, R. C. Wiggs, Abram Gurnzy, Charles Sheco, H. C. Hamblin, Wm. R. George, A. J. Lewis, James A. Reynolds, Marion Davis, Simon Kemp, A. C. Kemp, Dave Kemp. Who is James Dulin?—A. I do not know him.

Q. R. M. Harris?—A. Son of J. D. Harris, the defaulter.

Q. William Jackson?—A. White man married in the country.

Q. A farmer?—A. Yes, sir. He is one of those intelligent farmers who could not run a straight furrow across this room.

Q. Who is Charles Stewart?—A. I do not know him.

Q. William Moore?—A. I do not know him.

Q. Noah McGill?—A. He is a school-boy, not of age.

Q. James Harkins?—A. I do not know him.

Q. Anderson Davis?—A. I do not know him.

Q. John S. Howell?—A. He is a Chickasaw, who lives up above. I do not know him very well.

Q. Does he farm?—A. I do not know the extent of his farming.

Q. D. B. Cotten?—A. He is a white man, who is trying to prove his citizenship.

Q. Benjamin Robinson?—A. I do not know him.

Q. John J. Cravens?—A. I do not know him.

Q. Thomas S. Barker?—A. I do not know him.

Q. Who is Benjamin F. Greenwood?—A. He was acting county and probate clerk.

Q. John M. Webb?—A. White man, who married a full-blood Indian.

Q. Does he farm?—A. I reckon so; I have never been at his place.

Q. Allen Latta?—A. I do not know him.

Q. Joel Kemp?—A. A Chickasaw.

Q. Jackson Kemp?—A. Brother of Joel.

Q. Do they farm?—A. No, sir.

Q. McKinney Colbert?—A. A young strap of a fellow. He does not farm; never has time to work; one of those fellows who lives without working.

Q. John Mashburn?—A. A white man, who married in our nation.

Q. N. W. Rider?—A. A Cherokee, who married a Chickasaw.

Q. Does he farm?—A. Yes, sir; about forty or fifty acres.

Q. McKinney Cobb?—A. A Choctaw, who married in our country. I never saw his place.

Q. J. J. Self?—A. White man; no farm yet; a doubtful citizen in our country.

Q. Lives by his wits?—A. Yes, sir; works well when employed by our citizens.

Q. Eastman James?—A. I do not know him.

Q. J. C. McCoy?—A. I told you who he was one of those fellows who does not work.

Committee adjourned until 10 o'clock a. m. Thursday, June 13.

THURSDAY, June 13, 1878.

No meeting.

FRIDAY, June 14, 1878.

Committee met at 10.30 a. m. Senators present, the chairman and Mr. Saunders. Counsel and delegates all present.

B. F. OVERTON resumed.

By Mr. BOUDINOT:

Question. Governor, you stated that the permit law was passed for the purpose of getting rid of the vicious and worthless characters in your nation; that was the object of it, was it not?—Answer. That was my statement before the committee. Now, Colonel Boudinot, before we go any further, I will address the chairman. I wish to know whom you represent in the Chickasaw country?

Mr. BOUDINOT. Nobody.

Mr. OVERTON. Are you authorized to interrogate me as to the condition of the Chickasaws?

Colonel BOUDINOT. I believe that was the understanding in committee, that it was the intention of the committee to get all the facts it could.

Mr. OVERTON. Of course I propose to be examined before this committee, and to answer any and all questions they may propound to me, but I would like to know your authority for interrogating me.

Mr. BOUDINOT. My authority is that I am a citizen of the Cherokee Nation.

Mr. OVERTON. You are not a citizen of the Chickasaw Nation. Our permit law does not interfere with the Cherokee citizens.

Mr. BOUDINOT. I will say that I appear here for myself and other Indians.

Mr. OVERTON. Please name them?

Mr. BOUDINOT. Mr. Robert Love, and quite a number of others.

Mr. OVERTON. Name them, if you please? I want to know who you represent in the Chickasaw country.

Mr. SAUNDERS (chairman *pro tempore*). I will state that while I think the committee has been too liberal heretofore—I think probably that they have been liberal in allowing these questions to be asked on both sides—I shall not change the rule now, and Mr. Boudinot will proceed to ask the witness any questions he may desire and the committee will decide whether he shall answer.

Mr. OVERTON. I objected to it all the way through.

The CHAIRMAN. Mr. Boudinot go on and question the witness.

By Mr. BOUDINOT:

Q. If that class of people that have been infesting your country, and whom it was designed to get rid of by this permit law, were intruders in your nation—A. Yes, sir; I said they were.

Q. Did one of that class ever pay this \$25 permit tax?—A. There were a number who paid it.

Q. How many?—A. I cannot remember, but a great number of them. You might probably find out by traveling out through that country and find out who they were. I was not so minute in my intercourse as to find out their names or what they were doing there, hence I do not know their number.

Q. You stated you arrested one person and took him across the line. Was he a citizen of the Chickasaw nation?—A. Yes, sir; I can say that he was a citizen of the Chickasaw nation.

Q. Was he a white man?—A. Yes, sir; in color he was white.

Q. Suppose he had refused to be arrested by you?—A. He did.

Q. Did you arrest him?—A. I took him out.

Q. By armed force?—A. I suppose I did. I was armed. I did not use arms. I was man enough to take him out without using armed force.

Q. You are opposed to any Territorial government being extended over that country, upon the ground that it is a violation of the treaty provisions?—A. I do; yes, sir.

Q. If such a government as that provided for in the eighth article of the treaty of April 28, 1866, should be put in operation, would you be in favor of that?—A. I do not understand the eighth article of the treaty of 1866 to mean the Territorial government.

Q. Are you in favor of such a government as the eighth article means?—A. I am in favor of such a government as was contemplated by the framers of that treaty. I object to nothing that the treaty provides for, and all I ask for from Congress (and I have already stated that before the Committee on Indian Affairs) is an honest and liberal construction of our treaties and a faithful compliance with the same. I am willing to abide by the treaties, but not by your construction of them.

Q. Are you willing that the superintendent of Indian Affairs should be the executive or governor of Oklahoma?—A. I am not willing he should be, but I am willing to submit to the treaties.

Q. The treaty provides that "whenever Congress shall authorize the appointment of a Delegate, it shall be the province of the said council to elect one from among the nations represented in said council." Are you in favor of that?—A. Yes, sir; whenever we want it we will make application for it.

Q. You are willing that such a government should be established?—A. I said I did not object to the treaty, and do oppose any such construction of the treaty as you put upon it.

Q. How do you know what construction I put upon it?—A. I do not know.

Q. How do you know, if you do not understand what construction I place upon it?—A. I understand your construction to mean the establishment of a Territorial form of government for the Indian Territory.

Q. Well, what is it?—A. I will not go any further than that.

Q. I think you very greatly misunderstand my construction of the treaty.—A. Well, I am not here to tell what Mr. Boudinot's construction of things is.

Q. You stated you objected to such construction as I placed upon your treaties.—A. Yes, sir.

Q. I have a right to know what that construction is, then.—A. Well, I think your construction is that the Congress of the United States has the right to legislate and to determine what system of government should

be established down in the Indian Territory, a system of government not provided for in our treaties. I think this from the fact that you are supporting the various bills—not only one bill but every bill that is calculated to destroy the tribal organizations of our country.

Mr. BOUDINOT. You are mistaken.

The WITNESS. I may be, but it is difficult for me to understand you.

Mr. BOUDINOT. That is where you do me injustice. Far from being in favor of destroying the tribal organizations of your country, I have never written a line or made a speech but that I have stated that the tribal organizations should remain intact, and that I was not in favor of any government that would disturb your tribal organizations.

By Mr. BOUDINOT:

Q. What county do you live in?—A. Pickens County, Chickasaw Nation, Indian Territory.

Q. Can you give the approximate number of white men who are employed in that county?—A. I cannot; but will give the committee that information when it comes into the Indian Territory; I will furnish the exact number to the committee then.

Q. Do you employ any white men yourself?—A. Yes, sir.

Q. How many have you in your employ?—A. I cannot say how many I have on my entire farm, but one man for superintendent, and instructed him to go to the clerk of the county in which I live and report the number of men whom he might hire to assist him in carrying on my farm, and I would pay \$25 tax for every 40 acres cultivated in carrying out our permit law. I have not been home this winter and do not know whom he has employed. I am told by the clerk he has reported every man upon the farm; he may have four or five or six, I never have over that number. I have 300 acres under cultivation, and I pay \$25 for every 40 acres cultivated. We have this improved machinery, and one man cultivates about 40 acres. I do not know how many men he has. I have only one superintendent, Mr. Gibson. I have authorized him to hire assistance, I paying these rates: \$25 for every 40 acres of the 300 under cultivation.

FRANK HOWARD, having been duly sworn, testified as follows:

By Mr. BOUDINOT:

Question. State your name, age, and residence.—Answer. Frank Howard; I am 38 years of age; reside in Coowischoowee district, Cherokee Nation, Indian Territory.

Q. Are you a citizen of the Cherokee Nation?—A. I am.

Q. By marriage?—A. Yes, sir.

Q. How long have you been a citizen of that nation?—A. I have been a citizen nearly eight years, October next.

Q. State what you may know in regard to the disposition of the school funds in the Cherokee Nation.—A. Well, they have many schools there. So far the teachers have been paid at the expiration of the sessions upon presentation of certificates, or certificates they have received for warrants for but they have cashed.

Q. Do you know whether the school fund is in debt to the general fund or not, or whether the school funds have been used for any other purpose except for the schools of the nation?—A. Well, I know this: It is generally known by the people there that each council passes what is called a "number one bill," that is, a bill which provides for borrowing money sufficient to pay the salaries of the Cherokee officials.

By the CHAIRMAN:

Q. Do you know whether any has been used in sending parties or representatives to the Capitol here in Washington?—A. No, sir; I do not.

By Mr. BOUDINOT:

Q. Are they not considered officers of the nation?—A. They are, and this loan is made from year to year for the officers of the nation, and they are among the rest of them.

Q. A delegate is an officer of the nation?—A. Yes, sir.

Q. Do you know how much money has been used in that way?—A. I do not. The only knowledge that I have, which I might consider reliable, is what the treasurer of the nation told me four or five years ago.

Q. What did he say to you?—A. He said that the general fund of the Cherokee Nation is considerably in debt to the school fund.

Q. Did he state how much?—A. He did not state the amount.

Q. Did he state the number of debts paid out of the school fund?—A. I had a warrant in my pocket which I wished to use—a warrant on the general fund—and I spoke to him to get information as to the probability of that being cashed within six months, somewhere in that neighborhood of time, and he told me as the condition of the finances were in such a shape that there was no probability that the warrant would be paid within a year, and perhaps longer than that, as the general fund was considerably in arrears.

Q. That warrant was upon the school fund?—A. No, sir; upon the general fund.

Q. Do you know how much the Cherokee Nation is in debt now?—A. It is over \$200,000. A short time ago the official statement showed it to be \$189,000, and it has been increased largely since.

Q. What are those certificates worth?—A. Well, you can realize 25 per cent. of the tickets by getting trade in the stores.

Q. Explain what you mean by tickets. What is the difference between a ticket and a warrant?—A. A ticket is a certificate from the clerk of the court for services rendered as a teacher, &c.

Q. Are they convertible into warrants?—A. They are convertible into warrants by the council, and when converted into warrants the value is slightly increased.

Q. How much?—A. I suppose that tickets presented to the auditor in the summer could be cashed for 25 cents on the dollar; after being converted by the council they increase to about 40 cents on the dollar.

Q. Then warrants are worth about 40 cents on the dollar?—A. Yes, sir.

Q. Have you lived in that part of the Coowiscoowee district where the Delaware Indians live?—A. I live about twenty miles south of where Mr. Journey Oake lives where there is a large settlement of Delaware Indians.

Q. Are you pretty well acquainted with the Delaware Indians?—A. I am, sir.

Q. Do you know what their feelings are in regard to the protection of life and property under the Cherokee laws?—A. I know they are very much dissatisfied with the way things are conducted now.

Q. Are you pretty well acquainted with the leading men of the Delawares?—A. Yes, sir.

Q. State what you know in regard to the views which any of them may have in regard to the taking of the lands in severalty, &c.—A. Many of the more intelligent and prospering portion of the Delawares—

that is, I can speak more definitely of west of the Grand River—that there is a strong sentiment of owning the lands in severalty rather than in common.

Q. You know Col. James M. Bell?—A. Yes, sir; I do.

Q. Are those his views?—A. Yes, sir.

Q. Is it not pretty well known in the district that he entertains those views?—A. Yes, sir.

Q. Was he candidate for any office last year?—A. Yes, sir; he was a candidate for senator last year.

Q. One year ago?—A. One year ago in August.

Q. One year ago in August when the election took place?—A. Yes, sir.

Q. Were his views understood by the voters in that district?—A. Yes, sir; I think so.

Q. How many votes were polled?—A. I do not remember.

Q. Do you remember how many votes Colonel Bell got?—A. I do not know how many votes he did get. He was beaten by about forty votes.

Q. Was Colonel Adair a candidate for that same place?—A. Yes, sir.

Q. At the same election?—A. Yes, sir.

Q. Was he elected or defeated?—A. He was defeated.

Q. Do you know how many votes he got?—A. He was defeated by about seventy. I will not be positive in regard to the number of either of them.

Q. But Bell got more votes than Adair?—A. That is my recollection.

Q. It is understood that Adair is opposed to the division of the lands in severalty?—A. Yes, sir.

Q. How many varieties of people are there that compose the Cherokee Nation?—A. Well, there are the Cherokees, the Delawares, the Shawnees, white men, and negroes—that makes five classes.

Q. That makes five classes of people in the nation?—A. Yes, sir.

Q. State what you may know of the feeling or prejudice which may exist between these classes, and what it amounts to, or whether there is perfect harmony, or whether there is a prejudice on the part of the more numerous against the others.—A. I know there is a prejudice in the district in which they live; that there is a prejudice against white men there, and that there is prejudice against colored men in the nation; that there is less against the Shawnees from the fact that they do not interest themselves in national matters as much as the other classes do.

Q. How many Shawnees are there among the Cherokees?—A. I do not know the number. I have often seen statements of the number, but I do not recollect it now—500 may be. I should not consider that there are over 400, and may be there is not that number.

Q. Can you give the number of white men who are citizens of the nation by marriage or adoption?—A. I should judge between 800 or 1,000.

Q. How many negroes do you suppose there are?—A. Well, I should deem that there are 2,000.

By the CHAIRMAN:

Q. What tribe?—A. The Delawares.

By Mr. BOUDINOT:

Q. Were you a participant in the distribution of the \$200,000 that was paid per capita to the Cherokees?—A. I was.

Q. How long ago was that?—A. It was in May. I do not just remember the year, but it was about four years ago.

Q. How much was determined to be due each member of the Cherokee Nation of the remainder of that \$200,000?—A. \$10.60, I think.

Q. Then the population of the Cherokees could be easily determined by that by dividing the \$200,000 by \$10.60?—A. I have understood that there was a small amount of that \$200,000 that was not paid out, that was reserved as a fund for those that did not apply to the payable, but since that time some who did not apply then have since appeared and received their payment. I do not want to speak positively that there are 2,000, but there was a reserve.

Q. Were you ever a member of the grand council?—A. No, sir.

Q. Were you ever present at any of the meetings of that council?—A. Yes, sir.

Q. In what way?—A. I have been to two meetings of the grand council; I could not state the year.

Q. Was General Porter there?—A. I do not recollect his being a member. I have seen the general at Okmulkee on several occasions, however.

Q. Were you there when a draught of the constitution for a civil government for the Indian Territory was being considered?—A. No, sir; I was there afterwards.

Q. Do you remember that that council adopted a constitution and referred it to the different nations for their confirmation?—A. Yes, sir.

Q. What was the action of the Cherokee council in regard to that constitution?—A. The Cherokee council rejected it.

Q. Both houses?—A. I will not be positive about that.

Q. Do you remember the vote?—A. No, sir.

Q. Are you acquainted with William T. Ross?—A. Yes, sir.

Q. Did he advocate the adoption of that constitution?—A. He did I understand he prepared the draught of it.

Q. Were you present when they adopted the constitution?—A. No, sir.

Q. You did not hear the speech he made in favor of it?—A. No, sir.

Q. Did you ever read that constitution?—A. Yes, sir.

Q. Does it provide for all the departments of a civil government?—

A. So far as my understanding extends, it did.

By Mr. PORTER:

Q. You spoke of borrowing money from the school-fund to pay the officers under the number-one act. What is that act?—A. What I know is what I have heard the members say about it.

Q. That was to pay their salaries?—A. To pay the salaries of the officers of the nation.

Q. You do not know that yourself?—A. Only from what the officers told me.

Q. In reference to this election between Bell and Adair last fall, did Adair lose the election by 70 votes, and was he beaten by Bell?—A. No, sir; he was beaten by Major Leip.

Q. Then he was not beaten by Bell?—A. Not by Bell.

Q. Are you certain that is the fact?—A. I know both of them were beaten in that election. I cannot just state the number of votes by which they were beaten, still I know they were both defeated.

Q. You do not know how many were cast for any one of them?—A. I cannot say positively.

Q. Did Mr. Bell run upon this question of dividing the lands in severalty?—A. His view in regard to dividing the lands in severalty is generally known throughout the nation, and was known when he ran for chief of the nation; that was some years ago.

Q. Was it so this last election?—A. In this last election he ran upon the independent ticket. That independent ticket had no published platform whatever; but they were called the progressive party, and under that main idea of elevating the Cherokees he ran upon that ticket.

Q. You said that there was not a general prejudice against the Delawares except in the district in which they live.—A. I say I know that is so. There are some, probably, in that district in which they live.

Q. Do you think there is any prejudice in the others?—A. I am not personally cognizant of that fact.

Q. Are these prejudices based upon political grounds, or are they because they are a different tribe?—A. Their political opinions enter generally into that trouble.

Q. You state they were prejudiced against the white men. What reason have you to think so?—A. I have this. That all over the nation there is a certain ring in that country that do all they can to foment this prejudice against the white population there.

Q. Do not the white men hold positions in both parties?—A. They do.

Q. Pretty generally have they not got an equal portion of officers in proportion to numbers?—A. No, sir.

Q. You do not think so?—A. No, sir.

J. T. SMITH, having been duly sworn, testified as follows:

Examined by Mr. BOUDINOT:

Question. State your name, age, and residence.—Answer. J. T. Smith. I live in the Coowiskooee district, Cherokee Nation, in the Indian Territory.

Q. How long have you lived in that nation?—A. Ten years last February.

Q. Are you an Indian?—A. I am by adoption a Delaware. I was adopted in the State of Kansas, and moved down with them from that State.

Q. You belong to the Delaware portion of the Cherokee Nation?—A. Yes, sir.

Q. State what are their views in regard to the protection which is given to the Delaware Indians for life and property where they are now living under Cherokee laws.—A. Well, I could say their laws are carried out very much one-sided at present.

Q. You consider they do not give adequate protection for life and property as now constituted?—A. I do not think they have equal rights with the Cherokees according to the treaty stipulations.

Q. State, if you know, what the opinions of the Delaware Indians are in regard to the remedies for the existing evils.—A. I cannot state for all the Delaware Indians, but in my own neighborhood I am acquainted with all of them, and they desire to get a reservation set apart for themselves.

Q. To be separate and set apart from the Cherokee.—A. Yes, sir.

Q. They wish to be relieved politically from any connection with the Cherokee Nation?—A. Yes, sir.

Q. Do you know the views of those people in regard to having their lands divided and each person have his portion of land in severalty?—A. Well, the views of the Delaware Indians are, as a general thing, that they are opposed to that. They want a reservation to themselves, and recognize their tribal relations.

Q. Do you know anything appertaining to the matters testified to by

Mr. Journey-Cake?—A. Well, I think his statement is true as near as can be.

Q. How long since you were adopted among the Delaware Indians?

—A. Well, I think it was in 1858.

Q. Twenty years ago?—A. Yes, sir.

Q. Are you acquainted with any of the Delaware Indians who took their lands in severalty in the State of Kansas?—A. Yes, sir; a great many of them; personally acquainted with them.

Q. Have you ever been among them since they have become citizens of the State of Kansas?—A. Yes, sir; I visited them last January or February.

Q. How are they doing?—A. They are getting along finely.

Q. Are they protected in their lives and property?—A. Yes, sir; they have the laws of the United States over them, and they have the same privileges as citizens of the United States.

Q. Have the same protection as any citizen of the United States?—A. Yes, sir.

Q. Where do they live?—A. They live in Wyandotte County, Kansas.

Q. Have they good farms?—A. Yes, sir.

Q. Comfortably situated, are they?—A. Yes, sir.

Q. Have you heard of any of them being obliged to give up their lands by reason of their being Indians?—A. No, sir.

Q. They have equal protection?—A. O, certainly; they have fine farms and are doing well.

Q. Is it your opinion that the present Delaware Indians now in the Cherokee Nation would have thrived better if they had adopted the same policy?—A. Yes, sir.

Q. They would have been better off if they had remained in the State of Kansas.—A. Yes, sir; I think they would have done better than they are now doing in the Cherokee Nation. I think it would have been better for them to-day.

JOHN BULLET, having been duly sworn, testified as follows:

By Mr. BOUDINOT:

Question. State your name, age, and residence.—Answer. John Bullet; I live in the Cherokee Nation, Indian Territory.

Q. Did you hear the testimony of Mr. Smith and Mr. Journey-Cake?

—A. Yes, sir.

Q. What are your views in regard to the matters of which they testified?—A. I do not believe that I can differ with them.

Q. What are your views in regard to the protection given the Delaware Indians in the Cherokee Nation for their lives and property?—A. I agree with Mr. Journey-Cake, I believe.

Q. That there is no adequate protection for life and property for the Delaware Indians in their present condition?—A. Yes, sir; that there is not adequate protection for them.

By the CHAIRMAN:

Q. Protection against whom?—A. Well, I will give an explanation: There is not a sufficient number of the Delaware Indians to take part in the courts, and they are conducted principally by the Cherokees, and of course we have no Delaware lawyers, and I do not think the Delawares get justice.

Q. You do not have any representative in the council, and you think the law does not do justice to the Delaware Indians?—A. Well, there have been Delaware councilmen elected several times.

Q. They are in the council as others, are they not; and have all the rights and privileges of other councilmen?—A. Yes, sir; I think they have.

Q. Wherein, then, do they fail to get justice—is it simply because they fail to carry their points on account of having the less number?—A. I suppose so.

By Mr. BOUDINOT:

Q. You mean to say that the prejudice is such that you do not have an equal show in the courts?—A. Yes, sir.

Q. That there is a deep-seated prejudice against the Delaware Indians?—A. I cannot say it is very deep-seated; it has generally existed, however, and I suppose that is so.

By the CHAIRMAN:

Q. The Delaware Indians feel that there is a prejudice against them, and that justice is not meted out to them?—A. Yes, sir.

By Mr. BOUDINOT:

Q. What is the wish of the Delaware Indians in regard to a change so as to better their condition?—A. Well, among the few there is opposition to a change, but then what I have seen I think they would be perfectly satisfied if they could withdraw from the Cherokee Nation, if they could be allowed to withdraw to themselves, and govern themselves where they could be to themselves.

By the CHAIRMAN:

Q. How extensive is the district you now occupy?—A. I cannot say positively.

Q. A good many miles, is it not?—A. Yes, sir; it extends from the Verdigris River to the Caney; I guess about 35 miles around.

By Mr. PORTER:

Q. The country is mixed up with the Cherokees and Delawares?—A. Yes, sir.

Q. There are Cherokees on Caney?—A. Yes, sir; some few on the Grand River.

By the CHAIRMAN:

Q. How came this consolidation, or union, to take place, or did it take place at the time you first went there, or were you sent thereto incorporated with the Cherokees, and to be consolidated or anything of that kind?—A. I think the Delaware Indians went there by order of the United States Government, and went down there to enter into an agreement with the Cherokees to come into the country and become Cherokees.

Q. To become a part of them so far as the government was concerned?—A. Yes, sir.

Q. The Cherokees and the Delawares seem to be united to some extent so far as law-making is concerned?—A. Yes, sir.

Q. Is there any rule by which they are entitled to a certain number in proportion to the people they have in this council, or can they elect whom they please?—A. I do not know.

Q. You were elected to this council, were you not?—A. Yes, sir.

Q. You know whether the Delaware Indians are entitled to a certain number in proportion to their people?—A. I do not know that there is; if there is I do not know it.

Q. I believe you stated you knew of no improper use being made of

the school fund.—A. Yes, sir; I have known them to borrow the school fund for general purposes.

Q. Has it been used to send people here to electioneer for or against this Territorial form of government?—A. No, sir; at least I do not know that it has been done.

FRIDAY, June 14, 1878.

CHARLES JOURNEYCAKE recalled.

By the CHAIRMAN *pro tempore*:

Question. Do you wish to make any corrections in your former testimony?—Answer. I do not recollect how far I went the other day.

Q. Are you satisfied to let it stand as the substance of what you did say?—A. Yes, sir.

By Mr. BOUDINOT:

Q. What is your opinion in regard to the protection which the laws give your people in the Cherokee Nation?—A. I could say this much, colonel, that the Delaware Cherokees have no protection by law there in the Cherokee Nation at all for life and property, that I can see.

By the CHAIRMAN:

Q. Against whom do you mean that you have no protection of life and property?—A. Protection among ourselves.

Q. One against another?—A. Yes, sir; I think we have no protection under the laws of the Cherokee Nation.

By Mr. SAUNDERS:

Q. Are you not able to protect yourselves, one against another?—A. We have no protection under the law.

By the CHAIRMAN:

Q. What do the Delawares want done?—A. We look for protection from the United States Government.

By Mr. SAUNDERS:

Q. In what way?—A. That has always been a mystery to me, what could be done.

(NOTE.—At this point Mr. Boudinot stated that Mr. Journeycake spoke and understood English but very little; that he could make himself more satisfactorily understood through an interpreter, and asked that Mr. John Bullett be sworn as an interpreter to translate his testimony. Mr. Bullett, having been duly sworn as interpreter by the chairman *pro tempore*, said: Mr. Journeycake says that, under the treaty of 1866 between the United States and the Delawares, he thinks that the United States Congress ought to protect them in their lives and property; that they have none in the Indian Territory where they are now at present; that he cannot but believe it is the duty of the United States to comply with the treaty in this respect, and either see to it that the laws are faithfully executed for the benefit of the Delawares in the Cherokee Nation or give them a separate piece of land somewhere else and let them govern themselves.)

By Mr. SAUNDERS:

Q. (To the interpreter.) What is the wish of the Delawares upon the subject of a separate Territory or Territorial Government, as you understand it? If that should be adopted and the Indians should be allowed to send a delegate of their own to Congress, and have the right to elect

their own governor, legislature, and other officers, would they be willing to have such a government as that extended over them, or would they prefer to remain as they are without these rights and without this change?—A. (By the interpreter.) Mr. Journeycake says that he is at a loss to say what the wish of the Delawares is in that respect, as he does not know the exact sentiment of the Delaware people upon that subject, but says that he expects in the future some time that the time will come when it may be. He says they should be further advanced in civilization before such a thing is done.

Q. The result of such a change would be this: that the land would be divided in severalty and allotted, and the Indians would hold their lands by the same tenure that the whites do, in severalty. Does he understand that would be the effect of such a change?

The INTERPRETER. Yes, sir; but he thinks the day has not come yet. The only thing he can see is that if the Delawares cannot get their lands set apart specially for the Delawares, independent of the Cherokees, then they must look to the Government of the United States for protection, whatever nature it may be and in what manner it may be.

Q. He is willing to leave it in the hands of the government if he cannot get it the way he desires it; in other words, he would rather fall into the hands of the government than the nation of which he is an adopted citizen?

The INTERPRETER. Yes, sir.

Q. Do the Delawares get their proportion of the school funds?

The INTERPRETER. Yes, sir; Mr. Journeycake says they do; that they participate in all that; that the schools are public.

By Mr. BOUDINOT:

Q. Do you wish to make any further statement, Mr. Journeycake?

The INTERPRETER. Mr. Journeycake says his main plea is to have the law so arranged that his people can be benefited; that up to the present time he has received letters from home, and that he is uneasy about how things are going on down there about the trial of one of his own men, who is being tried there for murder; that he is afraid he cannot get justice. He thinks if he can get justice he will come clear. Mr. Journeycake says that if the committee will come down into the Cherokee Nation and stop at his house, he can give the committee further information in regard to how the people feel. He says he has sufficient convenience to take the committee around through the country among his people and show the committee what damages have been done to the Delawares, their property, houses, meeting-houses destroyed, &c. He says he is considered a chief among his people, and that he is also a minister of the gospel, and says there are times when the people are afraid to go to church, especially at night.

By the CHAIRMAN:

Q. Of whom are they afraid?—A. Of the Cherokees.

By Mr. SAUNDERS:

Q. He feels that the Cherokees are the enemies of his people?—A. Yes, sir.

Q. And that he is compelled to associate with them more or less, and that it is disagreeable to him?—A. Yes, sir; exactly.

Q. What does this feeling of enmity grow out of; why does it exist? Did it exist when the Delawares were first put together with the Cherokees? If not, then state how it first commenced, and out of what it has

grown?—A. (By the interpreter.) Mr. Journeycake says this enmity has existed from the time the Delawares first went into that country in 1869; that the Cherokee people made it a point to introduce liquor among the Delawares in the Cherokee Nation, and sold it to the Delawares; that when he found it out he instructed his young men not to take any under any circumstances or make any use whatever of intoxicating drinks; that this was when the enmity commenced between the Delawares and the Cherokees; that the Cherokees found out that the Delawares were loyal to the government from the time of Penn up to the present, and that a large portion of the Cherokees went south, and that that same feeling exists between the Cherokees and the Delawares yet; that this is what caused the enmity to continue.

Q. It commenced at a very early day after their union with the Cherokees?

The INTERPRETER. Yes, sir; in 1869. Mr. Journeycake further says that when his young men began to be killed he always appealed to the United States agent, and reported these murders to him, and also appealed to the department here to give them protection; that if the Delawares have done any damage to property or violated the law in any case he does not wish them to go unpunished, but that he thinks they ought to be punished according to law, so that justice may be done them.

By Mr. OVERTON:

Q. Did you state, Mr. Journeycake, in your former testimony, that the Delawares and Cherokees were treated alike by the laws?—A. No, sir; I said I thought the law ought to be equal or pretty equal upon the Delawares and Cherokees, because they are equally interested.

Q. Do you think you are now acting in any capacity as chief of your people? Don't you think if you, or any other Delaware, were chief, all this trouble would be settled so far as these difficulties are concerned, and that the Delawares would be peaceable and satisfied?—A. I do not know about that. There was a time when the Delawares governed themselves, and there never was anything of this kind occurring among them to the extent it has been for the last 10 or 12 years ever since they have been in the Cherokee Nation.

By Mr. PORTER:

Q. From what State did the Delawares remove?—A. From the State of Kansas.

Q. Did the Delawares move from that State of their own accord or by the advice of the government? Did the Delawares ask to be removed or did the government request them to remove, and a treaty made for that purpose?—A. The United States made it optional with the Delawares to remove from that State, and the United States made a treaty with the Indians in the Territory providing for the consolidation of all the Indian tribes. Friendly Indians, under that treaty, were to remove into the Territory too. Under that treaty it was optional with the Delawares to go or remain in Kansas.

Q. What option had they—to go and become citizens of the Territory, or remain in their tribal state as in Kansas?—A. Either to go to the Indian Territory or become citizens of the United States.

Q. The Delawares elected to go in order to avoid becoming citizens of the United States, did they not?—A. Yes, sir. All who were in favor of becoming citizens of the United States remained in Kansas.

Q. What has been your experience in regard to the effect it has had upon the Indians who became citizens of the United States? Has their

condition been altered for the better or worse?—A. Those who remained as citizens of the United States numbered sixty-eight; they are in a better condition as citizens of the United States than those who went down into the Territory to live. They have school-houses of their own in every section where they are, and are enjoying themselves.

Q. Were those who remained as citizens half-breeds or full-bloods?—A. They were half-breeds.

Q. Pretty intelligent, thrifty men, were they not?—A. Yes, sir.

Q. But the full-bloods and a good part of the half-breeds chose to go to the Indian Territory to avoid becoming citizens of the United States?—A. Some did, but some good, intelligent men—business men—have gone down there only through sympathy for the balance of the tribe.

Q. Have any of those sixty-eight who remained in Kansas and became citizens of the United States since sold out and come down into the Territory?—A. Yes, sir; some.

Q. How many?—A. I do not know how many.

Q. If the Indians were all placed under one general government, do you believe equal justice would be dispensed among all the tribes, large and small?—A. Some of the more ignorant class might be injured by it.

Q. Would there not be the same dissension between the large and small tribes by mixing them up that there is to-day between the Delawares and Cherokees?—A. I do not know but that there would be.

Q. Were you in Kansas when a Territorial government was extended over that country?—A. Yes, sir.

Q. As soon as a Territorial government was extended over that country did it not fill up rapidly with white people?—A. Yes, sir.

Q. And the Indians were forced to narrow down their reservations and to go upon smaller districts or territory?—A. Yes, sir.

Q. Until finally, in 1866, you began to make treaties in order to get out of the State entirely and get into the Indian Territory?—A. Yes, sir.

Committee adjourned subject to the call of the chairman.

CHEROKEE NATION.

VINITA, CHEROKEE NATION, INDIAN TERRITORY,

Friday, November 15, 1878.

Committee met at 10.30 a. m.

Senators present, the Chairman and Mr. Grover.

Delegates present on behalf of the Cherokee Nation Messrs. Adair, Duncan, William P. Ross, and Daniel H. Ross, and Mr. Boudinot for himself and other Cherokees; on the part of the Creek Nation, Messrs. Porter, Hodge, and Stidham.

Mr. Adair stated that the delegates desired to be present during the examination of witnesses.

MR. GROVER. There is no objection to their being present.

J. T. CUNNINGHAM, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. J. T. Cunningham.

Q. What is your age?—A. I am thirty-five years old.

Q. Where do you live?—A. Here in the town of Vinita.

Q. To what nation do you belong?—A. The Cherokee Nation.

Q. Are you an Indian?—A. Yes, sir; I am an Indian.

Q. Are you a full-blood?—A. No, sir.

Q. You are not a full-blood?—A. No, sir.

Q. Were you born in this nation?—A. Yes, sir; I was born in the Cherokee Nation.

Q. Is your nation progressing in civilization and wealth; if so, how rapidly?—A. Yes, sir; very fast.

Q. How rapidly; faster than any of the other tribes?—A. I have not become acquainted with the other tribes.

Q. In what way is your nation increasing in wealth?—A. In stock-raising, particularly; that is the principal source of wealth. Our principal source of wealth is in stock-raising.

Q. Is there much farming done?—A. As much as in any other nation.

Q. Is there as much farming done here as in the States?—A. Not as much as in the States; still they are improving very fast.

Q. Are there any new farms being opened here?—A. Yes, sir; every year they have been opening up new farms and they are increasing in the nation.

Q. How about your schools? Have you good schools?—A. We have good schools. Yes, sir.

Q. Have you enough of them?—A. We have an abundance; we have schools in every neighborhood where there are a sufficient number of scholars to warrant us in locating a school.

Q. Do you believe your nation would be benefited by the repeal of those parts of the acts of Congress under which the several railroads claim title to land in the Indian Territory?—A. I do; yes, sir.

Q. Would such repeal hasten the time for organizing a Territorial government?—A. That seems to be the great drawback. They are afraid that a portion of the land will be taken under these land grants.

Q. By the railroad companies?—A. Yes, sir.

Q. Do they think those lands should come to the nation that belong to it?—A. Yes, sir; they claim the lands that the railroads had granted to them through this country.

Q. Then you think if the land were released by the railroad companies it would remove the principal objection to a civil government being established here in the Indian Territory?—A. Yes, sir; I think it would. I do not think the people are in favor of any change; that is, the majority of them.

Q. Would you or any member of your nation be benefited by a division of the lands in severalty among the members of the tribe?—A. That would depend entirely upon how it was done.

By Mr. GROVER:

Q. If all the lands in the Indian Territory should be divided among the heads of families and they should hold them in severalty without the power of selling them, then would they be benefited?

The WITNESS. Without any change of government?

Mr. GROVER. With a change of government.

The WITNESS. I do not think they would. I do not think any change would improve our condition at all.

By the CHAIRMAN:

Q. Do you think you are in favor of holding land in severalty with all the rights of ownership in fee?—A. A portion would be, but a large majority would not.

Q. What proportion would be in favor of that?—A. In our nation not over a third would be competent to compete with the whites.

Q. That is to hold lands?—A. Yes, sir.

Q. State the advantages or disadvantages to the nation of dividing the land in severalty and in fee simple, free from any incumbrance of grants to railroads.—A. The disadvantages would be of opening up of the land to settlement by white people. They would rush in and crowd the Indians out.

By Mr. GROVER :

Q. Suppose all the lands were given to the Indian tribes in severalty, the heads of families taking their lands in fee.—A. The disadvantages would be that those who are not able to take care of themselves would be bought out. The land would be bought away from them and they would soon have none at all. Situated as they are now they are bound to hold them always, and they have got to hold them.

Q. Should all the lands owned by your tribe be allotted among the members of the tribe after setting apart a sufficient portion for a school fund, and a portion of each tract be reserved and made inalienable for five or ten years, would it not benefit your people?—A. I do not think it would. It would not deter them from selling the lands. They would lease them for ten years and sell them at the end of that time.

Q. Suppose eighty acres were allotted to each member of the tribe and secured so that it could not be alienated or even sold for taxes or debts, and the remainder of the lands of the nation sold and the proceeds kept by the United States and the same paid annually to the tribe, would it not improve the condition of the Indians and be for the benefit of life and property?—A. I do not think it would. I see the tribes drawing annuities are not any better off than we are without them. The eighty acres would be well enough, but the way we have it now we have it already secured.

Q. What proportion of your friends and neighbors are desirous of such an allotment of lands?—A. None of them; only here in town there are some who are in favor of it, I suppose. I have never heard anybody speak in favor of allotting the lands in severalty, that is, opening the country for settlement.

Q. How many did you ever hear speak of it at all?—A. Three or four; not over that number.

Q. The people in town are in favor of it?—A. Yes, sir; some are.

By Mr. GROVER :

Q. Those in favor of a change, what kind of a change do they favor?—A. Well, they want the land allotted and the Territory organized into a Territory proper of the United States.

Q. So that they can become the separate owners of their land?—A. Yes, sir.

By the CHAIRMAN :

Q. If a secret ballot could be taken, what proportion of the nation would be in favor of such an allotment?—A. I think a great majority would be opposed to it.

Q. Majority?—A. Yes, sir; I am satisfied of it.

Q. Do you think any persons have been prevented by fear from expressing their opinions upon this subject?—A. No, sir; I do not think any embarrassment would be thrown in the way of expressing opinions at all.

Q. Has there been any free discussion of this point?—A. They have had every opportunity to discuss it.

By Mr. GROVER :

Q. There has been considerable discussion of this question before, has

there?—A. Not much in the elections; it was never raised at our elections. It was a question that never was an issue.

Q. How do you hold elections? Do you have two candidates for the same office?—A. That is the way.

Q. What was the issue in this election? Did some advocate one thing and some another?—A. Yes, sir; but they never made that an issue.

Q. It has been talked over among the people some?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there any pressure used by the leaders of your people here in the nation to prevent an expression of opinion upon that subject by the people?—A. None that I ever heard of.

Q. Then the people are free to vote for whom they please?—A. Yes, sir.

Q. I mean upon this question of organizing a civil government and dividing the land in severalty, &c.?—A. I never knew of their using any pressure of any kind to keep down an expression of views upon the subject.

Q. You never heard it said that there was complaint of that kind by some people?—A. I have heard some men say that they were afraid to express their views, without giving any reasons why.

Q. Do you hold any office in the nation?—A. No, sir.

Q. Did you ever?—A. Yes, sir; I have.

Q. What office did you hold?—A. I was clerk of the Delaware district and was in the council.

Q. How long were you clerk of that district?—A. Two years.

Q. How long were you in the council?—A. Two years.

Q. If each nation was allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government, making each and every member of the tribe citizens of the United States?—A. I do not think they would be benefited by any change. I do not see how any change of that kind would benefit them.

Q. Can a civil form of government be organized over the Indian Territory for the better protection of life and property; if so, what should the government be?—A. If a United States court was established here, as the treaty of 1866 provides, it might be a benefit to the country. The people have to be taken to Fort Smith, Ark., for trial, and if we had a court here, like that at Fort Smith, it would give better satisfaction and the laws would be better executed.

By the CHAIRMAN:

Q. But the form you have now does not give protection to life and property?—A. It does, but we have to be tried at Fort Smith. We have no jurisdiction over United States citizens at all, because, if any difference comes up between citizens of the nation and a citizen of the United States, the trial has to be tried at Fort Smith.

By Mr. GROVER:

Q. So the United States courts would be by agreement of your nation with the United States?—A. Yes, sir.

Q. And then you would have a court here within the nation?—A. Yes, sir. A court with jurisdiction over all cases. White citizens who are living here in the nation know that our Indian courts have no jurisdiction over them; any difference between a citizen of the United States and our people is tried at Fort Smith, Ark.

By the CHAIRMAN:

Q. Don't you think the establishment of a United States court would give better protection to life and property between the Indians themselves?—A. Of course I do. They would have more power over the people of the country and then they would not have to go that great distance to Fort Smith, Arkansas.

Q. Would it not have more power in settling difference among your own people?—A. It would among the whites.

Q. But I mean among yourselves?—A. I do not know that it would; our laws seem to be well executed; so far as any violation of law is concerned; it is so in our district, at least.

By Mr. GROVER:

Q. That is in cases between members of your own tribe; in protecting life and property of the members of the tribe?—A. Yes, sir.

By the CHAIRMAN:

Q. Has the Territory been benefited or injured by the construction of the railroads through this country?—A. I do not believe the railroad has been any benefit to the country; there was more money in the country before the railroad came than there has been since. They took all the money out and they do not bring any in.

Q. Is that so?—A. Yes, sir; that is my impression. When cattle used to be driven through the country there was more money in the country than there is now.

Q. Has the construction of the railroads increased the population of the Territory any?—A. I do not know that it has hastened it any.

Q. You think it has not hastened it any?—A. No, sir. I do not think it has.

Q. Stock-raising is the chief employment here, is it not?—A. Yes, sir.

Q. Since the railroads have been constructed through the Territory, do you not get a better price for your cattle?—A. No, sir.

Q. You think the prices are not greater now than they were before you had the means of transportation?—A. We used to sell steers for twenty dollars on the prairies; you cannot get that now.

Q. You think that does not depend upon the condition of the market but upon the railroads?—A. I think it depends upon the railroads, because they take cattle right through from the State of Texas.

Q. So you are brought in competition with the Texas cattle?—A. Yes, sir.

Q. And cattle are cheaper there and the railroads transport them at a smaller price, and that interferes with you here?—A. Yes, sir.

Q. Do you not think that is only temporary?—A. If it were not for cattle being cheaper in Texas, the prices here would be better.

Q. Well, then, when this surplus stock from the State of Texas is shipped to market, would you not be in a better condition than you were before the railroad came?—A. I do not know that we would; they would come down and buy them from the State of Kansas. Before the war we kept stock here, and cattle-buyers would come and pay higher prices than they do now.

By the CHAIRMAN:

Q. You think the prices are less than before the war?—A. Yes, sir; the price of a steer is less now than it was before the war.

Q. You buy large numbers of them?—A. Yes, sir.

Q. Can you give a general estimate of how many cattle there are in the Indian Territory?—A. I cannot form an idea.

Q. You are constantly shipping them, are you not?—A. Yes, sir; we are shipping all the time.

Q. From the increase of cattle here at home?—A. Yes, sir; that is one reason why I believe it would be better to have our lands as they are; if it was fenced up, it would be destroyed as a stock-raising country. There is more money in it as a grazing country than there would be in farming the land.

Q. More money for the people living here?—A. Yes, sir; more money with less labor. We are not skilled in farming and could not compete with the States, but we can raise cattle as well as they can.

Q. What is your occupation?—A. I am a druggist.

By Mr. ADAIR:

Q. How many schools do you think there were in this nation before the war?—A. About thirty or forty schools.

Q. How many have we now, day and common schools?—A. Seventy-five or eighty schools; I do not know exactly the number.

Q. Before the war the Cherokees had a great many cattle.—A. Yes, sir.

Q. And they were destroyed by the effects of the war?—A. Yes, sir; a large number of them.

Q. Please state the effects upon the people and state how the close of the war found them?—A. When the war closed there was not anything left in the country; farms were destroyed, stock all taken out, a portion of us went South, and a large portion of rations from the government

Q. That was the case with the majority of the Cherokees?—A. Yes, sir.

Q. Their property was all destroyed?—A. Yes, sir.

By the CHAIRMAN:

Q. I don't understand you.

The WITNESS. I am speaking of those who went South. A large portion drew rations from the government. They were entirely destitute; they were not able to remove themselves back to the country.

By Mr. ADAIR:

Q. Did not the Cherokee Nation make provision to bring them home because they were so poor?—A. There were some delegates sent down to do it, and they were sent down a number of times to bring the people up.

Q. About what amount of property, including cattle, stock, and improvements, &c., had we before the war that was destroyed—about how many millions do you think would cover it?—A. I do not know anything about it. It is too large an amount to estimate. I was not well enough acquainted with the people at that time to state it.

By Mr. WILLIAM P. ROSS:

Q. In regard to the allotment of the lands among the Cherokee people, has not that subject been up before the national council, as provided for in the treaty of 1866?

The CHAIRMAN. I do not think we want to go into the treaty; he is no better judge than you or I. There is the treaty itself; we do not want his idea of the construction of the treaty.

Mr. ROSS. I merely wanted to show that the subject was provided for, and was in the hands of the Cherokees for the people to exercise their own views about it.

Mr. GROVER. We would like the views of the chief men as to their construction of the treaty.

By Mr. ADAIR:

Q. (To the witness.) Have the Cherokee people, or any number of them, been paid for property lost during the war, either the Northern or Southern Cherokees?—A. Not that I know of.

Q. Is it not your understanding that a considerable amount of money is due these Northern Cherokees for pensions, bounties, &c.?—A. Yes, sir. A great many had powers of attorneys acknowledged before me to settle these claims before the department.

Q. Have any of the Cherokees instructed their delegates to try to get this pay for them for their services in the Union Army?—A. I think so; yes, sir.

By Mr. GROVER:

Q. You say none who had served in the Union Army had been paid?—A. I say none who had property destroyed had been paid that I knew of; a large portion remain unpaid, I know.

By the CHAIRMAN:

Q. That is for property destroyed by the Army?—A. Yes, sir.

Q. Are you an Indian at all?—A. Yes, sir.

Q. By blood?—A. Yes, sir, by blood, and have always acknowledged myself to be one.

Q. Were you born and raised in this country?—A. Yes, sir; and nobody has ever disputed my right as an Indian.

ARTHUR WILLIAMS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Arthur Williams.

Q. Where do you live?—A. On the Grand River.

Q. In what district?—A. In the Delaware district.

Q. In what nation do you live?—A. In the Cherokee Nation.

Q. Where were you born?—A. Right here in the Cherokee Nation.

Q. On the Grand River?—A. Yes, sir.

Q. Has the Cherokee Nation granted you the right of citizenship?—A. Yes, sir.

Q. Do you vote?—A. Yes, sir.

Q. Do all the colored people in your nation vote?—A. No, sir.

Q. Why?—A. Some are not acknowledged as citizens of the nation.

Q. Why are they not acknowledged as citizens?—A. I suppose they would not come behind the treaty of 1866.

Q. Who says so?—A. The treaty book says they do not.

By Mr. GROVER:

Q. Are they of Indian blood?—A. Yes, sir; but they are colored people.

Q. They are mixed with African and Indian blood?—A. Yes, sir.

By the CHAIRMAN:

Q. How many negroes are there in the Cherokee Nation?—A. I cannot state the number, but it is a good many.

Q. What do you mean by a good many?—A. I cannot state just how many there are.

Q. What proportion are deprived of the right to vote?—A. Well, I cannot tell; I guess our records would prove that.

Q. Can you read and write?—A. No, sir; I cannot read and write.

Q. Do half of the colored people vote, do you think?—A. No, sir.

Q. One-fourth of them?—A. I cannot tell so as to be positive, but a majority do not vote.

Q. Do the negroes sit on juries in the Cherokee Nation?—A. No, sir.

Q. Do they pay taxes?—A. No, sir.

Q. What statement of facts is it you are sent here to make in regard to your rights and privileges? You say you have been sent as a delegate?—A. Yes, sir; I have been sent here as a delegate by the colored people of my district.

Q. Well, what is it you wish to state to the committee?—A. Well, we are not allowed representation in the council-house, and we are excluded from the orphan asylum and seminary.

Q. That is, you are denied the right to send your people there?—A. Yes, sir.

By Mr. GROVER:

Q. The council-house; what do you mean by that?—A. That is the place where they make the laws.

By the CHAIRMAN:

Q. They do not allow colored men to be elected to the council?—A. Only once we had one elected to the council-house to my knowing; but it was only once.

Q. How long ago was that?—A. It has been about three or four years ago; I do not know just exactly.

By Mr. GROVER:

Q. Do you vote yourself?—A. Yes, sir.

By the CHAIRMAN:

Q. Go on and state all the rights that are denied you.—A. I believe that is about all.

Q. Are you allowed to hold property the same as an Indian?—A. Yes, sir.

Q. Are you allowed to take up land and improve it?—A. Yes, sir.

Q. And keep it?—A. Yes, sir.

Q. Do they allow all the colored people to do that?—A. Yes, sir; all that are citizens, or recognized as citizens.

Q. Well, what you mean is, a man whom they allow to vote is allowed to hold property?—A. Yes, sir; all that come inside of the treaty of 1866, they have a limited time of six months, and they have the same rights as natural-born Indians. That is what the ninth article of the treaty of 1866 reads.

By Mr. GROVER:

Q. Then this exclusion is based upon that provision of the treaty of 1866?—A. Yes, sir; and those who come behind that treaty are not recognized as citizens.

Q. They come outside of that, and the negroes who were here have certain rights?—A. Yes, sir.

Q. And those who come after that time are not entitled to any rights?—A. Yes, sir.

Q. They stand upon the same basis that white men do who come from the State of Kansas?—A. Yes, sir.

Q. And a white man coming along at the same time, they would be both on the same ground?—A. No, sir; there is a law to adopt a white man in the nation by marriage, but there is no law to adopt a colored man.

Q. But a white man would have no rights unless adopted in some manner?—A. Yes, sir.

By the CHAIRMAN:

Q. All the negroes born in the nation vote?—A. No, sir.

Q. They do not?—A. No, sir.

By Mr. GROVER:

Q. Are there any colored persons in the nation who have Indian blood in their veins who were here before the treaty of 1866, excluded; I mean all colored people who have part Indian blood and who were here before the year 1866—are any of those excluded?—A. Yes, sir; some, I think.

Q. Do you know why?—A. There are some who have Indian blood and part darkie that come behind the treaty—the time prescribed by the treaty.

Q. Since the year 1866?—A. I do not know behind that time.

By the CHAIRMAN:

Let me read this article of the treaty.

“July 19, 1866.—Treaty with the Cherokee Indians.

“ARTICLE IX.—The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees: *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.

“ARTICLE XII. The Cherokees agree that a general council consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.

“First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons whose compensation shall be fixed by the Secretary of the Interior and paid by the United States.

“Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council, and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in

the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interest of said tribes shall require such special session.

"Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory, the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes or nations, and the common defense and safety of the nations of said Territory.

"All laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by the direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States or laws of Congress, or existing treaty stipulations with the United States. Nor shall said council legislate upon matters other than those above indicated: *Provided, however*, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

"Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

"Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

"Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council."

Q. Now, do you mean that all the colored people vote except those who returned after the six months expired, and who are recognized as citizens?—A. Yes, sir, except some who were born and raised here; but they never come in accordance with the treaty of 1866.

Q. They did not come after the six months had expired?—A. Yes, sir; that is, they never made application.

Q. And all who did come back within six months are allowed to vote?—A. Yes, sir; but some say they came back within six months, and they refused to allow them representation in the council.

Q. They refused them representation in the council?—A. Yes, sir; they won't allow them to vote.

Q. Did the council refuse to give them the right to vote because they did not come back in the six months?—A. I do not know whether the council decided it or not. I do not know whether they decided they were citizens or not; they just marked them doubtful.

Q. How many colored people are there in that condition?—A. Some five or six hundred. I do not know exactly.

Q. Are half of the colored people in that condition?—A. Yes, sir.

Q. More than half?—A. Yes, sir.

Q. Do you know how many colored people are citizens?—A. No, sir.

By WILLIAM P. ROSS:

Q. Don't you think there are twelve or fifteen hundred recognized under that clause of the treaty of 1866 who enjoy the same rights that the Cherokee people enjoy?—A. I do not think there are that many.

By the CHAIRMAN:

Q. Well, what else do you want to tell the committee?—A. I want, if it could be done, a portion of this country set apart to the colored people who are citizens of this country; that is, people who were born here and raised here; I want it set apart to them.

Q. Do you want the government changed here and have the lands divided up in severalty, so that each person will hold his land in fee simple, and know what he owns?—A. No, sir.

Q. How do you want the lands given to you? How are you to get some of them, then?—A. Well, my idea is that we could petition our council or the government and get a portion of the country so that we could live by ourselves.

Q. Do you get as much land as you want to farm?—A. Yes, sir; we can get land plenty to tend.

Q. Do they give land to these Indians not recognized?—A. Yes, sir.

Q. Do they allow them to take up lands, and farm?—A. Yes, sir; but they cannot share in the annuities; they cannot vote.

Q. But they can take up lands, &c.?—A. Yes, sir; it is held in abeyance and it is in dispute.

By Mr. ADAIR:

Q. They are allowed to cultivate all the land they want to?—A. Yes, sir.

By the CHAIRMAN:

Q. What condition are the negroes in?—A. In good condition.

Q. Pretty prosperous, are they?—A. Yes, sir; some are.

Q. Good laborers, are they?—A. Yes, sir; we have got some good laboring men. All we want is to have the treaty complied with.

Q. Do you make enough to support yourself off of the land?—A. Yes, sir.

Q. Do you raise stock?—A. Yes, sir.

Q. And farm?—A. Yes, sir.

Q. Are any of you mechanics?—A. A few; not many.

Q. How about the schools?—A. We have one school in Saline district. It is the first school we have had in our neighborhood. We have none in Coowiscoowee district, or the Delaware district, except once in 1866 we had one started, but it did not hold. The majority of our people are in the Coowiscoowee district.

Q. How many of them are there?—A. Five or six hundred, perhaps more.

Q. Do they have schools for negroes?—A. Yes, sir.

Q. They do not allow the colored people to go to their schools?—A. No, sir.

Q. How long have you had the school in Saline district?—A. It started just a little while ago. It has not run long because we have not been to Tahlequah to get books.

Q. Did they build the house?—A. No, sir; we built the house ourselves.

Q. Have the colored people any schools in the nation?—A. I suppose they have some schools. I do not know how many. There is one I know of. I hear of one in Spring district.

Q. Is it not a fact that they do not allow the colored people schools all over the Territory?—A. Yes, sir.

Q. Are you protected by the laws in the Territory here in your rights and privileges—protected in your lives and property, &c.?—A. No, sir; I could not say positively that we are. For one reason, we have never seen a colored man on a jury.

Q. Do you have colored men upon the jury at all?—A. No, sir.

By Mr. ADAIR:

Q. Where a colored man is interested, do they not have a colored jury?—A. If we do, I do not know anything about it. I have been in the court-house in the Delaware district and Saline district and I never saw a colored man on a jury. I cannot say about the other districts, but I can tell about where I live.

Q. How far is the Illinois district from you?—A. About forty or fifty miles.

By the CHAIRMAN:

Q. Do you think you have the same protection in the courts you would have if you were an Indian?—A. No, sir.

By Mr. GROVER:

Q. Would you be in favor of a United States district court being established in the Territory?—A. Yes, sir; I believe I would. I think the court at Fort Smith, Arkansas, is a draft upon our people. There are a good many who have been taken down there without money, and when they get down there a cute half-foot lawyer will get their pony and they will be set afoot a long way from home.

Q. Would you like that form of court here, instead of the local courts you now have?—A. Yes, sir.

Q. Do you know the difference between a civil form of government—that is, the same as the people have in Arizona, New Mexico, and the other Territories of the United States—and present form of government you have here now?—A. Yes, sir; I think I do.

Q. Would you prefer to have that form of government established here than the one you now have?—A. Yes, sir.

Q. Do you think the colored people would prefer it?—A. Yes, sir.

Q. And to have the officers appointed by the President of the United States?—A. Yes, sir.

Q. Your people prefer that, would they?—A. Yes, sir.

Q. You think your rights would be better protected under that form of government, do you?—A. Yes, sir; I think so.

Q. Is that the opinion of the colored people, as far as you know?—A. As far as I know, that is the opinion of the colored people in my district.

Q. If each nation was allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government making each and every member of the tribe a citizen of the United States?—A. I do not know anything about that.

Q. What proportion of your friends and neighbors are desirous and in favor of the allotment of the lands, sectionizing them, &c.?—A. We do not have anything to say about that. All that we ask is, to have the treaty complied with. I do not know that I understand what you mean by sectionizing and allotting lands.

Q. What I mean is, would your people prefer, if these lands were opened up, to have their own lands?

The WITNESS. As it is owned in the United States?

The CHAIRMAN. Suppose, in this new form of government, each negro should be given all the rights and privileges of everybody else, would you not prefer that kind of government?—A. Yes, sir; they would.

By Mr. DUNCAN:

Q. How many colored people have been tried in the courts and sent to Tahlequah?—A. Well, I am not able to say; I know there have been a good many.

Q. How many are there now?—A. I cannot say; I have not been to Tahlequah in four years.

Q. They might have been tried in the courts and hanged?—A. That is hard for me to state.

Q. Do you know of any colored men who have been hanged?—A. Hanged? I know the case of Henry Scales.

Q. Is that the only case?—A. I heard his brother was hanged too.

Q. What had he done?—A. He was charged with murder, I suppose.

By Mr. ADAIR:

Q. Charged with killing a colored man?—A. Yes, sir.

By the CHAIRMAN:

Q. Do you know of any colored men who were on the jury at that trial?—A. I do not.

By Mr. WILLIAM P. ROSS:

Q. Have you not heard half of that jury were colored men?—A. No, sir; I never heard it.

By Mr. DUNCAN:

Q. Do you not think there are two or three colored men who have been convicted by colored men?—A. I have no idea of it.

Q. How many Cherokees in jail under sentence now?—A. I do not know that.

Q. Do you think there are more than fifteen?—A. I cannot tell whether there is one or not.

Q. Does the Cherokee Nation build school-houses for the Cherokee citizens?—A. Yes, sir.

Q. Does the nation do it at the public expense, or do the people themselves build the school-houses?—A. I am not positive whether it is paid out of the nation's funds or not; I guess it is. I know that we got ours put up by main strength.

Q. Do you think it would be best for both parties if the Cherokees and colored people were to attend school together in the high school?—A. Yes, sir; I do, if it is true that they could go to school together, but they should never have been made.

Q. Does the treaty say that?—A. It does say they are equal in every respect, and I think they ought to go to school together.

Q. What is the name of the colored senator we had in the national council some years ago?—A. Joseph Brown, I think was his name.

Q. Was there a colored representative elected to the grand council at Ocmulgee?—A. Not that I know of; it was not in my neighborhood.

By Mr. ADAIR:

Q. Were you ever at this celebrated meeting that we had in August, in which the colored people met?—A. Yes, sir.

Q. Were you present when there was a letter read from the Commissioner of Indian Affairs, stating that all those colored people who did not come into the country within six months under the treaty of 1866 should leave?—A. No, sir.

Q. Did not some one read such a letter?—A. There was a letter. A petition had been made out and sent to Washington to know whether the court was legal to try these doubtful people.

Q. That was read?—A. I heard so.

Q. Did not that state that the Commissioner of Indian Affairs had decided that the colored people who did not come into this country within six months after the treaty of 1866, that they had better go out of the country?—A. I do not remember.

Q. Is not that your understanding?—A. I tell you I do not know, but they were read out by that petition. I do not know.

Q. You spoke of not having the right of representation in the council?—A. Yes, sir.

Q. Do you not have the right to nominate a man for the senate and house if you want?—A. Yes, sir; but the kind that are nominated are so weak that we cannot help ourselves.

Q. You have the right, then, if you want to exercise it?—A. It is a thing we have never done since we have been here.

Q. But do you have the right if you choose to exercise it?—A. Yes, sir; if permitted.

By the CHAIRMAN:

Q. What do you mean by "if permitted"?—A. That is, to be allowed to be in the council-house.

By Mr. ADAIR:

Q. Did you hear of Joseph Brown being executed?—A. Yes, sir.

Q. You came here inside of the treaty—inside of the time specified by the treaty of 1866, did you not?—A. Yes, sir.

Q. You vote as any other Cherokee?—A. Yes, sir.

Q. No Cherokee who came here within that time has been denied the right to vote?—A. Yes, sir; those who are recognized vote. I claim we all are not recognized.

Q. Have not all the colored people been notified to prove their rights before the citizenship court at Tahlequah?—A. I remember once when a portion went down there, and they told them to go home again.

Q. You know there was a court to try citizenship cases?—A. Yes, sir.

Q. But you wrote a petition referring to the department asking about this court?—A. Yes, sir.

Q. And have you not been notified or told you must go down there to prove your rights?—A. Yes, sir; and also fee a lawyer.

Mr. ADAIR. I do not know about feeing a lawyer.

The WITNESS. That is what the paper said; "fee your lawyer twenty-five dollars."

Mr. ADAIR. Who told you to fee a lawyer?

The WITNESS. The Advocate; the Cherokee Advocate.

By the CHAIRMAN:

Q. A newspaper?—A. Yes, sir.

By Mr. ADAIR:

Q. Have you copy of it?—A. No, sir; I do not know anything about it.

Q. You consider they would have tried your case like those of any other Cherokee?—A. So far as I am concerned myself I never paid any attention to it.

Q. And that was so with the people generally?—A. Yes, sir.

By Mr. DUNCAN:

Q. Are you acquainted with the neighborhood near Mr. Gresham's?—A. Yes, sir; I have been there twice.

Q. Have you any knowledge of any colored people being there?—A. There was one there in 1867.

(NOTE.—The letter referred to by the witness is a letter of the Commissioner of Indian Affairs, dated June 21, 1878, in regard to the rights of the colored people, &c. See Landrum's testimony.)

By Mr. WILLIAM P. ROSS:

Q. Did you share in the distribution of the bread money?—A. Yes, sir.

Q. You got the same as any Cherokee did?—A. I did; but there are a good many colored people who did not.

Q. How many acres of land are you cultivating now?—A. Not many; I have not worked for five or six years. I have about fifteen or sixteen acres under cultivation.

Q. You cultivate that many acres yourself?—A. Yes, sir.

Q. And you live off of the land?—A. Yes, sir.

Q. Do you contribute anything to the treasury of the Cherokee Nation for the privileges you enjoy?—A. No, sir.

By the CHAIRMAN:

Q. Do you pay taxes?—A. No, sir.

Q. What do you do for a living?—A. I live like other poor people do; I do the best I can.

By Mr. GROVER:

Q. These fifteen or sixteen acres—you have the privilege of enjoying them?—A. I do; yes, sir.

Q. Suppose you wanted to develop your farm, could you go on without interference and improve it?—A. Yes, sir.

By Mr. ADAIR:

Q. Could you not go somewhere else and make another farm if you did not interfere with the rights of anybody else?—A. Yes, sir.

Q. Have you anything else that you wish to state to the committee that has not been inquired of?—A. No, sir; I believe not.

* SIMON LYNCH, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Simon Lynch.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Where were you born?—A. In the Cherokee Nation.

Q. How old are you?—A. I am forty-eight years old.

Q. Have you lived here all your life?—A. Yes, sir. I was in Kansas during the war.

By Mr. GROVER:

Q. Your home is here now?—A. Yes, sir.

By the CHAIRMAN:

Q. What do you want to tell the committee?—A. I want to ask the committee a few questions. I want to know if this committee will allow us the same privileges as the Indians have who are recognized as citizens.

Q. Do you vote?—A. Yes, sir.

Q. How many of your people vote?—A. I do not know exactly how many vote.

Q. There are some who do not vote?—A. Yes, sir.

Q. Why do they not vote?—A. Well, I suppose they come behind the limit of the treaty; they did not get back in time. I suppose that is it. Yes, sir.

Q. Why did they not go before the citizenship court?—A. They have been there, but they have been sent back without a trial. I can point out a dozen who have been there.

Q. Do you have all the rights that the Indians have?—A. Well, I do not know. In some respects we do.

Q. Well, in what respects do you not?—A. In respect to the schools we do not.

Q. Have they Indian schools around you?—A. Yes, sir; we have lately got a school from the board—three or four weeks ago.

Q. Are there any negroes on that school board?—A. No, sir.

Q. All Indians?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. Are you not one of the directors on that board?—A. Yes, sir.

By the CHAIRMAN:

Q. You are one of the directors on that board?—A. Yes, sir; I am.

Q. Of this school that has been lately organized?—A. Yes, sir.

Q. Is it a district organization?—A. Yes, sir.

Q. How many members are there on that board?—A. Three members.

Q. How many of them are colored people?—A. All of them are colored people.

Q. No Indians upon it at all?—A. No, sir.

Q. You have charge of the school?—A. Yes, sir.

Q. How long has it been since you were appointed?—A. I do not know the date exactly.

Q. Has it been a year?—A. No, sir.

Q. Six months?—A. No, sir.

Q. Two months?—A. Yes, sir; about two months.

Q. Were there any directors for colored schools before that time?—A. Yes, sir; about seven years ago.

Q. And have they not had any schools?—A. Yes, sir.

Q. How long before that did you have one?—A. In 1866 we had one session.

Q. How long did this session last?—A. I believe they both lasted five months.

Q. Each?—A. Yes, sir.

Q. What else do you want to say to the committee?—A. I do not know of anything else.

Q. Are your rights, the same as an Indian's, protected; that is, do you enjoy the rights and privileges of the Indians, and is your life and property as secure?—A. Well, I have never been in any difficulty myself; I

do not know how it would be, but it looks to me if we are allowed the privileges of the Indians we have the privilege of the jury-box; that is what I look for. I want only what is allowed me, but when I am allowed anything I don't get, I do not think I have it.

Q. There are no negroes, then, upon the jury?—A. None that I have ever heard of.

Q. Where is the court?—A. There is none in my district.

Q. No negroes sit upon the jury there?—A. No, sir; none that I have ever known.

Q. Do you know the difference between a civil form of government such as they have in the organized Territories of the United States, like New Mexico, Montana, &c.?—A. No, sir; I am not posted so as to tell the difference.

Q. In the Territories where they are inhabited by the whites, the President appoints the governor, judges, United States marshal, and the United States district attorneys, and general officers of that kind; the people elect their members of the legislature, their county judges, their sheriffs, constables, justices of the peace, and officers of that class. Are you in favor of that kind of government, extended over your nation, leaving to you the election of a Delegate to Congress, and election of your members of the legislature, your sheriffs, constables, county judges, and justices of the peace; and those general officers, such as the governor, secretary of state, United States marshal, being appointed by the President; are you not in favor of that kind of a government?—A. No, sir; I do not understand that at all. I don't want to say anything about anything I do not understand, because I do not know what condition it would bring me in.

Q. How much land have you got?—A. I have one hundred and ten acres.

Q. Do you rent?—A. Some of it.

Q. Do you make a comfortable living?—A. Yes, sir.

Q. Do you pay taxes?—A. I may have. Some say we pay taxes and some say we pay none.

Q. You keep all you raise?—A. Yes, sir; I do.

Q. Would you not sooner hold the land yourself than hold it the way you do; that is, would you not rather have it in common?—A. It seems to me I own it anyhow. I don't know anything about a change. I do not like to talk about that, because I do not know anything about it. It may be for my better and it may be for my worse. That is left for the people of the country, who have the power to do such things, and who know more about it than I do.

By Mr. GROVER:

Q. This one hundred and ten acres you have as a farm. How did you get possession of that one hundred and ten acres?—A. Well, I just went to work and improved it.

Q. Now suppose you put two hundred and twenty acres, and increase it at the same rate, would you still have the right to do that?—A. Yes, sir.

Q. Would there have been any objections to your holding two hundred and twenty acres, and farming it, if you had made it?—A. No, sir; I do not suppose there would be.

Q. You understand your right to that is undisputed. You are in possession and nobody disputes your right to it?—A. Yes, sir; nobody disputes my right to it.

Q. You can rent it?—A. Yes, sir.

Q. In the case of your death where would that go according to your understanding?—A. I do not know, sir.

Q. In your neighborhood, when a man dies and has a family, what is the result; what becomes of his property?—A. Sometimes somebody administers on it and takes it all.

Q. Suppose you were not in debt, and the property was treated fairly, would it go to your children?—A. Yes, sir; it would go to the children. I do not see anything of that sort done.

Q. But ordinarily you understand you have a right to this place?—A. Yes, sir.

Q. As to any other form of holding your land you are not prepared to judge?—A. No, sir.

Q. You are pretty comfortably situated now?—A. Yes, sir. I would like to have what the treaty allows me. I do not want anything less. I have been barred the chances of an education, and I think it is hard on my children.

Q. Are you a part of the Indian people?—A. No, sir.

Q. Are the colored people part Indian?—A. Yes, sir; a good many of them are.

Q. What proportion?—A. I have no idea.

Q. There are some intermarriages?—A. Yes, sir.

Q. What district do you live in?—A. Saline district.

Q. Was there any one of your people running for member of the council?—A. No, sir.

Q. Was any one nominated?—A. I was nominated to the grand council.

Q. You were not elected?—A. No, sir.

Q. You ran?—Yes, sir; I ran.

By Mr. W. P. Ross:

Q. I suppose there were some Cherokees beaten at the same election?—A. Yes, sir; several of them.

By Mr. ADAIR:

Q. You got a good vote?—A. Yes, sir.

By Mr. GROVER:

Q. Did you get some Cherokee Indian votes?—A. The most votes I got were Cherokee votes. I came here to tell the truth.

Q. If all the colored people had voted for you would you have been elected?—A. Yes, sir; I only lacked five votes of the election.

Q. Do you think that your admission to the council would have been opposed by anybody?—A. No, sir; I do not think so.

Q. You were really nominated by the Indians themselves, were you not?—A. Yes, sir; and if my people had voted for me I would have been elected.

By the CHAIRMAN:

Q. Did any of the colored people vote against you?—A. I do not think they did. We have not got very many voters who are recognized as citizens.

Q. Did half of the colored people vote?—A. No, sir.

By Mr. W. P. Ross:

Q. Those who are recognized as citizens vote, do they not?—A. Yes, sir; they do.

Q. Did they not participate and share in the *per capita* distribution, when it took place?—A. Yes, sir.

Q. School-books have been furnished them, have they not?—A. We have not received them yet. I do not doubt but that we will get them.

By Mr. ADAIR:

Q. How many children have you attending school?—A. I have three.

Q. How many have your neighbors?—A. We have counted twenty-two.

Q. How many go to school?—A. Well, all are not going now; there may be thirty.

By the CHAIRMAN:

Q. There are only thirty who can go?—A. No, sir; we have more than that; only thirty can go.

Q. They won't allow you to sit upon the jury?—A. They won't allow us that.

Q. Have you ever applied to the council?—A. No, sir.

Q. Have you ever made complaint to the council?—A. No, sir; I do not think they ever did.

By Mr. DUNCAN:

Q. Do you know of any white men who have never sat upon the jury?—A. No, sir; I do not recollect whether I do or not; but they could not sit on the jury, but they were recognized as citizens. I see white men who are married in here.

Q. Do you think every Cherokee and white man has been summoned to the court as a juryman?—A. No, sir; I do not think every one has, but I think when a man is tried in court his own people should judge him.

Q. Do you know how many colored people are in jail?—A. No, sir.

Q. Are there any? How many colored men have been hanged?—A. Henry Scales was hanged, and he is the only one I know anything about.

Q. Don't the Cherokee citizens and white citizens live harmoniously together and get along well and friendly?—A. I do not see any difference.

By Mr. ADAIR:

Q. As a general rule don't the colored people in the country generally settle together about in little squads?—A. Yes, sir.

Q. And they prefer to do that?—A. Well, I suppose that is their choice. I do not know how that is. Many of them do. There is room enough for settlement if they choose to do that.

Q. But you have never had any restrictions placed upon you as to the amount of land you could cultivate?—A. No, sir; never. I suppose a colored man could cultivate all he wants to and could. One thing I am debarred of is what the treaty allows me as to education. I have been debarred of that.

Q. You are satisfied with what you now have?—A. Yes, sir; I am satisfied with what I have now, with that exception.

By the CHAIRMAN:

Q. You want to sit upon the jury?—A. Yes, sir; I want my people to have that right in the court. I want them to have the right to sit upon the jury in the court in which they are to be tried.

Q. Do the Indians treat you well in your intercourse with them?—A. Yes, sir; they treat us the best kind.

By Mr. DUNCAN:

Q. If you had your choice, would you rather live where you are than

in the State of Kansas?—A. Yes, sir; I would. I was in Kansas, and could not stay there. I was doing well there, but I did not like it. I left and came here.

By Mr. GROVER:

Q. If you could have taken a quarter-section of land in Kansas under the homestead law, and could have lived there as other citizens of the United States, would you prefer your present condition to that?—A. Yes, sir; I would.

JOHN BEAN, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John Bean.

Q. Where were you born?—A. In the nation here.

Q. What nation, the Cherokee Nation?—A. Yes, sir.

Q. How old are you?—A. I do not know, sir.

Q. Have you lived here all your life?—A. Yes, sir.

Q. What is your occupation?—A. I am a farmer.

Q. You are farming, are you?—A. Yes, sir.

Q. How much land do you work?—A. I work but a very small portion, about ten or twelve acres.

Q. Do you make a comfortable living off of that?—A. Yes, sir; a pretty fair living.

Q. Well, what is it that you desire to say to the committee?—A. Well, I have been deprived of all my rights, privileges, &c., in this country.

Q. What are they?—A. I returned in the year 1866, and I have been disputed and called a doubtful citizen—they never recognized me in any way.

Q. Don't allow you to vote?—A. No, sir.

Q. Have you ever been to Tahlequah to attend this citizenship court to prove your rights?—A. Yes, sir; I was down there five or six years ago, and the judge told me I had no business there, and that I might go back home to work. He told me it did not require it, I was here in time. I heard it read in the Advocate that I was a disputed citizen; that is how I know of it.

Q. Why do you not go back and tell them you are not a doubtful citizen, and that you desire to be allowed to vote?—A. I have been three times; I have been to a called session of the court.

Q. What does the judge tell you?—A. He told me to go home, that he was not ready for me; that is the way that he does with the people.

Q. Is that the way he does with the people?—A. Yes, sir.

Q. Then he will not give you a chance to be heard?—A. Yes, sir; they said we had no business there. They told us that four years ago.

Q. And you have not been back since?—A. No, sir; I have not been back since.

By Mr. GROVER:

Q. Were you born here in the Territory?—A. Yes, sir.

Q. How old are you?—A. Colonel Adair says I am thirty-four; his folks raised me.

Q. You went away before 1866; when did you go?—A. I do not know whether it was not; but I went away the time the first tribes came in the nation.

Q. Well, when did you come back?—A. In the fall of 1866.

Q. Within six months before the treaty?—A. Yes, sir.

Q. You consider you have a right under that treaty?—A. Yes, sir

Q. When you appeared before the judge of the citizenship court, he said there was no question about your right; that you might go home, &c.?—A. Yes, sir.

Q. You were not included in the treaty rights?—A. Yes, sir.

Q. After you read there was a dispute about it?—A. Yes, sir.

Q. Did you have a hearing then?—A. No, sir.

Q. They said they were not ready to hear your case?—A. Yes, sir.

Q. Were you ever allowed to vote?—A. I was once allowed to vote. I have been to an election three times since, but they rejected me.

By Mr. GROVER:

Q. Because your name was on the doubtful list?—A. Yes, sir.

Q. It has not been settled by the court?—A. No, sir; it has not been settled.

Q. Is that court now in session?—A. I do not know, sir.

By the CHAIRMAN:

Q. What other complaints have you to make?—A. Well, I am like the balance of the colored people; I have no schooling or advantages of that kind. I am like those who came too late, to have any right to send my children to school.

Q. Do they not allow you to send your children to school?—A. No, sir.

Q. You live in the same district that Lynch lives in?—A. Yes, sir.

Q. There is a school there for colored people?—A. No, sir; in Saline district, about three miles from where I live, there is one.

Q. Do other colored people send their children there?—A. Yes, sir.

Q. That is, if he is a voter?—A. Yes, sir.

Q. And you who are not voters cannot send your children to school?—A. Yes, sir; that is it.

Q. Why have you not been before the citizenship court to claim your rights?—A. Well, the last time I went I was before the council, and I am now waiting for the government to give me the right to vote.

Q. You are waiting for the government to give you the right to vote?—A. Yes, sir.

Q. Don't you think it would be better for you to go to Talequah before the citizenship court?—A. Yes, sir; if they will recognize me I am willing to go.

Q. You say you have not been there for four years?—A. No, sir; I have not been there.

By Mr. GROVER:

Q. What do you think about the change of the condition of the Territory here into a Territory of the government proper, like that of New Mexico, so each one could hold lands by himself? Do you think any change is desired by your people?—A. No, sir; I really think it would be a disadvantage to them.

Q. You think they are satisfied as to their present condition and mode of holding lands?—A. Yes, sir; provided they can get their full rights, the same as the native-born Cherokees. They claim this as their birth-right; they do not know any other place.

Q. They are satisfied with the condition of holding their lands in common?—A. Yes, sir.

Q. They can get as much land as they want to cultivate, can they?—A. Those who are counted doubtful cannot, but the others may.

Q. Those who are counted doubtful are in favor of holding their land

as they are now, but if they cannot get their rights, then they prefer a change?—A. Yes, sir.

Q. They can get as much land as they want to cultivate, can they?—A. Those who are counted doubtful cannot, but the others may.

Q. All you want, I suppose, is your citizenship allowed here in the Territory, and to have the same complete rights to the schools, and the right to vote and to sit upon the jury that native-born Cherokees have?—

A. Yes, sir; the right to law in every respect.

By the CHAIRMAN:

Q. If you had all the rights that native-born Indians have would you be satisfied with the present condition of affairs?—A. Yes, sir.

By Mr. GROVER:

Q. Do the Indians deny you have these rights—I mean those who are not disputed to be citizens? Did you ever hear the Cherokees say they should not sit upon the jury?—A. I have heard them say that they had no right to sit upon the jury, and that they would not be put upon it.

By Mr. ADAIR:

Q. Have you not heard of negroes sitting upon the jury in some of the courts in some of the districts?—A. Yes, sir; down in Gibson.

Q. Did they dispute it there?—A. Yes, sir; a portion of them.

Q. They actually sit upon the jury, though?—A. Yes, sir; I have heard of it.

Q. And they attended the council?—A. I have heard it so stated.

Q. And if one was elected now do you doubt but that he would be admitted to his seat?—A. No, sir; I do not doubt it. I think he would be admitted.

HENRY DREW, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. My name is Henry Drew.

Q. What is your age?—A. Thirty-four years old.

Q. Where were you born?—A. In the Cherokee Nation here.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a full-blood?—A. No, sir; I am not a full-blood.

Q. What is your occupation?—A. I am in a dry-goods store, selling goods.

Q. Are you a merchant?—A. Yes, sir; I am employed in the store.

Q. You are a clerk, then?—A. Yes, sir.

Q. Have you lived here all your life?—A. Yes, sir; I have lived in the nation all my life. I never lived outside of it.

Q. Is your nation progressing in civilization and wealth; and, if so, how rapidly?—A. Yes, sir; I think it is.

Q. In what way?—A. Well, in our schools.

Q. Have you good schools?—A. Yes, sir; we have good schools.

Q. Only one?—A. Yes, sir; only one school.

Q. Do you believe your nation would be benefited by the repeal of those parts of the acts of Congress in which the several railroads claim title to land in the Indian Territory?—A. Yes, sir; I believe it would.

Q. How would it benefit the people?—A. I do not think the railroads are any benefit at all.

Q. You do not think they are?—A. No; I do not think they have been.

Q. Would such repeal hasten the time for the organization of a Ter-

ritorial form of government?—A. Well, I do not know whether it would or not.

Q. Would you, or any member of your nation, be benefited by a division of the land in severalty among the members of the tribe?—A. I do not think we would; at least I am not in favor of it. I think that we are doing well enough as we are.

By Mr. GROVER:

Q. Do you think it would not work beneficially?—A. No, sir; I do not think it would.

Q. In what particular would it not?—A. Well, I think that we are doing very well as we are, and I do not think any change would benefit us.

Q. How do you think it would work, suppose all the Indian Territory should be divided up among the Indians occupying the Territory, so each head of a family should have a section of land to himself; what would be the result of that kind of a law?—A. Well, there are a good many of our people who I do not think could stand it. They do not know anything about living in that way.

Q. What would they do?—A. I do not know.

Q. Well, what would they do with it, do you think?—A. They might sell away their lands and get cheated out of them.

Q. You think they might sell the lands for less than they are worth?—A. They might; yes, sir.

Q. What would they do with the proceeds of the sales?—A. They might squander it.

By the CHAIRMAN:

Q. Suppose that the land should be secured to them so that they could not sell it?—A. Well, I do not know that they would be benefited by it. I think we would rather live as we are; we want it as it is. The full-blood portion of our people would rather have it stand as it is than have it changed.

Q. You think your people capable of holding land in severalty?—A. No, sir; the mass of them are not.

Q. All of them are not?—A. No, sir; I do not think all of them are.

Q. What proportion of them are not?—A. Well, the majority of them are not.

Q. A majority of them are not capable of holding their lands in severalty?—A. Yes, sir.

Q. Do you mean to say if the majority of your people have lands given to them in severalty they would not be able to occupy them?—A. I do not know about that. Some of them would, but there are a great many who would not.

Q. What is the reason they would not?—A. Because they have never lived in that way. They never had their lands in that way.

By Mr. GROVER:

Q. What are the heads of families principally engaged in now?—A. Stock-raising, farming, &c.

Q. How are they located? Around in different parts of the Territory, do they occupy lands separately?—A. Yes, sir.

Q. Do they hold to these locations pretty firmly?—A. Yes, sir.

Q. Where they make improvements are they tenacious about their rights?—A. They all tend their own places.

Q. They do not sell them out to others?—A. No, sir.

Q. Where a man has improved a place and wants to go off is there any dispute about the possession of it?—A. No, sir; there is no dispute.

Q. Would it not be the tendency of these heads of families to hold on to the land if they had patents in fee instead of the mere possession they have now; in other words, suppose they owned the title from the United States, and the United States, by agreement, should give to these heads of families who have farms, patents, don't you think they would keep and occupy them?—A. Well, most of them; the intelligent portion might hold on to them.

Q. Can you give an estimate of how many cattle there are in this Territory?—A. No, sir.

Q. A large number?—A. Yes, sir.

Q. Stock-raising is a leading business?—A. Yes, sir.

Q. Can you give us about how many are shipped yearly on the railroads?—A. No, sir; I have never been in the cattle business.

Q. Then, as a merchant, you have not observed enough to give an intelligent answer?—A. No, sir.

Q. But it is a large number?—A. Yes, sir.

Q. Do you believe the stock market is as good now as it was before the railroads came here, or is it better?—A. It is not as good.

Q. You think cattle do not bear quite as good prices?—A. Yes, sir.

Q. Though that might be the effect of the Texas market being opened by the railroads?—A. That is the effect of it.

Q. Do you think that is temporary or permanent?—A. It looks as if it might be permanent.

Q. Is this as good a country as that?—A. Yes, sir.

Q. You are sending cattle to the market yourselves, are you not?—A. Yes, sir.

By the CHAIRMAN:

Q. You are a clerk in a store here?—A. Yes, sir.

Q. You make sales here?—A. Yes, sir.

Q. Who are the customers?—A. The Indians and whites equally.

Q. What do the Indians trade with you?—A. Produce.

Q. You have some money, have you?—A. Yes, sir.

Q. Are they not as fit to buy for themselves as the whites?—A. Yes, sir.

Q. Are they not quite as sharp on a bargain?—A. Yes, sir; they know the value of their money.

Q. Any produce they bring in they want as much for it as a white man would?—A. Yes, sir.

Q. They want it because they want the money?—A. Yes, sir.

Q. You do not expect to get produce from the Indians any cheaper than from a white man?—A. No, sir.

Q. Suppose that the Indian should raise it upon the land he takes up, don't you suppose they are as capable of taking care of the land if they owned it in fee as the whites?—A. No, sir; they would not be capable of taking care of a large portion of land.

Q. Do you think they would be more likely to give away their lands for nothing than their produce?—A. Yes, sir.

Q. They would?—A. Yes, sir; I think so.

By Mr. GROVER:

Q. You credit in some cases?—A. Yes, sir.

Q. Credits among the Indians are paid promptly?—A. Yes, sir; they pay promptly.

Q. In cases where they do not pay promptly, what method do you have of collecting debts from them?—A. We have laws that we collect debts with.

Q. You bring suits in the courts?—A. Sometimes we do.

Q. Suppose you got judgment against a person who has property how do you proceed to collect that debt?—A. We collect it by our courts.

Q. If he has cattle can you exhibit the execution and collect the debt?—A. Yes, sir.

Q. As to the possession of the land, can you take that under an execution?—A. You can take a person's improvements.

Q. You can take his possessions, so he has to move away?—A. No, sir.

Q. Then he is safe under the present form of government in the absolute possession of the land; and as to movable property, you can seize that the same as in the United States?—A. Yes, sir.

Q. Can you take any portion of the land away from his possession in any form?—A. No, sir.

By Mr. BOUDINOT:

Q. For whom are you working?—A. Mr. Foreman.

Q. Do you take checks or the national warrants?—A. Yes, sir, sometimes.

Q. What do you give for warrants?—A. I cannot tell you that; we have never bought any.

Q. What do you mean by the checks?—A. It is our national money here.

Q. Checks are evidences of indebtedness of the nation, and evidences of indebtedness of the nation for services, as jurymen and other officers?—A. Yes, sir.

Q. Simply a statement of what is due to certain citizens for services performed in various positions?—A. Yes, sir.

Q. And you give 40 cents on the dollar for them?—A. Yes, sir.

Q. So you do not know what the warrants are worth?—A. No, sir.

Q. What do you do with these warrants when you get them cashed?—A. Yes, sir, sometimes. We have not handled many of them.

Q. Are they collected?—A. Yes, sir.

Q. How long do you generally have to hold them before you get the money?—A. I do not really know the time exactly.

Q. Is that the scrip of the nation or local districts?—A. It is the scrip of the nation.

Q. It is used because there is no money in the treasury at the time to pay for services?—A. Yes, sir.

Q. Do they bear interest?—A. No, sir.

Q. It is one year or two years before you get them paid?—A. I do not really know.

Q. Can you tell how long they are in arrears now?—A. No, sir; I cannot.

By the CHAIRMAN:

Q. What do you do with the checks?—A. We use them in various ways.

By Mr. GROVER:

Q. They are finally cashed by the treasurer of the nation?—A. Yes, sir.

By the CHAIRMAN:

Q. Does the treasurer take them at par when paid?—A. Yes, sir.

Q. You never got any paid at the treasury?—A. I never used them myself; I am not the proprietor. The proprietor took them and used them himself.

Q. What does he do with them?—A. He gets pay for them.

By Mr. GROVER :

Q. When there is money applicable to pay them he gets his pay?—A. He gets warrants for them.

By the CHAIRMAN :

Q. He gets warrants for the checks?—A. Yes, sir.

By Mr. GROVER :

Q. What is the money of the treasury when they pay these warrants, legal-tender or gold?—A. Legal-tender.

JAMES MADISON BELL, having been duly sworn, was examined.

By the CHAIRMAN :

Question. What is your name?—Answer. James Madison Bell.

Q. Where were you born?—A. In the State of Georgia.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. I am a Cherokee.

Q. A Georgia Cherokee?—A. Yes, sir.

Q. Are you a full-blood?—A. No, sir.

Q. Where do you live?—A. I reside in this place at present.

Q. How long have you lived here?—A. About five years.

Q. How long have you been living in this Territory?—A. Since 1839.

Q. What is your occupation?—A. I am a jobber, farmer, and practicing in our courts.

Q. A lawyer, too?—A. Yes, sir.

Q. You must be an accomplished fellow, then?—A. Yes, sir; I am open.

Q. Is your nation progressing in civilization and wealth; and, if so, how rapidly?—A. I consider it is in civilization.

Q. What way?—A. Well, so far as education is concerned, the people are advancing and learning to speak the English language, understand what property rights are, &c. I consider they are advancing in that way.

Q. How many speak the English language?—A. I do not know exactly.

Q. What proportion?—A. I suppose seven-eighths at least.

Q. How many can read?—A. All of them.

Q. All of them read either English or Cherokee?—A. Yes, sir.

Q. You have been here a long time and have had an opportunity to form an accurate opinion, have you not?—A. Yes, sir.

Q. And you have been around among the people a good deal?—A. Yes, sir.

Q. Well, then, do you think your nation would be benefited by a repeal of those parts of the act of Congress under which the several railroads claim title to the land in the Indian Territory?—A. I do.

Q. You do. You think they would be benefited?—A. I think that these acts of Congress making any provisional grants of land in this country are to our detriment. We have a patent to our lands. We own them in fee-simple, and any deprivation of our rights for absolute ownership of our lands would be injurious.

Q. Have you not more lands than you farm?—A. I admit that, but we paid for them and bought them from the Government of the United States, and have patents for them.

By Mr. GROVER :

Q. These grants to the railroads have been made subject to the final assent of the nations here?—A. Yes, sir.

Q. Do you think that final assent should never be given?—A. I do.

Q. So these railroads should never hold these lands?—A. That is my opinion about it.

Q. Now, do you think it would be better for these people to withdraw from any connection whatever with the railroads altogether, so that the nation would be entirely isolated from contact with the railroads; you think that would be beneficial to the nations?—A. Those railroads, in the first place, asked nothing but the right of way; we granted that.

Q. Then they hold the right of way by your grant?—A. Yes, sir.

Q. Then they hold lands conditionally that you are to consent to the grant?—A. Yes, sir.

Q. And you never have assented?—A. No, sir.

Q. And you think it would not be for the benefit of the Indians to assent?—A. I think so. Yes, sir.

Q. You think it would be beneficial to withdraw from any contact with the railroads?—A. I do not think it would be injurious materially.

Q. You think continued isolation from the railroads would be beneficial, or don't you think you would progress faster with more railroads with the rest of the country?—A. Well, sir, I do not know that the railroads have ever benefited us in any particular. I cannot see that they have. They may have had an influence to a certain extent in civilizing and advancing our people and in learning them to speak the English language by the intercourse they have had with the railroads and being brought into contact with those connected with the railroads, but farther than that I do not think they have been beneficial to the country.

Q. Do you not believe any progress which your people have made in the English language, becoming educated and learning the mode of civilized life; do you not believe that their contact with the railroads has been the means of progress in your nation; don't they aid you in that particular?—A. I do not think they do.

Q. It has been mentioned that the railroads have not raised the prices of cattle in this country.—A. No, sir; but, on the contrary, they have reduced the prices of everything.

Q. It has been mentioned that it has been produced by being brought into competition with the Texas cattle trade. Now, being that the railroad passes through your country by your own grant of the right of way, don't you think it is a benefit to the country, being brought into connection with these same markets, and that the fall of prices is owing more to your own act in not being able to compete with Texas than to the railroad?—A. No, sir.

Q. Your market would not be as good if the railroads were taken away, would it?—A. No, sir; not if entirely taken away from us.

Q. You make a good deal of use of this railroad, do you not?—A. I have not attempted to keep myself posted.

Q. Then the amount of the stock shipped is very inconsiderable?—A. Very inconsiderable; I do not know exactly how much.

Q. Can you give an approximate estimate of the number of cattle there are in this country?—A. I cannot exactly.

Q. You have a pretty large property in cattle?—A. Yes, sir.

Q. That is the main industry of the country?—A. Yes, sir.

Q. You are a practicing lawyer, are you?—A. Yes, sir.

Q. I asked a merchant a question as to the safety of property in possession of settlers; what is the right of a settler who holds land here under your system; what does he hold?—A. He holds possession of one-fourth of one mile around his improvements.

Q. That is a margin for grazing?—A. Yes, sir.

Q. He holds that in his actual possession?—A. Yes, sir.

Q. How is that possession forfeited? Is it ever forfeited?—A. It might be by discontinuing to hold it one year.

Q. If a man goes away for one year can anybody take it up?—A. Yes, sir.

Q. Suppose he leases it and does not stay upon it, is his right as good as the right of the man on it?—A. Sometimes it is and sometimes it is not.

Q. Is there any difficulty about that?—A. I have known instances where it is not.

Q. Do you recognize a man in possession has the right to lease?—A. Yes, sir.

Q. When a man dies in possession, then what becomes of his property?—A. It descends to his wife and family.

Q. By your local laws?—A. Yes, sir.

Q. Is there any difficulty about this?—A. Yes, sir; I have known instances. I know an instance in which I am engaged in now.

Q. Is it a safe right?—A. Yes, sir; where every one of the parties are Cherokees.

Q. Is there any considerable difference of opinion in this country about that being as good a right to land as they want? What do the people say?—A. Yes, sir; there is a considerable difference of opinion.

Q. What do the people say upon the one side and upon the other? Do some want to hold their titles in fee?—A. Yes, sir.

Q. How many of that class of people are there?—A. There are some who have expressed their opinions in that way.

Q. What proportion of the people would like a change of the law so as to hold their lands in fee?—A. I think half at least, if allowed to vote upon that subject.

Q. Do you think one-half would prefer that there should be a change in the system of government here, as well as the system of holding lands?—A. I think half at least want a change in regard to the lands.

Q. Would they want a change as to the government?—A. No, sir.

Q. What do they want as a change?—A. They want the lands allotted.

Q. They would like it done by the nation here?—A. Yes, sir.

Q. You claim the nation has the title in fee from the general government, and that they want the ground from the local government for themselves?—A. Yes, sir.

Q. So that if a change were made so as to oblige the different families to hold the land, in that way would they preserve the title and transmit it to their descendants?—A. I have no doubt as to the capacity of the people to take care of their own property.

Q. You think they have a good idea of the value of property?—A. Yes, sir.

Q. They appreciate the value of land and money?—A. Yes, sir.

Q. You have traveled through the country a good deal?—A. I have.

Q. Have you discussed this subject with the people?—A. Yes, sir.

Q. Privately and publicly?—A. Yes, sir.

Q. Is that idea connected in any way with a change of government?—A. I have never heard anything expressed upon that subject.

Q. They do not couple it with the idea that the United States Government is to allow the people to vote and elect a delegate to Congress. Do they talk about that thing any?—A. No, sir.

Q. They are satisfied with the present local government?—A. Yes, sir.

Q. As to the courts: what do they think about the affairs of the local courts; do they think the laws are sufficiently administered?—A. There is complaint.

Q. How does it arise? What is it about?—A. These complaints arise from the fact that parties do not get justice in the courts of this country.

Q. Are these complaints from those citizens whose right to citizenship is disputed?—A. No, sir; from *bona-fide* citizens.

Q. Natives here who are entitled to vote?—A. Yes, sir.

Q. Can you name some particular instance which you think justifies that view?—A. Yes, sir; I can name the Delawares.

Q. What about the Delawares?—A. The Delawares average about one thousand, who came here under treaty stipulations, and soon after they came to this country unfortunately a young man got into an altercation—a personal encounter—in which a Cherokee Indian was killed, and the Delaware was tried and acquitted. This led to various difficulties. In the quarrel the sheriff of our district was assassinated. The parties who assassinated him I believe were never tried for that offense. Afterwards, one of the parties who killed the sheriff also killed a very old minister of the gospel belonging to the Delaware tribe. That man was tried and acquitted. After that, the Cherokee people went to a Delaware church and killed a person appointed under the law for doing his duty, and one of the parties engaged in the killing was tried in the courts of the Coowiscoowe district. The testimony was plain he committed the act, but still he was acquitted. After this there was a series of killing on each side until it finally resulted in this trial of this young man, the Cherokee who had killed a Delaware in the performance of his duty under our laws.

By Mr. GROVER:

Q. Then it was a feud between the Delawares and Cherokees?—A. Yes, sir.

Q. And where the Cherokee was tried for killing the Delaware he was tried by a Delaware jury?—A. No, sir. He was tried by a Cherokee jury, and they acquitted him.

Q. Then they acquitted him?—A. Yes; right in the face of the testimony.

Q. That is assigned as the reason why they could not get justice from the Cherokees?—A. Yes, sir; they claim that the Delawares do not receive justice. These Cherokees waylaid the Delaware on the road.

Q. If a Delaware had been on trial for killing a Cherokee Indian, tried by a Delaware jury, would he have been likely to have been acquitted in this high state of feeling?—A. I don't know whether he would or not. It is my impression that he would not.

Q. You think perhaps there might have been more justice from a Delaware jury than from a Cherokee jury?—A. I think there would.

Q. But this result was from the high state of excitement?—A. Yes, sir.

By the CHAIRMAN:

Q. Did not you tell us that the Cherokees were killed by the Delawares?—A. Yes, sir; I said that a Delaware Indian killed a Cherokee.

Q. Was the Delaware Indian tried?—A. Yes, sir; tried and acquitted. I don't know that they were Cherokees. There may have been some Delawares.

Q. And he was acquitted?—A. Yes, sir.

Q. By a Cherokee jury?—A. Yes, sir.

Q. For killing a Cherokee?—A. Yes, sir; I don't know that they were Cherokees, but I presume that the majority were.

Q. You spoke of the insufficiency of the courts based upon these circumstances you suggested. What would you suggest as a form or remedy by law here for organization of the courts?—A. I don't think we could unless we had a court in our country and a jury of our own country.

Q. Suppose you had the United States system of district courts, the judges being appointed by the President of the United States with consent of the nations; do you think he would administer justice here any better?—A. It may be possible that a United States district court might work better than our own courts.

Q. I mean a court that would sit right here among the people?—A. Yes, sir; in particular cases of that kind.

Q. You must observe that you would have jurors selected here, and have them selected fairly. You believe it be an advantage in the administration of justice?—A. Yes, sir.

Q. Have you discussed that among the people any?—A. Yes, sir; that has been talked of here.

Q. Is there any considerable number who have expressed an opinion in favor of that change?—A. Yes, sir; I think there is.

Q. But you consider that it should be moved by the assent of the nation here, but no change should take place by Congress?—A. I do not know but it is embodied in our treaties.

Q. You regard that as controlling upon the United States Government?—A. Yes, sir.

Q. In your view of it and in your discussions did you think Congress might act without the assent of the nations in reference to the court here?—A. Yes, sir.

Q. State your views.—A. I am bound to give my view of it. I believe our people have already given their consent to the establishment of that court.

Q. Do you refer to the treaty?—A. I refer to the treaty as evidence of the fact.

Q. You think it would be a favorable action by Congress?—A. Yes, sir.

Q. Suppose the lands should be allotted in the way you suggested they might be, and the courts of the United States might be extended over this country, what objections have you to extending a civil form of government of the United States as administered in other Territories of the United States, like New Mexico?—A. I am bound to admit that in the treaty of 1866 our people have done everything in the world that constitute that without any action of Congress. They have agreed in their treaty to the establishment of this court. They have agreed that the national council shall request it, and it was to be done at the expense of the government. They agreed that a Territorial legislative body shall be established in this country, and the treaty defines exactly any other duties. They agreed to a delegate who shall go from this country to Congress. These four things are embodied in that treaty. They have agreed, consented, and signed and confirmed by every act of theirs.

Q. You mean they have assented to the treaty but not to the legislation; is that the point you make?—A. They have agreed that the legislative body shall meet, and it has met under the treaty provisions in this country, and the members have been paid by the United States Government. Mr. Ross was a member of that council. They have met frequently—four or five times.

Q. So you think that that meeting is equal a Territorial jurisdiction under the laws of the United States?—A. No, sir; I don't think that.

Q. Then you do not think the nation has really assented to the establishment of an ordinary Territorial government such as in New Mexico?—A. No, sir.

Q. When did this legislature meet?—A. In 1869, 1870, 1871, 1872, and 1873.

Q. It has been abandoned, has it not?—A. Yes, sir.

Q. How were these delegates elected?—A. By the people.

Q. So many members to each nation?—A. So many from each district, and one independent.

Q. How many had you from the Cherokee Nation?—A. I do not remember, but there were two from each district, one from three districts and two from another, and three, I believe, from another.

Q. How many districts have you in this nation?—A. Nine districts.

Q. Is that legislature composed of two houses, a Senate and House of Representatives?—A. I don't think it was.

Q. Composed only of one house?—A. Yes, sir; the members were all elected and went there on the same footing exactly.

Q. Did they pass laws for the Territory?—A. Yes, sir; they passed some laws, I believe, and made provisions for a census of the nation and a government here.

Q. Were the acts published?—A. I believe so; yes, sir.

By Mr. GROVER:

Q. Are they embodied in your code of laws?—A. No, sir.

By the CHAIRMAN:

Q. Are the laws binding upon you?—A. No, sir; I don't know that they have passed any laws that would be binding now.

Q. What kind of laws did they pass?—A. I was never present at the organization, I never saw any of its reports.

Q. Did this legislature have any executive head at all?—A. Yes, sir.

Q. What power had it?—A. He was the superintendent of Indian affairs.

Q. By whom was he appointed?—A. By the government.

Q. What was his name?—A. Enoch Hoge, I think, was his name.

By Mr. BOUDINOT:

Q. Appointed by the President of the United States?—A. Yes, sir; by the President of the United States.

Q. He was, by his office, presiding officer of that legislative body?—A. Yes; sir; and he was the superintendent of Indian affairs.

By the CHAIRMAN:

Q. What power had he as the superintendent of Indian affairs to pre-side over that legislature? Had he any veto?—A. He had the power to stop it, or confine it, or reserve it at any time.

(Colonel Adair submitted article 12, page 90, of revised treaty of Cherokee Nation, and article 8 of the Choctaw treaty of 1866.)

By the CHAIRMAN:

Q. Did not the construction of the railroad cheapen the price of products brought in here—dry goods, and everything else?—A. Yes, sir; I believe it did.

Q. I suppose you are getting everything cheaper?—A. Yes, sir.

Q. Very much cheaper since the railroad has been built?—A. Yes, sir.

Q. Have there been improvements on the line of the railroad, by way of opening up farms, &c.?—A. No, sir; not a great deal.

Q. Do you think the products of the Territory have been increased—cattle, grain, stock, &c.?—A. I do not think they have.

Q. Then there is not much increase, is there?—A. No, sir; I do not think there is much increase.

Q. Do you think there will be much as long as the lands are held in common?—A. I hardly think there will be.

Q. The mass of the people, as a general thing, are very poor, are they not?—A. Yes, sir; the masses are.

Q. Very poor?—A. Yes, sir.

Q. Under the present system of government do you think there is any prospect of their getting any better off?—A. No, sir; I do not think there is.

Q. Then, if some new system should be adopted regulating improvements, don't you think it would be a good thing?—A. I do.

By Mr. WILLIAM P. ROSS:

Q. I may have misunderstood his reply. Did I understand you to say that the treaty of 1866 gave the government a right to create a court in the Cherokee Nation that would take jurisdiction of cases arising between Indian citizens of the Cherokee Nation?—A. No, sir.

By the CHAIRMAN:

Q. You say it did not?—A. No, sir; I did not understand it that way.

Q. In referring to those cases in which the Delawares were interested, if I understood you, it was a case in which young Crocker was killed. He was killed by Charles Newcomb, a Delaware Indian?—A. Yes, sir.

Q. In the trial Newcomb was acquitted?—A. Yes, sir.

Q. That was before a Cherokee court, was it?—A. Yes, sir.

Q. Afterwards the sheriff of the district was killed by some of the same party?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. By Cherokee Indians?—A. No, sir; by a Crocker.

Q. Then afterwards Charles Journey-Cake was killed by a Crocker?—A. Yes, sir.

By the CHAIRMAN:

Q. Was the sheriff killed by Crocker?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. After the lapse of some time, Crocker was tried and acquitted?—A. Yes, sir; I believe so.

Q. Then after a year or two this difficulty to which you referred at the church in the western part of the district, where one of the Delawares was carried away and killed by a party consisting of some mixed men—Cherokees and white men—and some of the Delawares on the ground immediately pursued those who committed the deed and killed some of the parties engaged in it; that was the end of the difficulty, the parties were destroyed?—A. Yes, sir.

By Mr. ADAIR:

Q. Since Brown was tried there has not been anything of that sort, and as matters now stands the difficulty is settled?—A. Yes, sir.

Q. From your general observation don't the people seem to be more peaceable there generally?—A. Yes, sir; I think so.

Q. You are in favor of a Territorial government of the United States being established over this country?—A. Not such a one as is estab-

lished over Idaho, New Mexico, and the rest. I am not in favor of that kind of a government.

Q. You think the establishment of a court is a different thing from the establishment of a Territorial government. The establishment of a judicial district for judicial purposes would be very different from the passage of a Territorial bill, would it not?—A. Yes, sir; I believe it would. I was a delegate at Fort Smith, representing the southern part of the Cherokees, prior to the making of the treaty. Judge Cooley, Judge Parker, and General Harney represented the United States sitting there. We had come there for the purpose of making a treaty with the Cherokee people. They expected that the people would acquiesce in and enter into a treaty looking to the formation of a State in this country. They said that, and I believe this article that has been inserted there anticipated that thing, and I said that our people were neglecting their own interests here as long as they do not comply with that treaty. It has been twelve years since it was made. It provided for the allotment of the land with one condition, that our council requested it. We agreed to the establishment of the court, and we agreed to the legislative assembly in the Territory; we agreed to a delegate to Congress, and the Cherokee treaty named this Oklahoma, and that the superintendent was to be governor. Our people agreed to everything else.

By Mr. W. P. Ross:

Q. To what treaty do you refer as giving the consent of the Cherokee Indians to a delegate to Congress?—A. The treaty of 1835.

By Mr. GROVER:

Q. Who were the parties to the treaty of 1835?

The WITNESS. On the part of the Government of the United States?

Mr. GROVER. No; on the part of the Indians.

The WITNESS. It was made by numerous persons.

By Mr. GROVER:

Q. By whom was the treaty made on the part of the Indians; I mean the persons purporting to act for the Indians?

The WITNESS. Their names are John Riggs, Major Boyer's father, Elias Boudinot, Standwaite, John A. Bell, George W. Adair, James Starr, John Walker, and various others.

Q. How many tribes did they represent; any person?—A. They represented those who were in favor of removing from Georgia to this country.

Q. They were all Cherokees?—A. Yes, sir.

Q. What grounds have been alleged as a reason why they said they were intruders?—A. I do not know, sir.

Q. At that time John Ross was chief of the Cherokee Nation? He was not in this list?—A. Yes, sir. He was opposed to the removal.

Q. Opposed to the other representatives of the parties who desired to remove?—A. Yes, sir.

Q. They were individuals of the tribe who had no official relations to the tribe?—A. That is what was claimed, that they had no official relations with the tribe.

Q. There was no official council of the tribe to confirm their action?—A. Yes, sir.

Q. Was the removal made under the treaty?—A. Yes, sir.

Q. Those who removed confirmed the action of that council so far as their action was confirmed?—A. Yes, sir.

Q. So the Cherokees now do not deny the authority of that treaty, since they acted under it?—A. They confirmed it by the treaty of 1846.

Q. In the terms of the treaty of 1846 they confirmed that action?—A. They did; yes, sir.

Q. Were you a part of the legislature when the delegates sent to Washington instructed by the resolution of the Cherokee legislature to petition for the organization of a United States court in this country; were you a member of the Senate at that time?—A. I believe I was.

Q. Do you know whether the Cherokee council has officially instructed them to advocate the institution of this court?—A. I do not know it of my own knowledge. I have heard it was the case.

Q. Have you not seen it in the papers?—A. I have it there; I think that is where I got it.

Q. Will you tell the committee whether there is any intimidation used in regard to an expression of opinion as to the division of the land in severalty? Do you think the people generally feel at liberty to express their honest convictions as to the allotment of the lands?—A. I do not think there is a free expression of opinion in regard to that subject.

Q. Then you think, from your own knowledge of the people and acquaintance with them, that if any one should express himself as in favor of the allotment of the land he would be injured by expressing himself as being in favor of dividing them up and sectionizing them, or are they afraid of the consequences?—A. Our people are a very sensitive people. They hate anything like a sarcastic remark made in reference to them. I think it is more on that account than any danger. I am called a sore-head, I am called a traitor, simply because I prefer to hold my land in severalty. I am considered a sectionizer, because I simply want the land allotted. I do not think it is anything to do with it. This is a question of allotment of the lands, and territorializing the government has been connected with it, and I do not think it has anything to do with it. They are afraid it will be carried out of their hands.

Q. Have not these parties to whom you have referred endeavored to impress that idea, that the dividing of the lands must deprive them of their lands and drive them away from their homes?—A. Yes, sir; they think they must necessarily do it.

By the CHAIRMAN:

Q. Suppose the people understand that it was not to be done in that way; that the land could not be sold for taxes or debt?—A. I do not know but a large majority would be in favor of it.

Q. Who live in the towns?—A. Yes, sir.

Q. Do you know of any persons who live in the country who entertain the same opinions that you do?—A. I know various persons throughout the country.

Q. Do they express themselves as being in favor of it, or are they afraid to express themselves?—A. They would be afraid to express themselves in the presence of Colonel Adair or Mr. Ross.

By Mr. Ross:

Q. We were both candidates for the office of principal chief, and we both came out with one ahead of us?—A. Yes, sir.

Q. Were you ever interfered with for expressing your views at that time?—A. No, sir.

Q. Did you not discuss the questions freely?—A. Yes, sir; I went through the country and spoke pretty general. I was advised at one place not to do it; that was the only place I was told.

By the CHAIRMAN:

Q. Was this question an issue in that campaign?—A. No, sir.

Q. You were not considered a traitor then, were you?—A. I was going to say to Mr. Ross that his was a real nomination, but mine was a nomination made in order that I might have an opportunity to say what I wanted to say at that time.

Q. Do you think it would be safe for you to go and stump the country on that subject; do you think it would be safe to-day to do it—to advocate the allotment of the lands, the establishment of the United States courts, the Delegate in Congress, &c.; I mean all over the country?—

A. I would not like to go over every place among the people, and many of the people know me, still I have no hesitation in expressing my opinion.

Q. But there are a good many people who have the same views that you have?—A. Yes, sir.

Q. But back in the country they do not understand it?—A. Yes, sir; all back here, the district in the south, is quite liberal on that subject. I have been invited to go over the river in Saline district, and address the people there about it.

Q. Why did you have any delicacy; were you afraid?—A. Well, I might have been insulted, if nothing else was done. I do not know that anything more than that would have been done. When I was called upon by the transfer commission here in regard to expressing my views as to what I thought about it I was insulted, but I thought the man was intoxicated; I did not pay much attention to it, but the committee was told I did not represent more than three or four men.

2 O'CLOCK P. M.

At this point the committee took a recess for one hour; committee met after recess at 3 o'clock p. m.

NOVEMBER 15, 1878.

JOHN MCINTOSH, having been duly sworn, was examined.

W. V. Carey sworn by the chairman as interpreter.

By the CHAIRMAN:

Q. What is your name?—A. John McIntosh.

Q. To what nation do you belong?—A. Cherokee Nation.

Q. Were you born here?—A. Yes, sir.

Q. What is your occupation?—A. Farmer.

Q. Do you believe your nation would be benefited by a repeal of those parts of the acts of Congress in which they several claim title to land in the Indian Territory?—A. Yes, sir.

Q. Would you or any member of your nation be benefited by a division of the land in severalty among the members of the tribe?—A. No, sir.

Q. What are your views in regard to the allotment of the lands in severalty and sectionizing the country?—A. I have noticed among the full-blood portion of the Cherokees when I have been talking with them, and I have not seen any who were in favor of dividing the lands in severalty or sectionizing them.

Q. Suppose eighty acres were allotted to each member of the tribe and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the land sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it

not improve the condition of the Indians and be for the benefit of life and property?—A. I do not think it would.

Q. What proportion of your friends and neighbors are desirous of such an allotment of land?—A. None that I know of.

Q. If each one were allowed to retain his tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government, making each and every member of the tribe citizens of the United States?—A. I have not seen any full-blood Indians who are in favor of a Territorial government.

By Mr. ADAIR:

Q. Are you a Cherokee?—A. Yes, sir.

Q. Were you born in this nation?—A. Yes, sir.

Q. How many cattle have you?—A. I have about twenty-seven head of cattle.

Q. How many have the Cherokees who are heads of families and who live upon farms? Do some have as many as one hundred head of cattle?—A. Yes, sir; some have between three and four hundred head.

Q. How many have no cattle at all among the Cherokees?—A. I am not able to state that.

Q. Are one-quarter of the Cherokees without any cattle?—A. I have never taken any notice as to that.

Q. How do those who have no cattle get a living?—A. They make their living by farming and raising hogs.

By the CHAIRMAN:

Q. Are there a good many who do not farm; if so, how do they live?—A. Those who have no farms and are without farms, and have no hogs and cattle, hire themselves out.

By Mr. GROVER:

Q. That is working for others?—A. Yes, sir.

Q. How many cultivate corn?—A. I cannot state the number.

Q. What proportion of the Cherokees would be engaged in cultivating corn?—A. I cannot state the number.

By the CHAIRMAN:

Q. Have you ever heard the question of dividing the land in severalty and a Territorial government discussed in this country?—A. No, sir; I have never heard of it at all.

Q. You have never heard of it at all?—A. I have heard no one advocate such a form of government. There are some in the nation who advocate such a form of government, but they are white citizens who have been adopted in the nation.

Q. Do you think any persons have been prevented by fear from expressing their opinions on this subject?—A. No, sir.

Q. Has there been any free discussion of this question?—A. The people do not like to talk about it at all.

Q. How far do you live from here?—A. About twenty-five miles.

JAMES TEACHER, having been duly sworn, was examined by W. V. Carey, interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. James Teacher.

Q. Where were you born?—A. Right on the line in Tennessee.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. Full-blood Cherokee?—A. Yes, sir; a full-blood Cherokee.

Q. Would you or any member of your nation be benefited by a division of the lands in severalty among the members of the tribe?—A. No, sir.

Q. Should all the lands owned by your tribe be allotted among the members of the tribe, after setting apart a sufficient portion for a school-fund, or should a portion of each tract be reserved and made inalienable for five or ten years, would it not benefit your people?—A. I do not think it would.

Q. Suppose eighty acres were allotted to each member of the tribe, and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the land of the nation sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians, and be for the benefit of life and property?—A. I do not know that it would.

Q. What proportion of your friends and neighbors are desirous of such an allotment of land?—A. None that I ever heard of.

Q. If each nation was allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government making each and every member of the tribe a citizen of the United States?—A. I have never heard any discussion of that question.

Q. Do you think any persons have been prevented by fear from expressing their views on this subject?—A. I have never heard of any.

Q. Has there been any discussion at all on the subject?—A. No, sir; the people do not talk about it.

Q. Do you understand what the question means—the question of dividing the lands in severalty and sectionizing them, and establishing the United States courts and making this Territory a part of the United States like New Mexico and the other Territories?—A. I understand it because I have witnessed it back in the State of Tennessee, and I do not like that kind of a government.

By Mr. GROVER:

Q. What is your occupation?—A. I am a preacher.

Q. Of what denomination?—A. Methodist.

Q. You have been among your people a great deal everywhere?—A. Yes, sir; ever since I have been a little boy I have been among them.

Q. Are they all satisfied with their present tribal relations and form of government?—A. Yes, sir; they are satisfied with their present condition. There is no one who would want any change in the government.

Q. Do they wish to have schools maintained among them?—A. They wish to maintain their schools, and wish to be further advanced in civilization.

Q. What do you think about their being able to hold the lands in severalty, each man having his own land in fee?—A. I do not think it would be right.

Q. Why?—A. There are a great many full-bloods in the nation, and they are all ignorant; they would not know how to manage their lands, and some land-shark and sharper would cheat them out of it.

Q. Then they are afraid that it would be gotten away from them?—A. Yes, sir; some land-grabber would get it.

Q. Why?—A. Because they are not far enough advanced in civilization.

GOULD-EATER, having been duly sworn by the chairman, was examined.

W. V. Carey, interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Gould-Eater.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. Were you born in the Cherokee Nation?—A. No, sir.

Q. Where were you born?—A. I was born in Georgia.

Q. How long have you lived in this Territory?—A. I came here in the year 1839.

Q. What is your occupation?—A. I am a blacksmith, farmer, and preacher.

Q. Do you understand the question of dividing the lands in severalty, and sectionizing them up?—A. Yes, sir.

Q. Should all the land owned by your tribe be allotted among the members of your tribe, after setting apart a sufficient portion for a school-fund, or should a portion be reserved and made inalienable for five or ten years, would it not benefit your people?—A. I do not think so.

Q. Suppose eighty acres were allotted to each member of the tribe and secured so that it could not be alienated or even sold for taxes or debts, and the remainder of the land of the nation sold, and the proceeds kept by the United States, and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. I do not think it would.

Q. What proportion of your friends and neighbors are desirous of such allotment of lands?—A. None that I know of.

Q. Has there been any free discussion among the people of your neighborhood upon this question?—Q. There are some who advocate it, but they are not Cherokees.

Q. Who are they?—A. They are adopted Cherokees. They are white people.

Q. Do you think any persons have been prevented by fear from expressing their opinions upon this subject?—A. No, sir.

Q. Do they allow anybody to discuss that question among the Cherokees in your neighborhood?—A. Yes, sir; they are allowed to advocate that question if they want to.

Q. What is your opinion about this question; are you opposed to it?—A. I am opposed to it.

By Mr. GROVER:

Q. When a man advocates the division of the land in severalty, and the establishment of a Territorial form of government, what is the result of it?—A. I cannot see why they advocate a Territorial form of government, because I cannot see the benefit of it myself.

Q. When your neighbor says he wants to divide it up what do you say to him?—A. I always tell them it is not right, that it will not benefit the people at all.

Q. Do you fear they will sell it out, and have no land after a while?—A. Yes, sir; that is a part of my reason.

Q. Do you fear that white men will come in and get a portion of the land?—A. Yes, sir.

Q. Well, you believe the Cherokees will be happier to live alone by themselves?—A. We are satisfied with our present condition.

Q. To live as you are?—A. Yes, sir.

By the CHAIRMAN:

Q. What do you think about the railroads; do you believe your nation would be benefited by the repeal of those parts of the acts of Congress under which the several railroads claim title to the land in the Indian Territory?—A. I have not given these railroad claims much thought; I cannot say much about them.

Q. (By Mr. Adair.) Did you not in the late election support Colonel Liep and Mr. Bell?—A. Yes, sir.

Q. And did you not do so under the impression that they were opposed to a division of the land in severalty, and the establishment of a Territorial government in this Territory?—A. Yes, sir; I supported them, and believed they would do right by their people in regard to favoring a Territorial form of government. I do not know anything about it; it was not an issue.

Q. It was not an issue?—A. No, sir.

ROBERT IRONSIDES, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Robert Ironsides.

Q. Are you an Indian?—A. Yes, sir.

Q. Where were you born?—A. In Canada.

Q. Were you adopted as a citizen in this nation?—A. Yes, sir.

Q. Married a Cherokee woman?—A. No, sir; I am a Shawnee Indian by birth.

Q. Do you belong to the Shawnee tribe?—A. I belong to the Shawnee tribe, and they were adopted in here as a tribe in 1866.

Q. How long have you been in this Territory?—A. About eight years; I came here in the fall of 1866.

Q. Where do you live in this Territory?—A. In the town of Vinita here.

Q. What is your occupation?—A. I am a farmer.

Q. How much land do you till?—A. I have about thirty acres under cultivation.

Q. What is the feeling here so far as you know in this neighborhood or in this part of the Territory in regard to the question of opening up this Territory to white settlement and establishing a civil government over it, dividing the lands in severalty among the Indians, so that it could not be alienated or sold for taxes or debts, and the balance of the lands of the nation and the proceeds kept by the United States and the interest on the same annually paid to the tribe?—A. I never heard any expression about selling the balance, but a great many wish the lands allotted.

Q. They would like to have a different form of government, would they?—A. Not exactly that—not exactly a different form of government. They would like to have the land set apart to them so that they could have it in their own possession.

Q. Do you think any persons have been prevented by fear from expressing their opinions on this subject?—A. Well, there may be.

Q. Has there been any free discussion of the point?—A. Yes, sir. At least, I do, but there are a great many who do not like to discuss it.

Q. Well, suppose a secret ballot could be taken, what proportion of the nation would favor such an allotment of the lands?—A. If the people understood the question, the vote would be in favor of the allotment; that is my honest opinion.

Q. Are the people led to believe by anybody that the division of the lands in severalty means to take them away from them?—A. Yes, sir; just that exactly; they do not understand it at all.

Q. Are not the people able to take care of their own lands and transact their own business?—A. Yes, sir; so far as I know, they are. I think it would be a very hard matter to beat them out of their lands.

Q. You would find men in the States who are not able to take care of their lands, would you not?—A. Certainly we do. It is so in all countries.

Q. You have a good many trading people?—A. Yes, sir; trading stock, &c. I make my living in that way. I find that it is hardest work to buy from a full-blood. The ones they are afraid of being cheated.

Q. They want every cent they can get for produce, &c.?—A. Yes, sir.

Q. Do they turn around and give it to somebody when they get it?—A. No, indeed; they do not. I lived in Kansas. I lived under a Territorial government. I think it made our tribe to be with the whites. I have no doubt about it. There are people here who could not be in a more destitute condition than they are. I can take you over the river and show you people who have not shoes to their feet. There are the ones who do not want the lands allotted. These are the ones who do not want it because they are—

Q. That is because they do not cultivate the land?—A. Yes, sir.

Q. There is no reason for any one being poor, is there?—A. There are some of the best workmen in this nation who are not keeping up to-day. There are those who are running places; they are good workers, but they are not holding their own.

By Mr. GROVER:

Q. How many cattle do you think there are in this nation?—A. That is something I cannot tell you anything about. I have seen some estimate; but then there is not such a terrible amount of cattle here. I do not know all; but there are a few who have cattle enough that would support their families off of it.

Q. Then there is some discussion about dividing the lands without changing the government?—A. Yes, sir. There are about two-thirds in favor of dividing the lands, and put in shape so that they could hold them themselves. When that question is up they say they want the lands divided, but do not want a change of government. Then there are others who want the laws of the United States extended over them.

Q. Large numbers want their tribal relations maintained?—A. Yes, sir; a majority want to keep up their tribal relations. But they want the lands allotted.

Q. How does these railroads benefit the country here? Do you believe your nation would be benefited by a repeal of those parts of the acts of Congress in which the railroads claim title to the lands in the Indian Nation?—A. Yes, sir; the railroads were the ruination of all.

By the CHAIRMAN:

Q. Why?—A. Before the railroad came through here, there were thousands of head of cattle in this town, and those who worked them went through this country, and every one was getting a good price for corn. Corn was a dollar a bushel, and we had a good market and was selling all. Now it is not worth anything.

Q. Perhaps it is because you raise more corn than you used to?—A. No, sir; I do not think so. There does not seem to be any more farming now than usual. Traffic goes through on the cars, and they do not leave

a dollar in the country. We are isolated from everything except what stock we have ourselves.

Q. Would you not be more isolated if you did not have the railroad?—A. Well, it might be. These people used to travel through here in wagons, and we used to make a good deal of money. Now there is no travel.

By Mr. GROVER:

Q. You think the owning of land in severalty would tend to open farms more than now?—A. Yes, sir; because I think I can lease lands if we could give proper protection; but you cannot put a man upon a place here and give him the right kind of protection.

Q. That is the reason you think the country is going back in agricultural pursuits?—A. Yes, sir.

By the CHAIRMAN:

Q. The allotting of the lands would not give them protection?—A. If I had the land in my own possession, could I not lease it to white men?

Q. But the authorities would not allow them to come in.—A. That is what is the matter; they won't allow them to come in and lease.

Q. How are you to alter that?—A. I would change the government. I am not afraid of a Territorial government.

Q. You really think a Territorial government would be better for the people?—A. I do.

Q. Better for all concerned?—A. Yes, sir. If they understood the matter and the laws of the United States extended over them, I think it would be better. I am not afraid of a United States court; that is what I want.

Q. Do the delegates attempt to exercise any influence over the people in expressing their views upon this subject?—A. There were a great many complaints made to me this morning because they were in this committee room. These complaints were not made to me because I am a prominent man, but they did not like to come before the committee while the delegates were in it. They feel timid about it. There is a natural dread that they might be picked out of the way.

Q. What do you mean by "being picked out of the way"?—A. Being killed.

Q. Is there any protection for life and property?—A. Of course; but nobody is hanged for killing.

Q. Have you laws to protect you?—A. Of course we have laws in the nation similar to the laws in the States, but when a man is killed, it is not once in fifty times they will punish the murderer. I express my opinion, but I feel I may gotten away with.

Q. What is the expression of the people here in reference to this subject of changing the government, sectionizing the lands, establishing the United States courts, &c.?—A. Those with whom I am acquainted, want a change; we want the country allotted. Perhaps I am saying more than the rest: I am willing to make it a State; but then there are others who are not so.

Q. Are there many murders committed in the Territory?—A. Well, yes, sir; a good many.

Q. But there is no one hanged for it?—A. I have been here eight years. I think there has been one hanged for murder, but I do not know how many murders have been committed. They will hang a man quicker for stealing a horse than for murder. They will snatch a man quicker than lightning for stealing a horse, but will not do much with

him for killing a man. I am emphatically in favor of a change. We need it, and I think it will be the best thing that could happen to the country. We need capital. There is no use setting a man out in the woods, and tell him to go to work. He cannot do it. The people cannot make farms themselves, when all are farmers and nothing else. We cannot get stock. They have no capital. They cannot make their living out of the ground. You cannot farm here like you can in the States.

Q. Why?—A. You cannot work so, because of the field-flies.

By Mr. GROVER:

Q. Do the flies trouble the cattle?—A. Yes, sir; that is the trouble. The cattle stand all day long. You cannot work your horses. Men work nights to get their corn in. If you work in the daytime, you kill your horses.

Q. Is that the way in Kansas?—A. It used to be, but when settled up they left. When the country was settled up we had a good, prosperous country. If a change is not made, I shall not stay in the Territory. I know less than twenty years ago this country comprised 24,000,000 acres of land; now we have not got 4,000,000 acres of land, and who has been benefited by it? No man will say that we got any benefit except what we got through the schools, and when we send our children to the school—the only one there in common—never supply the books.

Q. What becomes of the money?—A. The leading men have the handling of that, but they will tell you none of the people are in favor of a change but a few soreheads.

R. D. KNIGHT, having been duly sworn by the chairman, was examined:

By the CHAIRMAN:

Question. What is your name?—Answer. R. D. Knight.

Q. Where do you live?—A. In this Territory.

Q. How long have you lived here?—A. For about thirty-three years.

Q. Where were you born?—A. Right here in this country; fourteen miles below here.

Q. Are you a native-born member of the tribe here?—A. I am a native-born member of the Cherokee Nation.

Q. What is your opinion about the allotment of the lands among the heads of families here—men, women, and children?

The WITNESS. You mean to divide the lands between the heads of families, and not all parties concerned—all of the people?

The CHAIRMAN. I mean divide them among those who may be members of the tribe; that is, divide the land up among those of sufficient age to hold lands.

The WITNESS. I am in favor of dividing the lands, so many acres to each and every one of a family—father, mother, and children, &c.—of the blood, because some families have a good many more children than others. Where some have but one, and all have some interest in the land that he holds, and I think it should be so that all should share equally.

Q. How much land to each one do you think would be about right?—A. Well, whatever there is of it.

Q. Divide it up, take a census, and apportion it among them?—A. Yes, sir.

Q. Do you think there would be enough to give each 160 acres?—A. No, sir.

Q. What portion of the country is not fit for farming?—A. About one-third or a little more.

Q. That would be called waste land?—A. Yes, sir.

Q. Are they tillable lands or are they mountains?—A. Mineral lands.

Q. You think the people are intelligent enough to cultivate their own land if they had it separated out to them?—A. I think they all are. I know they have had this thing misrepresented to them all the time. The great trouble with the people here is that the politicians of the country—these Rosses, Adairs, and Bushyheads—have a great hold upon the people, and make them believe when you sectionize the country it makes a Territory of it, and gives the land back to the United States; and they have to pay taxes, &c. I do not see why it should be so.

Q. In your view of it you favor a division of the land, so that each person could get a good title. You think a great many might be found in the community who would be happier to hold their land and make use of it?—A. Yes, sir. I think they have sense enough to know that it is the last step they can make. I think they will hold to the land.

Q. As to a change of government, how many are in favor of that; that is, if each nation was allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government, or are the people satisfied with what they have?—A. There is a portion who are in favor of it, and a great portion who are not. They may say I have got all the privileges in the world here, and it is my fault because I do not make money out of the farms. When the war closed I took up one hundred cattle. I sold the cattle to improve my land. The next year they passed a law that I should not hire a white man out of the States. Now my farm lies idle. It is of no account to me. The farm then I offered for \$3,000 I am offering to-day for \$150, and cannot sell it for that price.

Y. You have sold the cattle, and you cannot make use of the proceeds of the farm?—A. Yes, sir; because I would work it, and where I found a man who is working, he is working for himself.

Q. Suppose you had title in your own right, you could then induce laborers to work your farm?—A. Yes, sir, I would; and I want a law that will let me reach a man if he does not comply with his contract. That is what we need in this country, and so that he can have a law that can reach me.

Q. You want the law as it is in the States, and have a title to the land as it is in the States?—A. Yes, sir.

Q. You think it would be better for the country?—A. I cannot speak of the ones who are full-bloods who would be cheated out of their lands. If I have got to be a guardian, I want to know it. I do not want some other man to be my guardian. If I have anything I want it.

Q. In other words, you think the portion who do not want a change have no right to stand in the way of those who do want it?—A. Yes, sir.

Q. Have the full-bloods good sense enough to hold their property?—A. If they take a notion to sell you a cow, and need the money, you can get it at your own price, but if they do not want the money you cannot get it; they would not take two prices for it. That is my experience with them, and I have had a good deal of experience among them.

Q. Is there anything else that you want to state to the committee of your own opinion?—A. I will say this much, there are a good many people here who believe contrary to me. They profess that if this was left to a vote of the people they would be against it, but I claim that that is not the way to get at justice; that it is simply Ross and Adair

multiplying their vote. It is not an expression of the people. My farm is twelve miles from here, and there are men there, well-educated full-bloods; I can talk to them, and I believe I can convert them to my belief in an hour's time; then a man, opposed to me, will talk to one of these same men and turn him over the other way; that is the way they do. They have no mind of their own, because they do not understand this. It has been put into their heads that whenever you sectionize this land, it means the taking away of the land from them. Now, if I understand it, sectionizing means to let the land out in squares. You have to do that to divide it up. They do not seem to know it. They do not seem to know the meaning of the word sectionizing. They seem to think it is simply territorializing the government—taxing us and taking the land away from us. I do not see why it should be; if we allotted our lands it will stop draining our people by selling land to maintain delegates, and there are people who take the money out, and it must be that we can support ourselves with less. If we have got to become citizens of the United States, had we not better go in with one hundred and sixty acres than to put it off ten years and to go in with nothing. I think we had better take what we can get and not spend all the money we have got. I commenced advocating this thing immediately after the war was over, when I was eighteen years old. If it had been done then we would have had one hundred and sixty acres. We could have put white men on the farms and hold leases. Under our laws now we cannot hire a man for more than twelve months at a time; at the end of twelve months he has no guarantee that he will be permitted to remain. It is all in my favor, but I cannot hire a white man. It is the scum of creation who come here. No good farmer will come and put his money into a place when he knows that he cannot get anything out of it. I think there should be a law to protect the white man as well as myself. We have no law to reach it unless you can arraign me for robbery or something of that kind. There is a man in this town who refused his own note and said to the creditor, "get the money if you can." You talk about our country being a grazing country. I admit it, but I admit there is not half a head of a cow to each man in the country. I have not got but very few cattle. I have one hundred and sixty acres, and that will support me very well. They say they do not want it sectionalized, because if you do I will want them to pay me for grazing on my land. They claim it is not fit for raising corn, &c., that it is not worth anything for that. They say give me the benefit of that grass; it is mine and the man who grazes upon it ought to pay for it. They say they are protecting the Indians. They say we would have no right here. I claim that I have Indian blood in my veins, and I claim if I had any white blood in me I would not be here. They claim to protect these and they watch a man who has a cow, and they will watch to put him in trouble and then beat him out of everything. The men who grazed their stock land pay for grazing their stock. I do not claim to be a very honest man, but I do want to give a man a little justice; if I have got any land I would like to have it; I would like to put a man on it, and if that is so he should have a law to protect him, and if I violated my contract he shall have a law to protect him. We have no law that reaches a white man. He can do anything he pleases to me, except cut my throat, and we cannot do anything to him; I can swindle him and nothing can be done to me.

Q. Cannot suit be brought against him?—A. No, sir; we want a United States court. We have a marshal and a court at Fort Smith where they won't allow us on a jury. They ask how much you are

worth, and say how much you are worth, and they keep a man until they drain him; but they won't allow a man on the jury from the nation.

Q. Would you like a system of United States district courts established, the same as they have in New Mexico and the other Territories of the United States?—A. Yes, sir; we need something of that sort—something that is justice. That is all we want. We want the white men to have as much justice as an Indian. That is what we want, and we want an Indian to have as much justice as a white man. There are those who do not want it. I want it. It is the very men who are opposed to the allotment of the lands. If a man says they are selling lands every year they say we are not; but they say we have sold no lands. Now it does not look reasonable to me that from 22,000,000 acres it should be reduced down to 4,000,000 acres.

Q. You mean the extent of the Territory is not so great?—A. No, sir; not by 18,000,000 acres.

Q. What became of that land?—A. The Shawnees, the Delawares, and the other tribes of friendly Indians have been brought in here. Eight million acres have been sold. I believe sold to Jay, president of the Missouri and Fort Smith Railroad.

Q. Where is that located?—A. North of Baxter Springs.

Q. Is it in the southern corner of Kansas?—A. Yes, sir.

Q. Is it within the boundaries of the Indian Territory?—A. No, sir; it is in Kansas.

Q. It is, then, within the boundaries of Kansas?—A. Yes, sir; they have sold the Shawnees lands; that is, sold them a right in here, also the Delawares, and the same with the Osages; but I suppose they have a mortgage on it. It has gone from us; we will never get it back. Still they say that they have never sold any land. They say we are doing well. I say so too, but that is the leaders are doing well, but the general people are damaged by it. They will talk to the people and say that whenever the allotment does come to you, you are bound to become a State; you are bound to pay taxes; the Government of the United States will force you to pay taxes. They do not say that a man who has nothing has no taxes to pay. They tell a man he must pay this tax to the government. As it is now here there may be a widow with ten children, and there may be a man without a child in the world, with \$50,000, and whenever there is an expense to be paid there is a dollar out of this man and a dollar from the widow and each of her ten children. Is there any justice in that? They never tell the poor people that; they always keep that back. When they go electioneering they do not tell an intelligent man that the majority ought to rule. I say it is not the majority, but it is the one the most votes—simply multiplied. They do not know what they want. They will take for granted what the leaders say to them, and vote for them. When I come around I will convert him to my belief, and he will say give me my land, money, &c., and I will take care of it myself. I have talked it to men in this country, and talked them into it in two hours, and they thought as I do.

Q. Is there anything else you want to express your opinion upon?—A. I do not think of anything in particular.

ENIAS RIDGE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Enias Ridge.

Q. How old are you?—A. Eighteen years old.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. What do you know about this question of allotting the lands and sectionizing them and dividing them up so that each person shall hold his land in fee-simple?—A. I would like to have the lands allotted so that I can know what I have got.

Q. You are in favor of allotting the lands?—A. Yes, sir.

Q. Do you want any change in the form of government; to have a Territorial government established; extend the laws of the United States over this Territory?—A. I am satisfied with the government.

Q. Are you going to school?—A. Not now.

Q. Where did you go?—A. I went to the male seminary at Tahlequah.

Q. What did you study there? Did you study the languages, the classics, Latin, &c.?—A. No, sir; I did not study the classics.

Q. Arithmetic, geometry, geography, &c.?—A. Yes, sir.

Q. Are you in any of the higher branches?—A. Well, I just studied for an English education. I didn't study any of the languages.

By Mr. GROVER:

Q. You read and write the English language pretty well?—A. Yes, sir.

Q. What are you doing now?—A. Working on a farm.

Q. Do you own it?—A. No, sir. I am living with my aunt. She has several farms, and I work one of them for her.

JOSHUA WITMEYER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Joshua Witmeyer.

Q. Do you want to make any statement to the committee?—A. Yes, sir. I am sent here by my people to make a statement for the people living on the Verdigris River.

Q. How many of your people live there?—A. There are forty families living there.

Q. What do you want to say to the committee?—A. We are deprived of our rights. My people and myself are citizens. We have no rights, no more than those who are not citizens.

Q. Where were you born?—A. In the nation—here.

Q. Are you an Indian?—A. No, sir.

Q. Were you a slave?—A. Yes, sir.

Q. Were you here during the war?—A. No, sir.

Q. Where were you during the war?—A. I was in the South during the war.

Q. What were you doing there?—A. The man who owned me took me there.

Q. Where did he take you?—A. To Bonham, Tex.

Q. Were you in the Southern Army?—A. No, sir; I was not in any army.

Q. What rights do they deprive you of; do they allow you to vote?—A. Yes, sir.

Q. Were you on the doubtful list?—A. No, sir.

Q. Do you know of anybody who was?—A. Yes, sir; my sister, my mother, and father.

Q. Why did they put them on the doubtful list?—A. I do not know.

Q. Did they say they were here after six months had expired, as pre-

scribed by the treaty?—A. That is what they claim, but they were here when I was.

Q. Did they ever go before the citizenship court up at Tahlequah to get proof of their rights?—A. Yes, sir; but they didn't have witnesses there at the time and were told to get witnesses, and when they went back they had tried the case without witnesses and decided against us, and the court had adjourned and gone home.

Q. Do they give you schools in your district?—A. There are no free schools in that district.

By Mr. ADAIR:

Q. Tell the committee when they went before the court?—A. I do not know exactly the year; it has been a good while ago.

Q. How long ago?—A. It has been 8 years since. We had the old supreme court. I know of some who had the court. Roberts Daniels tried me and gave me my rights.

Q. Have you ever been before the present court?—A. No, sir.

By the CHAIRMAN:

Q. Why did not your sister go up there?—A. They have an understanding not to go to that court. They received a letter from Washington not to go. (For this letter refer to Landrum's testimony.)

Q. Why did you not go before you got that letter?—A. Well, some of the folks had been before that court, but they did not give them any trial.

Q. Why not?—A. They told them they were not ready for them.

Q. Did they go again?—A. Some have been three times.

Q. Did they get a trial?—A. Yes, sir; but they have not decided the case.

Q. Do you know of any colored men in the nation who were in the Union Army and who were deprived of their right to vote on that account?—A. I do not know of any who was in the Army, because I was carried South.

Q. Do you know of any who told you they were in the Union Army and had been deprived of their rights?—A. I have two cousins; they were here a while ago.

Q. Don't they allow them to vote?—A. Yes, sir; they did at the first election.

Q. But at the last election?—A. At the last they didn't allow them to vote.

Q. Were they on the doubtful list?—A. Yes, sir.

Q. What for?—A. They claimed that they didn't get back in time.

Q. Where are they now?—A. They may be out there now, and they may have gone away to-day.

Q. They were both in the Union Army?—A. Yes, sir.

Q. What are their names?—A. Nelson and Mose Wittmeyer.

By Mr. ADAIR:

Q. Did not these men go down and return?—A. Yes, sir.

Q. Did not they come back to get witnesses?—A. Yes, sir.

Q. Was it not the understanding among the men that the court would sit at two places; at Gibson and next at Tahlequah?—A. Yes, sir.

Q. Did you understand that the court would sit for twelve months up at the council?—A. No, sir; I did not understand that it was to sit that long. There were men throughout the country summoning people to Tahlequah, and they told them that if they did not come in a certain time they would not be tried.

By Mr. WILLIAM P. ROSS:

Q. Are you a farmer?—A. Yes, sir.

Q. How much land have you under cultivation?—A. Fifteen acres.

Q. There is more land you can inclose and cultivate when you get able to do so?—A. Yes, sir.

Q. There is no interference with you in that respect?—A. No, sir.

By the CHAIRMAN:

Q. Do they allow you to sit on the jury?—A. Not since I have been in this district.

Q. Did you ever sit on the jury?—A. Yes, sir; once at Tahlequah.

Q. Do you complain of that?—A. I am not complaining myself; I am complaining for the people that sent me. They have no rights in Coowis-coowee district.

Q. Why did not they vote at the last election?—A. Because it was claimed that they were doubtful citizens.

By Mr. ADAIR:

Q. Did any of them vote?—A. Not that I know of.

Q. Don't you vote?—A. Yes, sir.

Q. Don't your neighbors vote?—A. They went to vote, but they were rejected.

Q. Why did they allow you to vote?—A. Because I am recognized as a citizen.

Q. How many colored people are there in that district; are there 100?—A. I expect there are about 400 or 500 colored people there. There may be more.

Q. Then there must be 100 colored voters there?—A. Yes, sir; I guess there are more than that.

Q. And then they let none vote but you?—A. There are some citizens they allow to vote.

Q. Were they all slaves before the war?—A. Yes, sir.

Q. Do you have schools?—A. We have no schools.

Q. Have you applied for schools?—A. Yes, sir, we have applied for schools.

Q. Is there an Indian school there?—A. Yes, sir, there is an Indian school there in that district.

Q. They won't allow you to send your children to school there?—A. There never has been a school there.

Q. How long have you lived there?—A. Three years, but I visited the place before I moved there.

By WILLIAM P. ROSS:

Q. Did you live in Tahlequah before you moved here?—A. Yes, sir.

Q. Did you send your children to school there?—A. Yes, sir.

Q. Don't you know of any Cherokee neighborhoods in which there are no schools?—A. Yes, sir.

Q. Don't you know of some Cherokee families who don't send their children to school?—A. Yes, sir, I know where there are some.

Q. Do you know how many schools there are in the Tahlequah district?—A. I don't remember just how many.

Q. Is there not a "Grapt" school?—A. Yes, sir.

By Mr. ADAIR:

Q. In what precinct do you vote?—A. I vote in Coody's Bluff.

Q. Are those men whom you say do not vote living at "Going Snake" district?—A. Yes, sir; my people live at Going Snake district.

Q. Are there any people there who vote?—A. I do not know.

Q. Don't 84 colored men vote in this district; those living in the neighborhood of Coody's Bluff?—A. I do not know.

Q. Don't you understand that they did vote in Going Snake district?—A. Some did and some did not.

Q. There are some on the Grand River?—A. Yes, sir.

Q. Do you know whether they vote or not?—A. I do not know whether they vote or not?

Q. You don't know whether they voted once around Coody's Bluff?—A. No, sir.

Q. How many families live around Coody's Bluff?—A. I suppose 40 or 50 families, maybe more; I didn't count the families and do not know exactly.

Q. How long have you been in that country with these colored people?—A. I have been living there since the war.

Q. And have been cultivating the ground?—A. Yes, sir.

Q. Some have large farms?—A. Yes, sir.

Q. Have they cattle, stock, &c?—A. Yes, sir.

Q. They have never been opposed by the Cherokees?—A. Not a great deal. Never molested in any way?—A. They have been opposed some, not a very great deal, 5 or 6 years ago, but lately they have not been troubled by the Cherokees.

Q. Don't you know that some of them did not come within the treaty?—A. I know there are some, but there are some on that doubtful list who did.

Q. Don't you think you ought to have gone to Tahlequah notwithstanding that letter that came here?—A. Yes, sir; but that discouraged me some.

By the CHAIRMAN:

Q. Who holds that election?—A. Well, the Cherokees hold the election.

Q. They hold offices?—A. Yes, sir.

Q. They don't allow the colored people to hold offices?—A. They had guards around the polls of their own people.

By Mr. ADAIR:

Q. They hold elections, however, like the white people in the States, do they not?—A. Yes, sir.

ISRAEL P. HAFF, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Israel P. Haff.

Q. Where were you born?—A. In the State of New York.

Q. Where do you live now?—A. About ten miles from here, right on the Grand River.

Q. How long have you been in this Territory?—A. Ten years last March.

Q. You are an Indian, are you?—A. Yes, sir; I am a Cherokee. I came in here with the Delawares.

Q. Did you marry here?—A. Yes, sir.

Q. Among the Delawares?—A. Yes, sir; but we are all Cherokees now; that is the way I look at it.

Q. What is your opinion about allotting the lands, and sectionizing them, and dividing them up in severalty, as they call it?—A. I would

like to see it remain as it is as long as my head remains upon my shoulders. I never want to see a surveyor's chain come through here. I do not want any alterations made here whatever, not one particle. I am as well satisfied as a hen with her chickens. The Cherokees treat me well enough. I have lived here ten years and have never been near the jail or court-house. As soon as we have our lands surveyed the white people will rush in here and take possession of everything and drive us away.

Q. How much land have you?—A. About sixty acres.

Q. Do you make a comfortable living off of that?—A. I have about eight thousand rails to make.

By Mr. GROVER:

Q. What do you cultivate?—A. I raise corn, wheat, oats, potatoes, pumpkins, &c.

Q. Do you raise cattle?—A. A few.

Q. What do you think of a United States court being established here; extending the laws of the United States over this Territory, &c.?—A. I do not want any United States court here; there are courts enough here now. I want just what the treaty of 1866 gives to the nation. I am satisfied without any change or alteration whatever.

By Mr. ADAIR:

Q. Are you acquainted with the people in this neighborhood?—A. Yes, sir.

Q. Are they living peaceably, getting on well and prosperously?—A. Yes, sir.

Q. Do you know any of them who are in favor of establishing a United States court, changing the government into a Territorial government, and have the laws of the United States extended over them?—A. No, sir.

Q. Are you satisfied with the schools in your district?—A. Yes, sir; I am.

T. J. MCGHEE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. T. J. McGhee.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Are you a full-blood?—A. My father was a full-blood.

Q. Are you a farmer?—A. Yes, sir.

Q. How far do you live from Vinita?—A. Twenty-five miles.

Q. What is your opinion: Should all the land owned by your tribe be allotted among the members of the tribe, after setting apart a sufficient portion for a school-fund, or should a portion of each tract be reserved and be made inalienable for five or ten years; would it not benefit your people?—A. I do not approve of it.

Q. Suppose that 80 acres were allotted to each member of the tribe, and secured so that it could not be alienated or sold for taxes and debts, and the remainder of the land of the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribe; would it not be for the benefit of life and property?—A. I think we are doing well under our own local laws; I do not see that any change would better our condition.

Q. What proportion of your friends and neighbors are desirous of such allotment of the lands?—A. It would not be satisfactory to our people; they are unanimous in that opinion. In my neighborhood you would find that that was so if you were to visit there.

Q. You are satisfied with things as they are?—A. Yes, sir.

Q. Suppose each nation were allowed to retain its tribal customs, privileges, and property, would the Territory be benefited by a Territorial form of government, making each and every citizen a citizen of the United States?—A. I do not think it would.

Q. Do you want a United States court established here, like the one at Fort Smith, Ark.?—A. As far as the treaty calls for it, I would like to have the treaty carried out.

Q. You do not want any change whatever?—A. No, sir; I do not want any change.

By Mr. GROVER:

Q. How far do you live from here?—A. I live 6 miles from the Arkansas line.

Q. Do you have property there?—A. Yes, sir.

Q. How much?—A. Two hundred acres.

Q. What do you cultivate?—A. Corn, potatoes, &c.

Q. Do you have cattle?—A. Yes, sir; I have cattle and hogs.

Q. The people in your neighborhood want no change?—A. Yes, sir; they are unanimously opposed to it.

Q. Are there many full-blood Cherokees there?—A. Well, I reckon there are; yes, sir.

Q. How many?—A. A settlement of sixty or seventy families.

Q. The opinion is a unanimous one?—A. Yes, sir; runs one way. You can call them together, and you will find it as I have stated. They are unanimous against any change whatever. They would be here now, but they didn't know anything about this meeting.

Q. Have you anything further you wish to state to the committee of your own accord?—A. No, sir; not that I think of. Only that I want it to remain as we are. I would like you to give the whole people a chance if you are not satisfied with what you have heard.

NOTE.—At this point a delegation of pure-blooded Delawares, representatives from the Delaware district, came in to protest against any change whatever in the government of the Indian Territory.

Mr. Adair asked that they be counted and put in the record as protesting against it.

The chairman counted them, and they numbered 17 in all, and the chairman asked the question, how many had served in the Union Army during the late war, and 15 of the Delawares held up their hands, and stated that they had served three years in the Union Army, and also stated that they were satisfied with the administration of affairs in the Indian Territory.

T. F. COUCH, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. T. F. Couch.

Q. Were you born in this Territory?—A. No, sir.

Q. Where were you born?—A. In the State of Georgia.

Q. Are you a Cherokee?—A. Yes, sir; I claim to be a Cherokee.

Q. How long have you been in this Territory?—A. I have been in this Territory since 1874.

Q. What are you doing here?—A. I am farming.

Q. Have you got a farm?—A. No, sir; I am renting.

Q. Do they recognize you as a Cherokee here?—A. No, sir.

Q. Have you made any claim to be a citizen?—A. Yes, sir.

Q. Where?—A. At Tahlequah.

Q. Why did they refuse you?—A. They never assigned any reason.

Q. Got an Indian wife?—A. No, sir.

Q. White woman?—A. Yes, sir.

Q. Do they allow you to vote?—A. I never tried; they deprived me of my citizenship.

Q. How far do you live from here?—A. I live right here in Vinita.

By Mr. GROVER:

Q. What is the basis of your claim?—A. My mother was the daughter of John Watts, a Cherokee in the State of Georgia.

Q. Is it admitted that he was a Cherokee Indian?—A. Yes, sir.

Q. He was recognized by the tribe?—A. Yes, sir; so witnesses said.

Q. Did the tribe admit he was?—A. I do not know that.

Q. You have never tried this question before the courts?—A. Yes, sir; and there were witnesses who testified that he was.

Q. Has it been decided?—A. It has never been decided.

Q. Then you simply claim to be a descendant of one who was a Cherokee?—A. My claim was filed in 1872 and they would not give me a hearing.

Q. Is that all you want to state?—A. Yes, sir. My testimony was filed there in the council and I was put off without a hearing.

Q. Is there anything further you wish to state to the committee of your own accord; this is all the complaint you have to make?—A. Yes, sir. I do not know that I have anything further to state to the committee, excepting that I have a statement from the clerk that my papers were filed there in 1872. If you wish to see them you can get them of Mr. William P. Ross.

Q. Have you presented your case to the present court?—A. I have.

Q. How long ago?—A. Last August.

Q. In August?—A. Yes, sir.

Q. Your case is pending in that court?—A. Yes, sir; I suppose so.

Dr. E. J. WARREN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. E. J. Warren.

Q. Are you an Indian?—A. Yes, sir.

Q. Where were you born?—A. In the State of Tennessee.

Q. How long have you been in this Territory?—A. About seven years.

Q. Are you a Cherokee?—A. Part Cherokee, but I have never asked anything for myself. I ask it for my wife.

Q. What is your occupation?—A. I am a physician.

Q. Are you a doctor?—A. Yes, sir.

Q. You live here in Vinita?—A. Yes, sir.

Q. What is your opinion, doctor, on this question of sectionizing the lands and having them allotted among the members of the tribes, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for five or ten years; would it benefit the people?—A. I do not think I have a right to pass an opinion upon that question.

Q. Have you ever made application for citizenship?—A. Yes, sir; I made application, but I want to explain the thing. I made application two years ago for my wife and family. It was filed before the national

council, and I have asked for its consideration time and again, but I cannot get it.

Q. Have you made application before the present court at Tahlesquah?—A. Yes, sir; my evidence is part of the defense there.

Q. What did the court do?—A. Not anything.

Q. Nor did it give you a hearing?—A. Not yet.

By Mr. GROVER:

Q. Were you not born here?—A. I was born in the State of Tennessee.

Q. Is there any doubt about your being a Cherokee by birth?—A. Not that I ever heard of.

Q. You applied upon your own account?—A. Yes, sir.

Q. Then you complain of the court that your case has not been properly taken up and decided?—A. Yes, sir; it was once presented to the senate, but I was misrepresented, and my papers were thrown out; I have, however, been reinstated.

Q. And you were put off from time to time?—A. Yes, sir; I told them I was ready for a hearing and would like to have a hearing, but they still refused to give me one.

Q. Then you complain that justice has not been prompt enough?—A. It appears that way to me.

By Mr. WILLIAM P. ROSS:

Q. Did you apply at the last session of the court?—A. I made my application in June. My defense is there, and they could take it up and settle it. I do not press it, however. All the evidence has been produced.

Q. They have not decided it?—A. No, sir.

Q. The case is pending?—A. Yes, sir; and I would like to have a decision. I have attended five councils and couldn't get a decision. I think it is time I had action upon it. My evidence is sufficient, and I want it if it is so and they so decide, and I do not want to be in the way if it is not so.

GEORGE MCDORLAND, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. George McDorland.

Q. Where were you born?—A. In the State of Louisiana.

Q. Are you a Cherokee Indian?—A. Yes, sir; I am.

Q. By birth?—A. No, sir.

Q. By adoption?—A. Yes, sir.

Q. Married a Cherokee woman?—A. Yes, sir.

Q. What is your business?—A. Printing.

Q. Where do you work?—A. In this town.

Q. What is the name of your paper?—A. The Vidette.

Q. What is your opinion in regard to this question of sectionizing the land? If they should be allotted among the members of the tribes, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for 5 or 10 years; would it benefit the people?—A. I am in favor of the allotment of the lands.

Q. Suppose eighty acres were allotted to each member of a tribe and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the land sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it

not improve the condition of the Indians and be for the benefit of life and property?—A. I think it would; but I am in favor of a delegate to Congress; I am in favor of the establishment of a United States court, &c.

Q. If each nation were allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government, making each member of a tribe a citizen of the United States?—A. Yes, sir.

Q. Can a civil form of government be organized here in the Indian Territory for the better protection of life and property?—A. Yes, sir; and I am in favor of a Territorial form of government.

Q. Are you in favor of a Territorial form of government?—A. Yes, sir.

Q. You think it would be the best thing for your country?—A. Yes, sir.

Q. And that the land should be allotted?—A. Yes, sir.

By Mr. GROVER:

Q. Do you advocate these things in your paper?—A. Yes, sir.

Q. What is the circulation of your paper?—A. Five hundred copies.

Q. Where does it circulate?—A. In this nation.

Q. At different points you have several subscribers?—A. Yes, sir.

By the CHAIRMAN.

Q. Where do you have subscribers generally?—A. At Tahlequah, Gibson, Muscogee, and almost every post-office.

Q. You have a circulation of 500 in the Territory?—A. Yes, sir.

Q. How long have you been advocating this question of the allotment of the lands, establishment of a United States court, and Territorial form of government?—A. Four months through the paper.

Q. How long have you published the paper?—A. Four months.

Q. And you have been advocating these schemes in the paper?—A. Yes, sir.

Q. And is your circulation increasing?—A. Yes, sir.

Q. Have you received any protest against these views?—A. No, sir; very little.

Q. Do you think that the opinion on these questions is changing?—A. Yes, sir.

Q. Do you think if the people understood the question they would go for it?—A. Yes, sir; I think they would.

Q. They want the question explained to them?—A. Yes, sir.

Q. It has been misrepresented to them?—A. Yes, sir.

Q. Do you think that with a different form of government, a civil government, and a United States court and United States officers, there would be better protection for life and property?—A. Yes, sir.

Q. Will it increase the prosperity of the Territory?—A. Yes, sir.

Q. You have advocated these views in your paper?—A. Yes, sir; I have.

Q. You say it has been misrepresented to the people?—A. Yes, sir; I do.

Q. Are there any other newspapers in the Territory advocating these views?—A. Yes, sir; one other.

Q. Where?—A. At McAlester.

Q. Who are the editors of that paper?—A. Haley and McPherson.

Q. Do you know anything about the circulation of that paper?—A. I think between 800 and 900.

Q. Is it a weekly paper?—A. Yes, sir.

Q. How large a circulation did you have for the first year?—A. I have not been publishing it for a year. Only within the last four months.

Q. You got 500 subscribers in four months?—A. Yes, sir.

Q. Is there any pressure brought to bear by any parties against the discussion of these questions, or do you know of any persons having been prevented by fear from expressing their opinion upon this subject?—A. I know I was, and I think others were. It is the only way a person can get at it.

Q. Is it made unpleasant for people to discuss these questions?—A. Yes, sir.

Q. Is it dangerous?—A. Yes, sir; a crowd came to my office two weeks ago with the intention of beating me to make an example of me.

Q. Who were they?—A. Parties from the Upper Verdigris.

Q. Do you know them?—A. Yes, sir.

Q. Have you got their names?—A. I know their names.

Q. Where is that place?—A. Twenty-five miles east of here. One was a white man; the Indians put him in ahead and he was to do the work, and they would back him up in it. Luckily I was not in. Finally when they came they met me and wanted to know if I advocated these views in my paper. I said yes, I did advocate them; that I was in favor of it. They said that anybody that was in favor of that was "a damned dog." If he had had anybody with him he would have carried out his threats.

Q. How many were in the party?—A. Five or six.

By Mr. ADAIR:

Q. Please give the names of those men.—A. I will not do it now.

Q. We would like to have it done. You have thrown aspersions upon the people of this country. Give us the names of those persons and we will have them summoned.—A. I will not give the names. There are other men who saw these parties.

Q. Give the name of the leader.—A. Doc. Daney.

Q. Where does he live?—A. Claimore. The others didn't say anything. They were to back him up.

Q. How do you know? Could not these men have beaten you if they had wanted to? Were they subscribers of your paper?—A. No, sir.

Q. Did they have any business in your office?—A. No, sir.

Q. Can you give the names of any of them?—A. No, sir.

Q. Why won't you do it?—A. Why? Because it would bring me into trouble. It might be the cause of my being shot through a crack in the night.

Q. You know such things have been done in this country; you know that is the way they settle these things in this country; you know that to be the fact?—A. Yes, sir.

Q. There has not been more than one man killed in this country in the last 12 months, has there?—A. One man was killed upon a reaper.

Q. What was the man killed upon the reaper for?—A. I do not know. I did not inquire about it.

By the CHAIRMAN:

Q. Is there anything further you wish to state to the committee?—A. Nothing that I know of.

Q. Do you vote?—A. No, sir.

Q. Are you allowed to vote?—A. Yes, sir.

Q. Have you any children?—A. Yes, sir.

Q. Do they go to school?—A. No, sir.

Q. Why do they not go to school?—A. Because they are too young.

Q. Your rights are not interfered with in any way?—A. No, sir, with the exception of free speech.

By Mr. WILLIAM P. ROSS:

Q. Have you any copies of your paper?—A. No, sir.

Q. I would like to have it produced and shown whether free speech is allowed or not.—A. I have to watch in order to keep from being shot secretly, because I have written upon this subject.

Q. You claim to be a Cherokee Indian?—A. Yes, sir.

Q. You say you enjoy your rights of citizenship?—A. Yes, sir.

Q. If your children were old enough you would have the privilege of sending them to the public school, would you not?—A. Yes, sir.

Q. Will you please state to the committee whether you ever contributed anything to the treasury of the Cherokee Nation for the privileges you enjoy as a citizen of that nation?—A. No, sir.

Q. So the privileges you enjoy are a gratuity to you without expense to yourself?—A. Yes, sir.

By Mr. ADAIR:

Q. Is your paper still running?—A. Yes, sir; but I haven't issued it for this week because of sickness.

Q. Did anybody ever subscribe for your paper except citizens of this country?—A. Yes, sir; some have.

Q. Do you send your paper about gratuitously?—A. No, sir. I did once; when I first issued it; I had no subscribers for the first two issues.

By the CHAIRMAN:

Q. It would not have been very profitable to have kept that up long?—A. No, sir. I couldn't afford to do it.

Q. Is there anybody else interested in your paper but yourself?—A. No, sir.

E. H. JENKINS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. E. H. Jenkins.

Q. Where do you live?—A. On "Big Cohen Creek."

Q. In the Cherokee Nation?—A. Yes, sir.

Q. How many miles from here?—A. Six miles from here.

Q. Where were you born?—A. In the State of Tennessee.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee Indian?—A. Yes, sir. I always thought that I was, but since I have been here they have disputed my right. Since I came here I have had to marry according to the laws of the Cherokee Nation although I had been married four years and had two children.

Q. Did you marry here?—A. Yes, sir.

Q. To the same woman?—A. Yes, sir.

Q. Do they recognize you as a citizen now?—A. I believe so.

Q. Do you vote?—A. I could if I wanted to.

Q. Do you send your children to school?—A. Yes, sir.

Q. To a Cherokee school?—A. Yes, sir.

Q. Are you a farmer?—A. Yes, sir.

Q. How much land are you worth?—A. I have about 130 acres under cultivation.

Q. You make a good living?—A. Not very good.

Q. What is your opinion ; should all the land of your tribe be allotted among the members of your tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for 5 or 10 years ; would it not benefit your people ?—A. I do not know whether I prefer that or not.

Q. Suppose 80 acres were allotted to each member of a tribe so that it could not be alienated, or sold for debts or taxes, and the remainder of the land of the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians, and be for the benefit of life and property ?—A. I do not know much about it ; it may be better.

Q. If the nation was allowed to retain its tribal customs and property, would the establishment of a Territorial form of government, making each and every member of a tribe a citizen of the United States, benefit the Territory ?—A. Well, I would like to have some kind of a change. I do not know whether it is proper to talk that way ; I do not want the nationality of the country changed at all.

Q. What kind of a change do you want—a civil form of government to be organized over the Indian Territory for the better protection of life and property ?—A. I would like to see the lands allotted throughout the country.

Q. Do you want the country sectionized ?—A. Yes, sir.

Q. You would be in favor of a Territorial government like that of New Mexico ; in favor of the establishment of a United States court, like that at Forth Smith, Arkansas ?—A. Yes, sir. I never had any business at court, but I have friends who are taken a long way from here for trial, and a great many of them suffer for want of proof. Nobody will volunteer to go there, and they won't *subpœna* a man here, where he is certain of something, and being able to hire somebody, and they lie in jail because of the want of proof to get them out.

By Mr. ADAIR :

Q. You do not want any change of government ?—A. Not at all.

Q. Do you want the country sectionized ?—A. Yes, sir.

Q. But you don't want any change of government ?—A. No, sir.

Q. You are satisfied with the present form of government ?—A. Yes, sir ; the government suits me well enough ; I have no trouble.

By the CHAIRMAN :

Q. All that you want is to have the lands surveyed and allotted so that each one may hold his own land ?—A. Yes, sir.

Q. And you want a United States court established ?—A. Yes, sir ; I am in favor of that.

Q. Is there anything else you desire to state to the committee which has not been inquired of ?—A. I believe not, sir.

J. C. Wood, having been duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. J. C. Wood.

Q. Where were you born ?—A. In the State of Georgia.

Q. Are you a Cherokee Indian ?—A. No, sir ; I am a white man.

Q. Citizen by adoption ?—A. Yes, sir.

Q. Married a Cherokee woman ?—A. Yes, sir.

Q. How long have you lived here ?—A. Twenty-five years.

Q. Are you a farmer ?—A. Yes, sir ; blacksmith and a farmer.

Q. Do you want any change here in the way you do business?—A. Yes, sir; I think it would be satisfactory to have a little change.

Q. Are you in favor of having the lands surveyed and each man having land for himself in fee-simple?—A. Yes, sir.

Q. So that each man would know what he owned?—A. Yes, sir.

Q. You think you could take care of your own land?—A. Yes, sir.

Q. "Land sharks" would not take your land from you, would they?—A. No, sir; I would risk that.

Q. Are you satisfied with the present form of government in the Territory?—A. I have nothing against the form of government at all.

Q. Would you like to have United States courts established here in the Territory?—A. Yes, sir; I think it would be an advantage to us.

By Mr. ADAIR:

Q. You are satisfied with the treatment you receive from the Cherokee people, are you not?—A. Yes, sir; of course. I have lived here a long time, and I think I can live longer under it.

By the CHAIRMAN:

Q. You get along very well, do you not?—A. I get on very well with our government; still I think it would be better to have a change, such as sectionizing the land, so that each man may know what he has.

Q. So that all the lands in your tribe might be allotted among the members of the tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for 5 or 10 years; would it not be for the benefit of your people?—A. I think so.

Q. Suppose 80 acres were allotted to each member of a tribe and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the land sold and the proceeds kept by the United States and the interest paid annually to the tribe, would it not improve the condition of the Indians?—A. I think so.

By Mr. ADAIR:

Q. You are satisfied with the schools?—A. Yes, sir.

By the CHAIRMAN:

Q. So that if each nation were allowed to retain its tribal customs and property, you think the Territory would be benefited by the establishment of a Territorial form of government, making each and every member of the tribe a citizen of the United States?—A. I am satisfied with the present form of government.

CHARLES HUNTER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Charles Hunter.

Q. Where do you live?—A. In the Cherokee Nation.

Q. How far from here?—A. About 8 miles.

Q. You are a Cherokee Indian?—A. Yes, sir.

Q. Born a Cherokee Indian?—A. Yes, sir.

Q. You have been to school?—A. Yes, sir.

Q. Where?—A. On the "Cohen Creek."

Q. Have you had much opportunity to get an education?—A. No, sir.

Q. What is the opinion of the people on the question of dividing up the lands? Should all the lands owned by your tribe be allotted among the members, after setting apart a sufficient portion for a school fund, or

should a portion of each tract be reserved and made inalienable for 5 or 10 years; would it be for the benefit of the people?—A. I cannot tell you.

Q. Suppose 80 acres were allotted to each member of a tribe and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the land of the nation sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. I could not tell you.

Q. What do you think about it?—A. I would like to have a change.

Q. You would like to have a change, would you?—A. Yes, sir; I would like to have a change of some kind.

Q. You would like to have the lands allotted, sectionized, &c., so that each one would know what he had?—A. Yes, sir.

Q. Do you want a change in the government so that if each nation was allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government, making each and every member of the tribe a citizen of the United States?—A. No, sir; I do not want any change of that kind.

By Mr. ADAIR:

Q. You have the privilege of going to school?—A. Yes, sir.

Q. You have all the privileges you want?—A. Yes, sir.

By the CHAIRMAN:

Q. Is your father living?—A. No, sir; my father was killed in the army.

Q. What army?—A. In the Southern army.

HENRY COOK, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Henry Cook.

Q. Where were you born?—A. In Germany.

Q. Are you a Cherokee?—A. My wife and four children are Cherokees.

Q. How long have you been living here?—A. I have been living in this nation twelve years.

Q. Are you a farmer?—A. I am; yes, sir.

Q. What is your opinion about the allotment of the lands, giving to each man his own land in fee simple, so that he may hold it separately?—A. Well, sir, I believe I would rather have it remain as it is.

Q. Why do you want it to remain as it is?—A. I think it would be better for my family.

Q. How much land are you working?—A. I have about fifty acres under cultivation.

Q. Do you have stock?—A. Yes; I have a few, not a great many.

Q. Do you have hogs, cattle, &c.?—A. Yes, sir; hogs and horses.

Q. Do you want any change in the government here, making it a Territory of the United States, establishing United States courts, &c.?—A. No, sir.

Q. The government suits you, does it?—A. Yes, sir. I would like to have only one change, and that is a United States court.

Q. A United States court?—A. Yes, sir; to take the place of the one at Fort Smith.

By Mr. GROVER :

Q. Is there anything else you wish to state to the committee of your own accord ?—A. No, sir ; I believe I have nothing further to state.

Q. You are satisfied with the present condition of things, and want no change except the establishment of a United States court ?—A. Yes, sir.

Q. You think it would be better for your family to have things remain as they are ?—A. Yes, sir.

By Mr. ADAIR :

Q. You are satisfied with the treatment you receive from the Cherokees ?—A. Yes, sir.

Q. Do they treat you kindly ?—A. Yes, sir.

Q. The people in your neighborhood are peaceable and well disposed, are they not ?—A. Yes, sir.

WILLIAM STOVER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. William Stover.

Q. Where were you born ?—A. In the Cherokee Nation.

Q. Where do you live ?—A. In the Delaware district.

Q. How old are you ?—A. I am 22 years of age.

Q. What is your occupation ?—A. I am a farmer.

Q. Are you farming on your own account ?—A. Yes, sir.

Q. Have you been to school ?—A. Yes, sir.

Q. Where ?—A. In the States and Territory both.

Q. In what State ?—A. In the State of Arkansas.

Q. Well, what is your opinion as to sectionizing the lands in this Territory so that all the lands owned by your tribe should be allotted among the members of the tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for five or ten years, would it not benefit your people ?—A. Well, sir, I am not in favor of any change.

Q. Suppose eighty acres were allotted to each member of the tribe, and secured so that it could not be alienated or sold for taxes or debts, and the remainder sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians ?—A. No, sir.

Q. If each nation were allowed to retain its tribal customs and property, would the Territory be benefited by the establishment of a Territorial form of government making each and every member of the tribe a citizen of the United States ?—A. I am not in favor of a Territorial government at all. I am satisfied with the present government.

Q. You are satisfied with the present government, are you ?—A. Yes, sir.

Q. So you want the lands surveyed off, and each one own his own land in fee ?—A. Yes, sir ; I would like to have the lands allotted.

By Mr. GROVER :

Q. As to everything else you are satisfied the way things are ?—A. Yes, sir.

Q. The government is good ?—A. Yes, sir.

Q. The people are prosperous ?—A. Yes, sir.

Q. Do you want a United States court established here like that at

Fort Smith?—A. Yes, sir; I would like to have a Federal court in our Territory.

By Mr. ADAIR:

Q. That is, a United States court such as is provided for by the treaty?—A. Yes, sir.

Q. You want all the treaty carried out, don't you?—A. Yes, sir.

LUCIEN BUFFINGTON, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Lucien Buffington.

Q. Where were you born?—A. I was born here.

Q. In this Territory?—A. Yes, sir.

Q. Have you been educated?—A. Yes, sir; a little, not much. I have a little education, I guess.

Q. Are you a farmer?—A. Yes, sir.

Q. What is your opinion as to the allotment of the lands, sectionizing them, &c.; are you in favor of it?—A. No, sir.

Q. You want it as it is?—A. Yes, sir.

Q. You are satisfied with the present condition of things?—A. Yes, sir.

Q. You are satisfied with the present system of government?—A. Yes, sir.

Q. You do not want any change at all?—A. No, sir.

Q. You want to be allowed to hold your own lands?—A. Yes, sir.

CHARLES KENNY, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Charles Kenny.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Where were you born?—A. Fort Smith, Arkansas.

Q. Are you a Cherokee Indian?—A. Yes, sir.

Q. Were you born a Cherokee?—A. Yes, sir; I was born a Cherokee. Col. William P. Adair is a relation of mine.

Q. You are recognized as a Cherokee, are you?—A. Yes, sir.

Q. Are you educated?—A. No, sir; not of any account.

Q. Why?—A. Because I never had any chances to go to school. My parents didn't send me when I was young. I had to come here and "hoe my own row."

Q. How do you make out at it?—A. Pretty well, I think.

Q. Are you a farmer?—A. Yes, sir.

Q. What is your opinion about the allotment of the lands in this Territory?—A. I would rather see the land allotted, and each individual own his own land; that is my notion of it.

Q. You are satisfied with the present government you have here?—A. Well, I cannot say but what I am satisfied with it.

Q. You do not want any change in your government?—A. No, sir; nothing only what has been spoken of.

Q. You would like to have a United States court established here?—A. Yes, sir; I would like to have a United States court established in the Territory.

By Mr. GROVER:

Q. Do you wish to say anything else to the committee than what ha

been inquired of?—A. Well, no, sir; I do not think there is anything else I wish to speak of.

Q. You think your present government is satisfactory?—A. Yes, sir.

Q. You would like to see a division of the lands in severalty and the establishment of a United States court and the laws of the United States extended over this Territory, would you not?—A. Yes, sir.

M. FRAZEE, M. D., having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. M. Frazee.

Q. Where were you born?—A. In Zanesville, Ohio.

Q. Are you a Cherokee?—A. I am, by marriage.

Q. How long have you lived here?—A. I have lived here 8 years.

Q. What is your profession?—A. I am a physician.

Q. Where do you live, doctor?—A. I live right here.

Q. At Vinita?—A. Yes, sir, at Vinita.

Q. What is your feeling about this question of surveying the lands? Should the lands be owned by the tribe and be allotted among the members of the tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for five or ten years; would it not benefit your people?

The WITNESS. Do you wish my opinion or the opinion of the public?

The CHAIRMAN. Your opinion.

The WITNESS. I was never better satisfied with a government than I am now.

By the CHAIRMAN:

Q. Have you got any land here?—A. Yes, sir.

Q. You farm, do you?—A. Yes, sir.

Q. And you want things to remain as they are now, do you?—A. Yes, sir, except this: I would like to have a United States court established here.

Q. You would like to have a United States court established here?—A. Yes, sir; but not that, if we have to abrogate anything.

By Mr. GROVER:

Q. You have stated your own opinion; what do you think the opinion of the public is?—A. My opinion is, that if you left it to the ballot-box, four-fifths of the votes would direct that way.

Q. In favor of the sentiments you have just expressed?—A. Yes, sir; that is the opinion of all men with whom I have associated here who have any interest in this matter.

Q. What do you mean by that "any interest in this matter"?—A. Well, Mr. Gillan and the other gentlemen whom I have associated with here, and who intend to make this their home, have told me, and will tell you, that four-fifths of the public would not wish to change. That is the true expression of the public.

By Mr. ADAIR:

Q. As a practicing physician you have been over the country a great deal?—A. Yes, sir; for eight years I have been over the country.

Q. You know the sentiment of the people very well?—A. I know the sentiment of every leading citizen in this country. These people who wait for their "paps" to die want a division, and those whose "paps" are dead, and who work for themselves, can stand by themselves in this

country; but the men who are waiting for their fathers to die are the men who want a division. Eight years ago the country was in peace. You are getting the expression of a few disaffected negro fellows who never had a drop of Cherokee blood in their veins. You are not getting the expression of the honest people of this country. I am an honest man, and I subsist by honor, and I tell you that the honest expression of these people is that they do not want any change. They are satisfied with the present condition of things. Nor do these disaffected negroes you have had up here to-day know *what* they want or how to get it.

(At this point Mr. Daniel H. Ross, on behalf of a delegation of people, submitted a paper containing the expression of the people assembled in mass meeting, and asked that it become a part of the record.)

By the CHAIRMAN:

Hand it to the committee, and it will be put in.

The paper is as follows:

“VINITA, CHEROKEE NATION, INDIAN TERRITORY,

“November 15, 1878.

“At a meeting of citizens of the Cherokee Nation, had at the school-house (this day), for the purpose of taking action upon the questions submitted in these investigations by the honorable Committee on Territories of the United States Senate, now in session in this place, to wit, upon the question of allotment in severalty of the lands of the Cherokee Nation and the organization of a Territorial form of government of the United States in lieu of the present Indian government, the meeting was organized by the appointment of Daniel Muskrat chairman, and I. T. Cunningham secretary. The chairman stated briefly the object of the meeting; whereupon, on motion of J. A. Foreman, a committee of three was appointed to prepare, by resolution or otherwise, a communication expressive of the views of the meeting. Messrs. Tick Eater, Henry Drew, and James Welch were constituted a committee, and at once retired in discharge of the duty imposed. After a brief absence, they returned and submitted the following communication, which was discussed and unanimously adopted, and ordered to be signed by as many as could conveniently do so, for presentation to the Senate committee during its session here, with the request that it be made a part of the record:

“Hon. J. J. PATTERSON and GROVER,

“United States Senate:

“The undersigned citizens of the Cherokee Nation beg leave to state, in view of the inquiry you are making into the views of the Cherokee people, that they adhere firmly to the provisions of their treaties with the United States; that they are opposed to the allotment of their lands in severalty and to the extension over them of a Territorial government of the United States or other interference with their guaranteed rights.

(Signed)

“DANIEL MUSKRAT,

“Chairman.

“J. T. CUNNINGHAM,

“Secretary.”

3. T. I. McGhee.

4. James Welch.

5. Lone Seven.

6. Wm. Stover.

7. Moses Downing.

8. Yellow Bird.

9. Gourd Eater.

10. Bluford Duncan.

11. Jo Fox.

12. Jno. Downing.

13. Quarlatar.

14. Jno. Countryman.

15. Wiley Melton.
16. W. H. Drew.
17. Geo. Williams.
18. Jas. D. Yost.
19. M. D. Daniel.
20. Jas. Ward.
22. Young Fox.
23. Jesse Seven.
24. Wat Hilderbrand.
25. Jno. Starr.
26. Jas. Tikle.
27. Jno. Ketcher.
28. Johnson O. Fields.
29. I. C. Woodall.
30. Ellis Moore.
31. Ned Keener.
32. Geo. Starr.
33. Henry Tibdow.
34. Wm. Cochran.
35. Peter Dennis.
36. Thos. Crutchfield.
37. W. V. Cary.
38. Jno. McIntosh.
39. Daniel Squarrel.
40. Tar-ne-yun-tah.
41. D. O. Fields.
42. W. M. H. Foreman.
43. Jno. Snell.
44. Ben Love.
45. Ska-quah.
46. Robt. Klans.
47. Henry Cook.
48. Wm. Brown.
49. L. P. Isbell.
50. Wm. Chamberlan.
51. H. H. Trott.
52. Jno. Weaver.
53. G. W. Emerson.
54. R. R. Taylor.
55. Jno. Bearner.
56. Geo. Hicks.
57. Arch Baldrige.
58. Young Bird.
59. Steve Blujacket.
60. Jack Squarrel.
61. Cramp.
62. Ravin.
63. David Guess.
64. Dave Muskrat.
65. Glass Muskrat.
66. Wrighter.
67. Wm. Ballard.
68. Eli Snell.
69. Jackson Jones.
70. Chester McCoy.
71. Jno. Miller.
72. James Snell.
73. Jesse Reese.
74. Henry Black Fox.
75. Charlie Hunter.
76. Jesse Grasshopper.
77. B. F. Snell.
78. Jno. Corn Tassell.
79. Jackson England.
80. Run About Six.
81. N. B. Luckey.
82. I. E. Harland.
83. W. H. Hicks.
84. Walter Smith.
85. Lem Parris.
86. Jno. A. Foreman.
87. A. W. Foreman.
88. James Kitchum.
89. Joseph Landrum.
90. Jno. Ahlulu.
91. Jno. Landrum, jr.
92. D. W. Rogers.
93. O. K. Benge.
94. Johnson Landrum.
95. L. T. Riley.
96. N. B. Blythe.
97. Lucian Woodall.
98. James Foster.
99. James Muskrat.
100. S. M. Couratzer.
101. D. W. Buffington.
102. Jack Candy.
103. Cricket Cloud.
104. J. T. Henry.
105. John Hensley.
106. Jo. Buffington.
107. Rattler.
108. Jim Dickeaskie.
109. Elijah Hilderbran.
110. Jno. Ward.
111. Jeff.
112. Fallin Buzzard.
113. Chu-chaw-la-tar.
114. Ne-caw-la.
115. Charlie Shotpouch.
116. Young Wolf.
117. John Comula.
118. Wilston Colston.
119. M. Frazee, M. D.
120. Geo. Wingfield.
121. Freeman Nodipper.
122. James Cockran.
123. Charles Kennie.

VINITA, CHEROKEE NATION, INDIAN TERRITORY,
Saturday, November 16, 1878.

Committee met pursuant to adjournment.

ANDERSON WILLIAMS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. Anderson Williams.

Q. Where were you born ?—A. In the Indian Territory.

Q. You are a colored man ?—A. Yes, sir.

Q. Have you any Indian blood in your veins ?—A. Yes, sir.

Q. What, Cherokee blood ?—A. Cherokee and Spanish blood.

Q. How long have you lived here ?—A. About 38 years.

Q. Are you allowed to vote here ?—A. Yes, sir.

Q. You have been a voter since when ?—A. Ever since 1866.

Q. What is your opinion about this question of allotting the lands among the different members of this tribe, so that, after setting apart a sufficient portion for a school fund, a portion of each tract be reserved and made inalienable, would it not be for the benefit of your people ?—A. I would rather it would be allotted so that every man would know what belonged to him.

Q. You think it would improve the condition of the people here ?—A. I think so.

Q. You think you would work the farms and be better satisfied with your condition ?—A. Yes, sir.

Q. And be more prosperous ?—A. Yes, sir.

Q. What do you hear as to the government here in the Territory ? Do you and your neighbors think that any change would be advisable ?—A. Yes, sir ; I think it would. We are wronged out of our schools and a part of our lands.

Q. Your people think you have not your share of the school fund ?—A. No, sir ; I do not think they have.

Q. Do you have any schools at all among your class of people ?—A. They began one, one or two weeks ago ; they do not give us books, or anything of that kind.

Q. Where do you live ?—A. Up on the Grand River.

Q. Have not the schools been established there ?—A. No, sir.

Q. Just begun ?—A. It is only for a little "blind" ; that is the way we look at it.

Q. You think a change of government would give the people the advantages of schools ?—A. Yes, sir.

Q. What is the condition of your people in regard to protection of life and property ; are you getting on in peace over there ?—A. Yes, sir ; it peaceable.

Q. Are you satisfied with the present form of government ?—A. No, sir.

Q. What do you say as to the establishment of a United States court in this Territory, like other Territorial courts of the United States ; for instance, like the courts in Arizona, New Mexico, and other Territories ?—A. I think it would be better for us.

Q. What do your class of people think about it ?—A. They think it would be best for us.

Q. Do they agree with you in your view of it ?—A. Yes, sir.

Q. Why ?—A. Because we are wronged out of our schools and our rights.

Q. Can you give an estimate of how many of your class of people are here in this country; that is, colored people of the whole or half blood?—A. Well, I do not know, for I have pretty nearly forgotten how many there are.

Q. Can you not approximate the number?—A. No, sir; not exactly.

Q. How many settlements of colored people are there up there on Grand River?—A. There must be something near about fifty; but very few have come in to-day.

Q. Where do they come from, from one settlement or three or four?—A. Most of them that are here came from one settlement.

Q. Or do they scatter about among the Indians?—A. No, sir; they are pretty well gotten together.

Q. In a neighborhood?—A. Yes, sir.

Q. Do you have churches?—A. Yes, sir.

Q. Some preachers?—A. Yes, sir.

Q. What denomination do you generally attend?—A. Methodist church here.

Q. Are there any Catholics here?—A. No, sir.

Q. Baptists and Methodists?—A. Yes, sir.

Q. Have you anything else to say to the committee, of your own accord, that has not already been inquired of?—A. No, sir; nothing more than that we want our rights.

Q. You would like to have the lands allotted, a right to the schools, and a change in the form of government, would you?—A. Yes, sir.

Q. Can you sign your name?—A. No, sir.

SARAH WAITE, having been duly sworn, was examined.

By the CHAIRMAN:

Q. What is your name?—A. Sarah Waite.

Q. How long have you lived in the Indian Territory?—A. Forty years.

Q. Were you born here?—A. No, sir.

Q. Are you connected with the Cherokees?—A. Yes, sir.

Q. Part Indian blood?—A. Yes, sir.

Q. You are a native-born Cherokee?—A. Yes, sir; my mother was a half-breed.

Q. Where do you live, here in the Indian Territory?—A. I live here in Vinita.

Q. Do you farm?—A. Yes, sir; my farm is on Grand River.

Q. You have a farm?—A. Yes, sir.

Q. How many acres are in your farm?—A. It contains one hundred and five acres.

Q. How much is under cultivation?—A. Eighty acres under cultivation.

Q. You cultivate eighty acres?—A. Yes, sir.

Q. What do you cultivate and raise?—A. Corn and wheat; produce generally.

Q. What else do you have; cattle, &c.?—A. Yes, sir.

Q. You have a family?—A. No, sir.

Q. This is your own property and you manage it yourself?—A. Yes, sir; my family is all dead.

Q. What is your view about any change in the right of holding lands here; suppose 80 acres were allotted to each member of the tribe and secured so that it could not be alienated or even sold for taxes or debts, and the remainder of the land of the nation sold and the proceeds

kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the nation, and be for the benefit of life and property? What do you think about that; do you think the lands should be allotted or remain as they are?—A. I should like to have them allotted.

Q. Should all the lands owned by the tribe be allotted among the members of the tribe after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for five or ten years?—A. So far as I am concerned I would like to know know what I am to have.

Q. What is your belief about your neighbors; what do you think they would say about this same subject?—A. Well, sir, some say they would like to have it allotted, and some say they would not.

Q. Those who say they would not have it allotted, what reason do they give?—A. They think the country would be settled up.

Q. The general opinion among them is that the country would be settled up by white people?—A. By white people; yes, sir.

Q. Well, suppose all the lands should be divided among all the tribes and those connected with the tribes; what do you think they would say about that proposition?—A. I do not suppose they would object much to have it divided among the citizens.

Q. Do you think the citizens capable of receiving and holding the land now so as to take care of it if they were to have a deed of it in fee?—A. Yes, sir; if they knew that was all they would ever get they would hold to it.

Q. As to the courts, what do your people say about that? Are they satisfied with the present condition of the courts?—A. I guess some are and some are not. As far as I am concerned, I object to them a little.

Q. If the land was divided, how would you like to have it divided?—A. I would like to have every foot of it that is my own given to me.

Q. Then where there are families, you think each member of a family should have a part of the land, the women the same as the men?—A. Yes, sir.

Q. Is there anything else you desire to state to the committee, as to your idea of things here?—A. Well, I would like to state a little transaction that happened there lately. Here is this hotel at Vinita, and Mr. Effert took possession of the hotel in my absence, when I was out on my farm. There is a law here that you get a writ of attachment where a person holds a house unlawfully. I went to the clerk and tried to get a writ myself, and he would not issue any; he said Mr. Effert claimed part of the hotel.

Q. You own the hotel?—A. Mr. Boudinot and I together owned the hotel; the clerk would not issue the writ to me, and when I took possession, a week ago, a writ of attachment was issued, and threw me out of the house.

Q. So you think the laws are defective; or is the administration of the laws defective?—A. Yes, sir; I think they are bad; I think they threw me out when they had no authority to do so.

Q. What right have you to the house?—A. I own one-half of it.

Q. Did you assist in building it?—A. Yes, sir; Mr. Waite and Mr. Boudinot built it as partners.

Q. Any of this property here in this town your husband's?—A. Yes, sir.

Q. He is dead now?—A. Yes, sir.

Q. So you think that property is not sufficiently protected by the present system of government?—A. Yes, sir.

JARRETT COWAN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. My original name was Love.

Q. What was your father's name?—A. My father's name was John Love. I was adopted into a family by the name of Cowan, with whom I lived.

Q. Were you born here?—A. Yes, sir.

Q. You have lived here ever since?—A. Well, sir, in the time of the war I was in the service of the United States; since then I have been back here.

Q. Where do you live now?—A. I live in Vinita, but I have a little place on Cabin Creek.

Q. How far from here?—A. Five miles from here.

Q. Are you a farmer?—A. Yes, sir.

Q. What do you say as to the allotment of the lands in this Territory to the members of each tribe, and secured to them so that it could not be alienated or sold for taxes and debt, and the remainder of the lands in the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribes, would it not be for the benefit of the Indians and for the benefit of life and property?—A. For myself I think it would be better for us if we should have our lands allotted, and a guarantee title given to us individually.

Q. Do you think they would be more industrious, and make more improvements, if each individual held his land in that way?—A. Yes, sir; I think so.

Q. Why do you think so?—A. I think, when a thing is set apart to me I would take more pride in making it more valuable.

Q. Suppose eighty acres of land were allotted to each member of a tribe, and secured so that it could not be sold, would they be apt to keep it as much as any other people generally?—A. I am a blacksmith, and work for all classes—full-bloods, and all kinds. Speaking the language pretty well, I have talked upon the subject often. I have found them to be as close in trading as any other people in this part of the country. I was working yesterday for a man that I used to work for on the other side of Grand River, a full-blooded Indian, a man who is a close observer of things and events, a man who takes great pride in his improvements, his farming tools, and so on, and who knows the value of them.

Q. Do the full-blood Indians employ others to work for them?—A. As a general thing they do. There are some classes of people in this country, a few, who subsist a good deal by hunting.

Q. Is game as plentiful as it used to be?—A. No, sir.

Q. There is no reliance to be placed upon it?—A. No, sir; they can barely live off of it.

Q. In your conversation with the class of people who come to your shop, what proportion of them talk as if they would like to have the lands allotted, sectionized, &c.?—A. It is the men who have a college breeding you have selected to-day. If you want to hear in favor of it, you must see the half-breeds and quarter-breeds. You will then find the enterprising portion of the community, and you will find them desirous of having the lands allotted to them.

Q. You think the most enterprising portion are desirous of having the lands allotted?—A. Yes, sir; I am satisfied about that. The way

they live in this country they have been influenced by a few leading parties they do not like to express their views to; they gather together a few at a time and they do not make it public unless talking to a friend confidentially.

Q. What is the general feeling as to the government here?—A. There is a good deal of complaint in regard to our laws. For instance, a citizen of the United States comes here and is not subject to our laws; we have no control over a citizen of the United States, and they do as they please. We have no remedy. A man in any business has to transact business with all kinds and any kind of men. A man comes here to pay me for his work, and they take advantage of this fact.

Q. You think more efficient laws should be enacted?—A. Yes, sir; a law that would reach every man's case would be more satisfactory.

Q. Then you are in favor of the establishment of a United States court, such as they have at Fort Smith?—A. Yes, sir; the majority of the people I have talked with on that subject are in favor of the establishment of a United States court.

Q. So there would be no distinction?—A. Yes, sir.

Q. Have you anything further to state to the committee that has not been inquired of? Have you any statement you desire to make of your own accord?—A. Well, I don't believe I have anything more. It is not necessary to state my own wishes and interests. In regard to the condition of our country we think we are overrun here with citizens of the United States. I have lost a span of horses by citizens of the United States coming here. They have their own way here. I have reported my case at Fort Smith, but they have done nothing with it.

Q. Therefore you prefer regular courts, so that you can apply for redress more quickly?—A. Yes, sir; I am using my property now for something of that kind. That is all I think of.

THOMAS HOWIE, having been duly sworn and examined by the chairman, testified as follows:

Question. What is your name?—Answer. Thomas Hughs.

Q. How long have you lived here?—A. Since 1873.

Q. Are you an Indian?—A. No, sir.

Q. Have you any Indian blood in your veins?—A. No, sir.

Q. Are you adopted into the tribe?—A. Yes, sir.

Q. How?—A. By marriage.

Q. What tribe have you been adopted into?—A. Into the Cherokee tribe.

Q. Where do you reside?—A. Within a mile or three-quarters of this place.

Q. What do you do?—A. I farm a little.

Q. What is your view as to the question of the people holding lands separate, or holding them as they do now?—A. My views are simply that I would like to see the lands allotted so that every individual could have his own land in severalty.

Q. Would you like the heads of families to own their land?—A. Yes, sir.

Q. I understand you that you want each person to own the land himself?—A. Yes, sir; each and every one. I think every man, woman, and child ought to own some land. That is my view of it.

Q. Do you believe the people are sufficiently civilized to allow them to take their own lands and keep them, as is the custom in the States?—A. I think they are.

Q. Do you think they would become interested in the lands?—A. I think so.

Q. What do you think of the Territorial form of government for this section?—A. I would not be in favor of that.

Q. You think that the present form of government is sufficient?—A. I do, until the people become intelligent enough to have a Territorial government.

Q. Please proceed to state your views generally.—A. The reason I am in favor of having the lands allotted is that I think it would create a desire among the people to hold the lands. If the lands were to become sectionized we could have our own property. Hence, I think it would be best to have the land allotted and patents given us.

Q. Do you think that if the lands were to be sectionized the same interest would be taken in farming?—A. I do.

Q. Would it be an inducement for the people to plow up more land if they owned it?—A. It would.

Q. Do people rent the land now?—A. They do in some instances. We have no protection for white people now. There is no inducement to plow up more land from the fact that they have to have a permit. The laws will not allow us to lease the land. If ordinary tenures of land were in force here it would be held and improved; but under the present system it is nothing but a wilderness. I presume you have been told about the quantity of land that we own. We did own 24,000,000 acres; to-day we have but 4,000,000 acres.

Q. Do you speak of the Cherokees?—A. Yes, sir; and then there are other things which combine to prevent us from being a prosperous people, one thing being the embargo on all valuable minerals. We cannot work the minerals. For instance, if I hold a lease to work a coal-mine, I cannot employ citizens to work it without a permit. I would be forced to discharge my men. I could write to the department for permission to employ them. But I cannot enter into a contract to supply coal to the railroads, from the fact that I am not allowed to employ men without a permit, and none of the citizens of the Indian Territory know anything about mining.

Q. Do you think that this coal interest would be much benefited by the change?—A. I do.

Q. What is the amount of coal interest in this country?—A. A large portion of it is coal-land.

Q. Is there not much other valuable mineral land throughout this section?—A. There is.

Q. Of what does it consist?—A. Lead, silver, &c. The resources of the country have never been opened. A geologist who made explorations here says that there is a sufficient amount of coal to justify working it; but the working of the mines and opening the country encounters a great deal of prejudice here from the citizens. The Cherokees do not wish to see any man prosperous or thrive in making money and a living, and they are opposed to any enterprising character.

Q. What is the character of coal you were working?—A. I could not give you the geological term. The geologist who made the examination is now in Saint Louis; but the vein is of such a quality that the railroads would accept it.

Q. Is it a stove-coal?—A. It is.

Q. Where do you find it?—A. On the east side of the Grand River here.

Q. Are you in favor of United States courts being established here?—A. I am.

Q. Do you think that the change would be advisable for this people?—A. I do.

Q. In what way?—A. If you are familiar with the business of the court at Fort Smith you will find that witnesses are taken from home in some cases. They are not able to stand the expense, and the result is that the people being away from their crops just at the wrong time they experience a loss which they are unable to make up.

JOHN L. MCCOY, having been duly sworn, was examined by the chairman.

Question. What is your name?—Answer. John L. McCoy.

Q. Are you a citizen of the Cherokee Nation?—A. I am. Now, Mr. Chairman, before I proceed, I wish to say that I would prefer to give my statement in writing.

The CHAIRMAN. You can do that, and hand it to the committee in the morning.

The statement handed in by witness reads as follows:

Statement of J. L. McCoy, a citizen of the Cherokee Nation.

I am in favor of an allotment of the lands of this nation in severalty among all citizens of the Cherokee Nation.

I do not believe under the present government of the Cherokee Nation there is adequate protection for life and property, or that there is safety in the free and open discussion of any subject not acceptable to the prejudices of the ignorant classes of our people.

I am satisfied that the school funds of this nation have been misapplied, and that evidence of this can be had from the treasurer of the nation.

The Cherokee Nation has maintained useless and expensive delegations at Washington, and I believe if Congress would carry out the provisions of the treaties and allow the Cherokees to elect a Delegate to Congress it would prove of great advantage to the Cherokees.

I think it is the bounden duty of the United States to establish United States courts in the Territory, and that there is scarcely any division of sentiment among Cherokees as to the great advantage which would accrue to the Cherokees by the organization of such courts.

JOHN L. MCCOY.

C. C. IRONSIDES, having been duly sworn, was examined by the chairman.

Question. What is your name?—Answer. C. C. Ironsides.

Q. Where were you born?—A. In Canada.

Q. Are you an Indian?—A. I am.

Q. Are you a member of the tribe here?—A. Yes, sir.

Q. By birth?—A. Yes, sir.

Q. To what tribe do you belong?—A. To the Shawnees.

Q. How long have you lived in the Indian Territory?—A. Eight years.

Q. What have you to say as to the question of the lands of the nation being allotted among individuals, they being allowed to retain their tribal customs and property; and do you think it would be beneficial to have a Territorial form of government established, making each and every tribe citizens of the United States?—A. I have not much to say in regard to that, though I think it would be the best plan to have the lands divided among ourselves.

Q. You think that would be better than any other plan?—A. Yes, sir.

Q. State the advantages or disadvantages to the nation of dividing

the lands in severalty and fee simple, and in what way it would benefit the people.—A. I think it would be a great benefit. A man would then know just what belonged to him. It would be better to have a change, for if he could not handle it himself, he could lease it, and let others do it.

Q. You think better improvements would be put upon the lands, and buildings of a better and more substantial character erected?—A. Yes, sir.

Q. How much farming is done by way of growing crops other than for raising stock?—A. There is considerable.

Q. Is there much in the Cherokee Nation?—A. There is considerable, but, I suppose, not nearly as much as there might be. The people do not turn their attention that way much.

Q. Do you believe there would be more general farming if the lands were sectionized?—A. I do. I think in that case nearly everybody would have a farm. As it is, the people feel uncertain about it. They do not wish to place permanent improvements upon a place where the title is in any way uncertain. If people were certain, they could buy or lease lands.

Q. And hire employment?—A. Yes, sir.

Q. What do you think about this present form of government; is it sufficient?—A. I think we get along better with the proposed new law about the nation.

Q. What do you think about having United States courts established here, such as they have in New Mexico, and other Territories?—A. I think it would be beneficial. It would save great expense to the Indians. A certain class have to go to Fort Smith now, which is very expensive.

Q. And embarrassing?—A. Yes, sir.

Q. In addition to what you have stated, you may make any statement to the committee, in your own language, you please, if you have anything further to say.—A. I have nothing especial to say further that I know of.

Q. What proportion of your people and voters are desirous of such an allotment of lands?—A. I think a large portion.

Q. What proportion of your people advocate these changes?—A. I think a large proportion,—as many as have property. Probably some people who desire these changes are timid about expressing themselves in this country.

Q. If a secret ballot could be taken, what exact proportion of the people would favor such an allotment?—A. I think a majority would.

Q. Has there been any free discussion on this point?—A. The people in this country are very timid about expressing themselves on this point, as they stand in dread of being assassinated.

Q. They do not express themselves as freely as they might under ordinary circumstances?—A. They do not.

EDWARD E. MILLER, having been duly sworn, was examined by the chairman.

Question. What is your name?—Answer. Edward E. Miller.

Q. Where were you born?—A. In the Cherokee Nation.

Q. In what part?—A. In the eastern part.

Q. Are you an Indian?—A. Yes, sir; a Cherokee.

Q. Are you a full-blood or a half-breed?—A. My mother was a half-breed, my father was a German.

Q. What is your occupation?—A. I am a farmer.

Q. Do you farm yourself?—A. I generally hire it done.

Q. You only have the land?—A. Yes, sir; I have the land, and farm myself, in that way. I am a cripple and have to hire the work done.

Q. How much land do you till?—A. Thirty-five acres.

Q. Do you make a comfortable living off of it?—A. Yes, sir.

Q. What do you raise on your farm?—A. Corn, mainly. I have raised some wheat, but not being able to get a machine to thrash it, I generally put my farm out in corn.

Q. What is the feeling in your neighborhood on the question of organizing a civil government, and allotting the lands, and sectionizing them, &c.?—A. I am in favor of having my lands in allotment. I will state to you why. I am trying to bring up little children. I want to work for the benefit of my children as well as for myself. I do not care for myself so much. If I have anything I want to know it, and if have not anything I want to know it. There are but few individuals in the country who are reaping the benefit of their labors. Our delegates have eaten up our substance. I call them cut-throats.

Q. What do your people think generally of living on their own land?

—A. The full-bloods are against allotment. My wish is the other way.

Q. How are the half-breeds?—A. They are generally of my opinion. They are in favor of allotting the lands and sectionizing them.

Q. What is the proportion of the population—are there as many half-breeds as full-bloods?—A. I do not know, but there are a good many half-breeds on the east side of the Grand River. I would like this committee to see how many destitute Cherokees there are. I understand that in Congress our delegates say they are living well, and have plenty to go upon. I am willing to take a week's ride for the purpose of showing this committee how they are.

By Mr. GROVER:

Q. Would you call them poor people?—A. They are poor people and cannot help themselves.

Q. Are these poor people full-bloods or half-breeds?—A. Full-bloods. My relations are Indians. I spring from a full-blood. I am pretty near white. I have to work for my children, and as I have not many days to stop, I want to see them well provided for before I die. I am now fifty-four years of age. I am anxious that my children should have their rights, and if I have anything for them I want to know it.

Q. You want to leave them in possession of the land?—A. Yes, sir; so that they could live hereafter. So far as the laws are concerned, they are good if executed, but the difficulty is that they are not executed as they ought to be. They are badly administered.

Q. How many Cherokees are there poor?—A. I cannot tell you. There are many of them very poor. One-half of them or more are poor and destitute.

Q. Have you cattle?—A. I have cattle and some horses. Some of the Cherokees have nothing to go upon. They fill up a little place by the fire-place with cedar to lie down upon, and have nothing else. I was raised among them on the southeast side of the river, and have seen them often in my own country.

Q. How do they get a living?—A. They have to make it the best they can; by begging, &c.

Q. And what little they can make here and there?—A. Yes, sir. On the 10th of last March they turned me out.

By the CHAIRMAN:

Q. Who did it?—A. My own tribe—Cherokee full-bloods. I was running a little store on the east side of the river. They robbed the house, and set fire to it. The men who did this were never punished. They were caught, but were afterwards turned loose.

By Mr. GROVER :

Q. Do you think you ought to have a different court here ?—A. I do.

By the CHAIRMAN :

Q. Would you like to have a Territorial form of government established, such as they have in the other Territories ?—A. I want our laws here the same as they are in Fort Smith.

Q. Have you anything else that you desire to say to the committee ? If so, state it.—A. No, sir ; I believe I have said about everything I want to. I only want a change in the courts, and the lands allotted.

MOSES HARDRICK, having been duly sworn, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. Moses Hardrick.

Q. Are you an Indian ?—A. I am.

Q. Where were you born ?—A. In the Cherokee Nation.

Q. Were you a slave ?—A. Yes, sir ; I belonged to Lewis Ross.

Q. Did you live here before the war broke out ?—A. Yes, sir.

Q. Where did you go then ?—A. I was taken out to Kansas. I came back to the Territory in the spring of 1866.

Q. Would they allow you to vote ?—A. Yes, sir ; I have been voting ever since peace was declared. I have always been voting.

Q. Did you or not come before the citizenship court ?—A. I did.

Q. When ?—A. Last June.

Q. What were you doing down there ?—A. They sent for me to prove my rights. I thought I was all right.

Q. But they sent for you to go down and prove it up ?—A. Yes, sir. They had my name upon the doubtful list.

Q. Have you voted since then ?—A. There have been no elections since then.

Q. Would they have allowed you to vote with your name upon the doubtful list ?—A. I have been voting.

Q. You were out of the country during the war ?—A. Yes, sir.

Q. Do your people take any interest in the question of dividing the lands of the nation in severalty and sectionizing them, &c. ?—A. No, sir.

Q. Do you take any interest in a Territorial form of government, forming a civilized nation, and extending the laws of the United States into this country ?—A. No, sir ; I take no interest in it, and do not know anything about it.

Q. Would you not sooner own your land in fee than own it in common ?—A. I have not got anything to say about that. You made the treaty.

Q. If the lands were divided would you receive your share ?—A. Yes, sir ; but we did not make the treaty. You and they will have to settle that.

Q. How do you know but they will drive you out ?—A. They cannot drive me out. I have papers given me from the chief before the war, when I applied to him for them. I belonged to him, but they did not acknowledge that, and did not put me among those they paid out four years ago.

Q. Did you not share in the distribution of that bread-money *per capita* ?—A. No, sir ; I did not receive a cent of it.

Q. Why ?—A. They said I was too late.

Q. How much did each get ?—A. Ten dollars and sixty cents. I had

ten in my family, and would have got a large amount. Mr. Bishop said he would pay it, but that it was against the orders of the agent.

Q. Are you well provided with schools?—A. We do not get any schools. We are in the Delaware district. We have been asking for twelve years, but have none yet.

Q. Is that the case with the Delaware district people?—A. It is.

Q. Have you ten children yourself?—A. Only seven now. I have had twelve, but some have died.

Q. How much land do you farm now?—A. About 20 acres. I have been too poor to do much.

Q. What is the condition of the colored people in your neighborhood?—A. They are pretty poor, making a very common living off of hog-meat.

LOT BECK, being first duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Lot Beck.

Q. Where do you live?—A. In the Cherokee Nation, Delaware district.

Q. Are you an Indian?—A. I am.

Q. Are you a Cherokee?—A. I am.

By Mr. GROVER:

Q. As to the matter of dividing the lands in severalty among the people of the nation, has there been much discussion among them?—A. There has.

Q. What proportion of your people favor it, and what proportion oppose it?—A. A portion of our people are in favor of what is called allotting the lands, and a portion are opposed to it.

Q. What is your idea of allotting the lands?—A. I think to give each member of the family part of the lands, so that it can be sold for taxes or debts, would be a doubtful policy, though it would depend greatly on how we could get them. If we could get our lands divided, so that every man could receive his proportionate share and a fee-simple title, without destroying our tribal relations and nationality, then I think that perhaps it would be the best thing we could do.

Q. Then you are in favor of allotting the lands and maintaining your present form of government and tribal relations?—A. That is about it.

Q. Do you favor any additional courts here?—A. I do not think the United States courts would do us any injury in this country.

Q. Would the establishment of courts here similar to the United States courts do you any good?—A. That would depend on circumstances. If in a United States court here we could get a trial by jury by our own men I think it would be a little advantage. But the way it is now, we are taken to Fort Smith, and tried by people who know nothing about us. I do not think they give us justice in every case.

Q. You, then, are opposed to a Territorial form of government similar to that of New Mexico, &c.?—A. Yes, sir; I am opposed to that, or to anything that would deprive us of our nationality, or destroy it, or to anything that would change our tribal relations from what they are now.

Q. What effect would allotting the lands have if each person should get a good title to land?—A. I do not know that it would improve the form of government. My notion is that if I had my portion of land allotted to me, so that no other tribe of Indians could ever have or claim the same land, it might do. I would not want my proportion taken away without my consent.

Q. You do not want any Federal laws over you?—A. No, sir; I do not want anything that taxes us.

Q. Do you think there would be a tendency to improve the lands if the people owned the titles in fee?—A. I do not think it would. It would set the people selling little strips of land.

Q. Has there been any discussion on this point?—A. No, sir.

Q. Why not?—A. I cannot tell you.

Q. Do you think many persons have been prevented from expressing their opinion upon this subject?—A. I do not know.

Q. Is there any disposition to interfere?—A. It would be a little dangerous to discuss it in certain portions of the country, or advocate any such change right out.

Q. What would they do to the man who should advocate it right out?—A. They might kill him.

Q. Would you or the members of your nation be benefited by the division of the land in severalty among the various members of the tribe?—A. I might be, but some would not.

Q. Do you think they are capable of holding lands in severalty?—A. The more ignorant ones are not.

JOHN D. MARKER, being first duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John D. Marker.

Q. Where were you born?—A. In North Carolina.

Q. In what county?—A. In Washington County.

Q. Are you an Indian?—A. No, sir.

Q. Are you adopted?—A. Yes, sir.

Q. You married an Indian woman?—A. Yes, sir.

Q. Of what tribe?—A. Delawares.

Q. What is your occupation?—A. I am a farmer. My farm consists of 100 acres. It is situated 100 miles from here.

Q. What is the opinion of the neighborhood in relation to dividing your lands in severalty?—A. They are divided upon that question.

Q. What is the sentiment of your people in regard to a civil government over the Territory, making it like that of New Mexico?—A. Some are opposed to it, and some are in favor of it.

Q. Do you think they are equally divided?—A. I think so.

Q. Has there been a free discussion of this question?—A. There are a great many who are afraid to express themselves.

Q. What are they afraid of?—A. They are afraid of the people. They fear the ruling class. I would not express my views before the people. I would not jeopardize my life and property. So far as I am concerned I would like to see it as it is, but if a strip of land is to be cut off every few years I am in favor of allotting it.

Q. Cut off how?—A. Cut off for other friendly Indians. That is, giving lands belonging to this nation to other people.

By Mr. GROVER:

Q. You are afraid of the continual cutting off of the land, and that there would not be much left for the Cherokees?—A. Yes, sir; it was in the treaty stipulations that land should be used belonging to the Delaware tribe.

By the CHAIRMAN:

Q. How many Delawares are there?—A. I think when Colonel Meacham made the last payment there were 736.

By Mr. GROVER:

Q. You think it would be better to divide up the lands, then?—A. I think it would be better if they are to continue taking strips off of it.

Q. You think if it is not divided up you will lose it all?—A. Yes, sir.

Q. What influence do you think it would have upon the people if each owned his own land; do you think they would farm better?—A. Yes, sir; and make better improvements.

Q. What do you think of changing the form of government into a Territorial form of government?—A. It would suit me very well, but the majority of the people are satisfied with the present form of government.

Q. What do you think of the establishment of United States courts here?—A. I should rather have courts here in our own country. As it is now we have to go 200 miles to attend trial at Fort Smith.

Q. You go to Fort Smith always for trial now?—A. Yes, sir.

Q. Is there anything that you wish to state to the committee that has not been inquired of?—A. Nothing.

DANIEL LANDRUM, being first duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Daniel Landrum.

Q. Where were you born?—A. In the State of Tennessee.

Q. How long have you been in this Territory?—A. I do not remember exactly when I came here.

Q. Were you owned as a slave?—A. Yes, sir; Charles Landrum owned me.

Q. You staid with him until the war broke out?—A. Yes, sir. I was in the Army.

Q. On what side?—A. I was in the Northern Army.

Q. Have you been allowed to vote?—A. Yes, sir; I have voted.

Q. When?—A. Two or three years after I came back, up to the time they drew this bread money. After that they rejected me.

Q. On what ground?—A. I cannot state, as I do not know. They put me upon the doubtful list. I went once after this to prove up my rights, but the paper stopped me.

Q. Was this paper written to you?—A. Yes, sir; and to W. M. Davis *et al.* He is here in this town. I was in the Army three years.

Q. They have refused to allow you to vote at any election?—A. I never went to vote after they refused me the bread money.

Q. What did they say to you?—A. They placed my name on what was called the doubtful list when I went. From that time they have never had anything to do with me. I have not made application to the Government of the United States.

Q. Can you prove you were here?—A. Yes, sir.

Q. Were you here before the six months expired?—A. Yes, sir.

Q. When did you come back?—A. I was mustered out in 1865.

Q. Where were you mustered out?—A. At Leavenworth, Kansas.

Q. Have you your muster papers with you?—A. I have them at home. I live 16 miles from here.

Q. You have never been convicted of any crime?—A. No, sir. I have not attempted to vote since that time. I thought if they rejected others they would me if I went to the polls.

Q. Are there many colored people in the Territories who served in the Northern Army?—A. Yes, sir; a good many.

Q. Are there many who have been deprived of the right to vote?—Yes, sir.

Q. Are they persons who were born here?—A. Yes, sir.

Q. Were they raised in this country?—A. Yes, sir.

The letter referred to by witness is dated at the Department of the Interior, Office of the Commissioner of Indian Affairs, Washington, July 16, 1878, addressed to Messrs. Daniel Landrum, William M. Davis, *et al.*; Vinita, Indian Territory, signed by the Commissioner of Indian Affairs, and is as follows:

"Refer in reply to the following L. E. J. B. Union L., 478, 1878.

"DEPARTMENT OF THE INTERIOR,
"OFFICE OF INDIAN AFFAIRS,
"Washington, July 16, 1878.

"MESSRS. DANIEL LANDRUM, W. M. DAVIS, *et al.*,
"Vinita, Indian Territory:

"GENTLEMEN: I am in receipt, by department reference, of your letter of the 2d instant, relative to the rights of the colored people in the Cherokee Nation, and the authority of the courts of said nation to pass upon questions pertaining to their citizenship.

"In reply you are informed that this department has never recognized the authority of any Cherokee court to decide who are or who are not citizens of said nation, and until you have received notice that this has been done, there will be no necessity for you to attend the sessions of said courts.

"The matter is now under advisement by the department, and no plan for the adjudication of cases of doubtful Cherokee citizenship will be adopted that does not provide for a fair and impartial trial of the cases of the colored people and of all other persons claiming citizenship in said nation, and for a determination of the rights guaranteed to them by treaties and laws of the United States. The Cherokee Nation, in the latter clause of the 9th article of the Cherokee treaty of July 19, 1866 (14 Stat., p. 801), agreed among other things, 'that all freedmen who have been liberated by voluntary act of their former-owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein or who may return within six months, and their descendants, shall have all the rights of native Cherokees.'

"I would advise all colored people not included in the class of persons described in this article who did not live in the nation at the outbreak of the rebellion or who returned thereto more than six months after the treaty to remove at once from within the limits of the Cherokee Nation, as they will be forcibly ejected therefrom as soon as the department shall devise a method of procedure in the matter.

"It is, however, the determination of the department to protect to the last extremity all parties who are, by treaty or law, entitled to citizenship in the nation.

"Very respectfully,

"WM. M. LEEDS,
"Acting Commissioner."

WILLIAM M. DAVIS, being first duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. William M. Davis.

Q. Where were you born?—A. In the Cherokee Nation.

Q. How old are you?—A. Twenty-four years old last October.

Q. Where were you during the late war?—A. I was in this nation the best part of the time.

Q. Do they allow you to vote here?—A. No, sir; they do not allow me to vote here.

Q. Why?—A. They dispute our right, claiming we have no right at all in the nation.

Q. But what particular reason do they give for not allowing you to vote, or for not deciding the question of your citizenship?—A. My father has voted, but I never have. Since that time they have disputed my father. They claim that we did not come in until the six months prescribed by the treaty expired.

Q. Were you here before that time?—A. Yes, sir.

Q. Why did you not go down to the citizenship court at Tahlequah and prove it?—A. I wrote a letter to the War Department, and the authorities advised us not to go without further orders. They said, leave the Territory, if you are ruled out by that clause. Many colored people are ruled out, but I cannot say how many.

Q. Can you give an approximate estimate?—A. I cannot give any figures. Many are deprived of the privilege of voting because they were too late, and could not be included in the six months prescribed by the treaty.

Q. What about the supreme court?—A. They say there was one established there about six years ago. Father went up there to stand trial once, but for some reason or other the case had been tried before he was ready with his attorneys. They looked over some papers, and said he had been tried, and that his name appeared upon the doubtful list. They tried him without a hearing, and they will not give me a trial nor allow me to vote. I claim my citizenship by birthright. There are many men of that kind.

Q. Have you schools?—A. No, sir; they deprived us of our schools. We had one in 1869, but only one. We have no school here now, and have not had since that one session in 1869.

Q. You have one in Saline district?—A. Yes, sir.

Q. How far is that from here?—A. Fifty miles.

Q. You have no schools around here?—A. There are no schools in the back settlements. The children are growing up in ignorance.

Q. You applied for a school, and they would not give you one?—A. Yes, sir; we applied to have schools established. They sent their own children to schools, and prevented us from having any.

Q. Are you the William M. Davis mentioned in the letter submitted by Mr. Landrum?—A. Yes, sir.

WILLIAM M. FOREMAN, being first duly sworn, was examined

By Mr. GROVER, chairman *pro tem.*:

Question. What is your name?—Answer. William M. Foreman.

Q. Are you an Indian?—A. I am.

Q. Are you a Cherokee?—A. Yes, sir.

Q. How long have you been in this country?—A. Forty-two years last July.

Q. What is your employment?—A. I am a farmer.

Q. Where is your farm?—A. On Grand River.

Q. How far from here?—A. Fifteen miles.

Q. What do you raise?—A. Corn, hogs, &c.

Q. Do you raise cattle?—A. I do.

Q. What is your opinion about dividing the lands among the citizens?—A. I think in our present condition it would be injurious to us. I do not think our people are prepared for it.

Q. Do you mean to say they are not far enough advanced in citizenship to undertake to hold the lands in severalty?—A. That is what I think about it.

Q. What do you think of a change of the government, making it a part of the United States, like the white people in the other Territories?—A. I do not think that would suit our people. Of course, with myself and many others it would not interfere, but with the majority it would.

Q. Why?—A. They are not far enough advanced in civilization, I think.

Q. Do you want a United States court established here?—A. I am in favor of it, and there are many others who are also.

Q. Have you anything else to say that has not been said to the committee?—A. No, sir.

Q. Can you write your name?—A. No, sir.

GEORGE W. BARKER, being first duly sworn, was examined.

By the CHAIRMAN *pro tem.*:

Question. What is your name?—Answer. George W. Barker.

Q. How long have you been in this country?—A. Eleven years.

Q. Are you a white man?—A. No, sir.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. I am.

Q. Where were you born?—A. In East Tennessee.

Q. Have you heard of the matter of the allotment of the lands and sectionizing, them to divide them up among the people in this country?—A. A good deal, sir.

Q. What is your view about that subject?—A. I would much prefer to remain as we are, if we could remain in peace.

Q. You then desire it understood that you are satisfied with the present condition of things, and that it is best for the people to let them remain as they are?—A. Yes, sir.

Q. What do you say as to the establishment of United States courts in this Territory?—A. I do not think it is necessary to have any courts established here similar to those at Fort Smith.

Q. Do you think the present court is sufficient?—A. I think it is sufficient to cover all cases.

Q. Do you wish to state anything to the committee of your own views in regard to anything further?—A. I have nothing particular to state to the committee further. So far as my knowledge goes, I think 90 per cent. of the people are opposed to a Territorial form of government, and prefer to live as they do. They would not be better off with changes in their form of government which are not suited to them.

Q. Can you write your name?—A. Yes, sir.

By Mr. ADAIR:

Q. You are a Cherokee?—A. Yes, sir. I was born in the States, and lived in them until I was twelve years old. In 1833 my father lived in the nation. Since that time I have been in the Cherokee Nation.

Q. Your mother was a Cherokee?—A. Yes, sir.

Q. You are pretty well acquainted with the people, are you not?—A. Yes, sir.

Q. What is the general sentiment of the country, so far as you know, in relation to the change of government?—A. The people have never expressed themselves to me as being in favor of it.

Q. How are the schools getting on?—A. Pretty well, I think.

Q. You are not in favor, then, of a Territorial form of government being established over the Indian Territory?—A. No, sir.

JAMES KETCHUM, being first duly sworn, was examined by Mr. Grover, chairman *pro tem.*, and testified as follows:

By the CHAIRMAN *pro tem.*:

Question. What is your name?—Answer. James Ketchum.

Q. How long have you been in this country?—A. I came here in 1867.

Q. Are you an Indian?—A. I am

Q. Are you a Cherokee by birth?—A. Yes, sir; I am a Delaware Cherokee. The Delawares used to live in Kansas, and then they came here to the nation, and the Cherokees took us in. I came in with the Delawares, and have lived here constantly about ten years.

Q. Have you ever heard the matter of the allotment of the lands among the people and sectionizing them spoken of?—A. Yes, I have heard a good deal of talk about it.

Q. Have you formed an opinion yourself on the question?—A. I have.

Q. What is your view about it?—A. I do not think we are prepared for it.

Q. What do the Delawares among whom you live say about it?—A. They are pretty much all opposed to it, I think.

Q. They express themselves satisfied with the present condition of affairs, do they?—A. Yes, sir; they do.

Q. You have seen many of them, have you?—A. I have.

Q. Have you schools among you?—A. We have.

Q. Are your schools mixed with the Cherokee schools?—A. Yes, sir.

Q. Are there no separate ones among you?—A. No, sir.

Q. The Delawares are Cherokees by adoption?—A. Yes, sir.

Q. You are generally mixed in with the Cherokees?—A. Yes, sir.

Q. What do you say as to the form of government you now have; do you feel satisfied with it?—A. I think the people are satisfied. I am myself.

Q. Have you heard many expressions in favor of a change in the form of government?—A. I have not heard many talk about it much.

Q. Would you like any change in the courts?—A. I have never thought much about a change in the courts. I have left all that to the Cherokees. They understand the question better than I do.

Q. Do you think their management is pretty good?—A. Yes, sir.

Q. Are you satisfied with it?—A. I am.

Q. Is there anything you wish to state to the committee of your own accord?—A. No, sir; I do not think of anything that is necessary.

Q. You have no complaints to make?—A. No, sir; I am perfectly satisfied.

By Mr. ADAIR:

Q. Were not the Delawares forced to leave Kansas in consequence of having their lands sectionized, and did they not come here to better their condition?—A. Yes, sir.

Q. You say your people lived in Kansas awhile?—A. Yes, sir; we

moved to Kansas in 1829. We made a treaty in that year, and have lived there ever since until we moved here.

Q. When you moved to Kansas it was then an Indian country?—A. Yes, sir.

Q. When the State was organized, you fell within the boundaries of that State?—A. Yes, sir.

Q. What was done; did they allot the lands you occupied?—A. In the second treaty we made was a clause sectionizing our country.

Q. What particular privilege did you enjoy under that sectionizing? Did you have the right to take a quarter-section?—A. Yes, sir; each person took 80 acres—men, women, and children.

Q. How many were in your family?—A. I think I had eight in my family then.

Q. Then you received eight times 80 acres?—A. Yes, sir; but some married off, which lessened the amount.

Q. How did that work?—A. It did not work at all.

Q. What was the reason of your becoming dissatisfied?—A. We had our first dissatisfaction with it about the allotment. A good many of them did not understand the numbers of the land and where the sections lay. The full-blooded Indians selected one place and the government another.

Q. They did not get title to that which they selected for themselves?—A. No, sir.

Q. And a paper title they did not understand?—A. No, sir; they did not understand the numbers of the sections named in the patents. When they came to find out what the patent said, it was not the land they had selected, and they felt dissatisfied with the result.

Q. Who regulated that?—A. Our agent and some other officers.

Q. What did you do with the land you got?—A. I lived there, I do not recollect exactly how long. I then became very much dissatisfied with the arrangement.

Q. Did you sell it?—A. I sold it all for a certain sum of money.

Q. You sold it out and came here?—A. Yes, sir.

Q. Then you were allowed in here with the other Cherokees?—A. Yes, sir; they immediately received us.

Q. So that kind of a change would not do for your people?—A. No, sir; it would not. I know that by experience. The Indians do not understand about sectionizing and that kind of thing.

By Mr. ADAIR:

Q. Please tell how many of the tribe came here.—A. I think 85.

Q. Was that all who came here?—A. That was all by the register. The entire number was 985. They became Cherokees.

Q. Is there not some of your land in the State of Kansas, and have you not tried to get pay for it?—A. Yes, sir; we have some land scattered about there. It is occupied by the whites of that State. We never have been paid for it.

Q. Was it good land?—A. Splendid land, I expect. I was satisfied with that land, but found my people were dissatisfied, and I concluded to move with them. That is a good country.

Q. Were you a leading man among them, and did you advise them what to do?—A. I applied to the council at the time.

Q. So you were called on to advise?—A. Yes, sir.

Q. Are you a minister?—A. I am.

By Mr. GROVER:

Q. Of what denomination?—A. Methodist.

Q. Do all your people belong to that church?—A. No, sir.

Q. Are they Baptists?—A. Most of them.

Q. How are the children progressing in education since they came here?—A. Pretty well.

Q. Do you think they are getting along here better than in the State of Kansas?—A. Yes, sir; a great deal better.

By Mr. ADAIR:

Q. You have the same privileges here in the common schools with the other Cherokees?—A. Yes, sir.

By Mr. GROVER:

Q. The schools are doing well?—A. We have some schools and churches here. When we lived in Kansas all the children talked Delaware. Since we came into this country, our children, not being able to understand the workings of the things have to talk in the English tongue. My children are not able to talk in the Delaware tongue here, and so they talk English.

By Mr. WILLIAM P. ROSS:

Q. Will you please tell your opinion as to the condition of the Delawares in the Cherokee Nation, and whether they are getting along peacefully and quietly as a mass.—A. I cannot say as to them in general. For myself, I am very well satisfied and have been since I came to this country. I have never had any better treatment in any neighborhood where I have ever lived. I know no Cherokee enemy. I think the Delawares ought to be satisfied with their treatment since they came into this country. I do not think they have reason to complain about the way the Cherokees treat them.

Q. Where were your people located in Kansas?—A. On the Missouri River, east of here.

Q. Where before that?—A. On the White River.

Q. Where before that?—A. I do not know. I was born in Indiana.

By Mr. ADAIR:

Q. Did they come from the Delaware River?—A. Yes, sir; I suppose from Philadelphia.

Q. And have been moving on west step by step?—A. Yes, sir.

Q. This is your last stop?—A. Yes, sir.

By Mr. ROSS:

Q. Have you not a law allowing you one representative in this district?—A. Yes, sir.

Q. Have you not been elected to the general Indian council?—A. Yes, sir; for four years straight along.

Q. Some kindness has been extended to the Shawnees and other friendly Indians?—A. Yes, sir.

Q. Did any of them have to leave Kansas for the same reason that the Delawares did?—A. Yes, sir.

Q. Because of having their lands sectionized?—A. Yes, sir; the Wyandottes.

Q. Do you know of any other?—A. I think some of the Ottawas and Miamies.

Q. Did not the Sacs and Foxes have to go too?—A. Yes, sir; and the Poncas and some others. I was at the grand council.

Q. The Modocs have now come down, and the Nez Percés?—A. Yes, sir.

Q. Altogether we have between 30 and 40 tribes?—A. Yes, sir.

Q. Were not that many represented in the grand council?—A. I think so.

Q. Did we not have many wild Indians represented in the grand council—the Shawnees and Arapahoes and others?—A. Yes, sir; a number of wild Indians came to that grand council.

Q. They liked to see their red friends there, and were pleased with the grand council?—A. Yes, sir.

Q. Was it not a means of civilizing them, thus being brought in contact with the civilized Indians?—A. Yes, sir.

Q. Did not the grand council send out delegates themselves to make them behave themselves?—A. Yes, sir.

Q. When they all met there they discussed the matter of citizenship, cultivating the soil, educating their children, &c.?—A. Yes, sir.

Q. Have you not understood that in consequence of their coming thus in contact with the civilized Indians these wild Indians were beginning the cultivation of their own tribes?—A. Yes, sir. They have, many of them, followed the civilized life. That grand council has done a grand work in civilizing the wild Indians.

By Mr. ADAIR:

Q. Speaking of your people when they came here, they then numbered 985. Did that include men, women, and children?—A. Yes, sir.

Q. Does that embrace all the Indians in the United States who belong to the Delaware tribe?—A. No, sir.

Q. Where is the remainder?—A. In Kansas.

Q. Are they together?—A. They have become citizens of the United States.

Q. Are they scattered around on different farms, or are they together?—A. They are with the white people.

Q. How many remained behind?—A. It seems to me about 60.

Q. Only a small portion?—A. Yes, sir. They were those who had married whites. There is no white representation, however, among the Wichitas nor among the Dakotas.

Q. How many of them are there?—A. I do not know how many there are of them exactly. I think perhaps in the neighborhood of 300.

Q. Then about 1,200 would embrace all the Delawares now living?—A. No, sir. There are not that many living now. We are decreasing. We now number only about 730. I think that was the number at the last census.

Q. Is that decrease owing to death, or intermarriage, or change of climate?—A. Death from change of climate.

Q. The health of the tribe is good now, and you are again increasing?—A. Yes, sir.

Q. How about the New York Indians; do you recollect that they had their lands sectionized and taken away, and they went off, and are in this country?—A. I do not know whether sectionizing the country did it, but I understand they had their lands right close to Fort Scott somewhere. They had certificates given them.

Q. Did not the same thing occur with the Osages?—A. I do not believe I have ever heard of that.

Q. Did not you ever hear that the Osages had to leave?—A. I do not recollect that.

JOHN A. FOREMAN, being first duly sworn, testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. John A. Foreman.

Q. Are you an Indian?—A. Yes, sir.

Q. Where were you born?—A. I was born in the Cherokee Nation, at Park Hill, five miles from Tahlequah.

Q. Are you a half-breed?—A. My father was.

Q. What is your occupation?—A. I am a merchant, at present.

Q. Where do you live?—A. Here in Venita.

Q. What is your opinion about the allotment of lands in severalty in this Territory?—A. I think it would be a great injury to us as a people to allot our lands, and my opinion is that we are doing well enough now. We are making rapid improvements, and all that we ask is to be let alone.

Q. In what way have you improved in the last five years?—A. We are improving in our schools, our farms, and our stock, and we are fast becoming civilized in every sense of the word.

Q. Do you produce more than you did five years ago?—A. Yes, sir.

Q. How do you estimate it?—A. I judge from the amount of produce being brought into this town, and the improvements going on in this district.

Q. Have new farms opened up in this district in the last five years?—A. Yes, sir.

Q. How many?—A. I do not know how many.

Q. Then you do not want any change?—A. No, sir.

By Mr. GROVER :

Q. You think your present form of government a sufficient guarantee for life and property, and the laws sufficiently administered?—A. Yes, sir; I think our laws are good. There are a few instances where they are not carried out, but they do not amount to anything.

Q. Have you anything further to say to this committee that has not been inquired into?—A. Nothing. From what I can see and learn, only the men who are doing no good in this country, or in any other country, complain. The people are doing well, and are satisfied.

Q. Is that the case with the people who want a change?—A. With the majority I think it is the case.

Q. You know there is a difference of opinion upon this question?—A. There are some respectable people who differ from me, of course, but they are not doing the country any good by improving it. That is what I mean by saying they are doing no good to the country.

Q. What do you do in the way of improving the country?—A. I am selling goods.

Q. Is that improving the country?—A. Yes, sir; by bringing people here and shipping out cattle, and by opening up a market for the people.

Q. Have you known of any one in this country who is in favor of sectionizing the land and dividing it up in severalty? If so, who are they?—A. As to the Territorial form of government, I cannot state that I know a single man who asks for it, but I have heard men speak in favor of the allotment of the lands.

Q. Do they not speak of the simple question of the allotment of the lands in connection with the means of keeping off a Territorial government?—A. That seems to be the influence.

Q. That seems to be the one argument that way?—A. These men are opposed to a Territorial form of government generally, and most of us want to keep our lands among ourselves in our own way.

JAMES E. HARDING, being first duly sworn, testified as follows :

By the CHAIRMAN.

Question. What is your name?—Answer. James E. Harding.

Q. Where were you born?—A. In the Cherokee Nation, in the State of Georgia.

Q. You are a Cherokee?—A. Yes, sir.

Q. What do you call yourself—quarter-blood?—A. No, sir; I am not a quarter.

Q. Are you a farmer?—A. Yes, sir.

Q. How much land have you in cultivation?—A. I have 140 acres under fence.

Q. Do you make a good living off of that?—A. Yes, sir.

Q. What is your view of the allotment of the lands among the members of the tribe after setting apart a sufficient amount for the school fund, a portion of each tract to be reserved and made inalienable for five or ten years? Do you think this would benefit your people?—A. I am very well satisfied with the present condition of the country.

Q. Suppose 80 acres were secured to every member of the tribe or made inalienable, for the remainder of the land and the proceeds kept by the United States, and the interest paid to the tribe, would it not improve the general condition of things in the Territory and be a positive benefit to the people and afford security to life and property?—A. No, sir.

Q. You do not want any change in the form of your government, then?—A. No, sir.

Q. You are satisfied with the schools?—A. I am.

By Mr. GROVER:

Q. Do you want a different court here?—A. So far as the courts are concerned, I would like to see the treaties carried out.

Q. You would be satisfied if the treaties were carried out?—A. I would.

By Mr. ADAIR:

Q. In the Territories where they are inhabited by the whites the President appoints the judges, marshals, United States district attorneys, and general officers of that kind; the people have their county judges and other subordinate officers of that character. Are you in favor of that kind of government being extended over this nation?—A. No, sir; I do not want any Territorial government.

HENRY TIBLOW, being first duly sworn, testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Henry Tiblow.

Q. Are you an Indian?—A. Yes, sir.

Q. Where were you born?—A. In Missouri.

Q. Are you a Cherokee?—A. I am an adopted Cherokee. I am a Delaware by blood.

Q. How long have you lived here?—A. Nine years.

Q. What is your occupation?—A. Farming.

Q. What are your views on the question of the allotment of the lands among the members of the tribe, setting apart a sufficient portion for a school fund, or should a sufficient tract be reserved and made inalienable for five or ten years, would it improve your people?—A. I myself am satisfied now.

Q. Suppose eighty acres were made inalienable, so that it could not be sold for taxes or debts, and the remainder of the land in the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the Indians, would it not much improve the general condition of the Indians?—A. I think not.

Q. If each tribe was allowed to retain its customs and property, would it be benefited by the establishment of a Territorial form of government?—A. I do not think it would.

Q. Can a civil form of government be organized over the Indian Territory for the better protection of life and property? If so, what should that government be?—A. I do not think any change is necessary. I am not in favor of any change in the form of government. I am perfectly satisfied as I am under existing laws and customs.

By Mr. GROVER:

Q. Where do you live?—A. Southeast of this place.

Q. How much improvement have you on your farm?—A. Seventy-five acres.

Q. What do you raise there?—A. Corn, wheat, pumpkins, potatoes.

Q. Have you any cattle?—A. I have a few.

Q. You are satisfied you can hold the lands as long as you want to under the present tenure?—A. I am.

Q. And the present treaty is all you want?—A. It is.

ALLEN LYNCH, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Allen Lynch.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Were you a slave?—A. Yes, sir.

Q. Where were you during the war?—A. I was in the Army.

Q. Were you in the Federal Army?—A. I was.

Q. How long?—A. Three years.

Q. Were you discharged from the Army?—A. Yes, sir.

Q. Where?—A. At Leavenworth, Kansas.

Q. When did you come back into the Territory?—A. In 1866.

Q. At what time in the year?—A. March 1, I think.

Q. Do you vote here?—A. Yes, sir.

Q. You are not on the doubtful list?—A. No, sir.

Q. How far do you live from here?—A. Ten miles.

Q. Have you any schools in your neighborhood?—A. No, sir.

Q. Have you any children?—A. Yes, sir.

Q. Have you ever had any schools?—A. I sent my children three times.

Q. What do you think about the allotment of lands in this Territory? Should all the lands owned by the tribe be allotted among the members of the tribe, after setting apart a sufficient fund for a school fund, or should part be reserved and made inalienable for five or ten years? Would that benefit your people?—A. I think it would be better to have the land divided, if, for instance, I could have the privilege of taking my land. I would accept anything in the way of a change from what it is now.

Q. As to the question of a civil form of government, can a civil form of government be organized over the Territory for the better protection of life and property?—A. I think so.

Q. Do you understand what is meant by a civil form of government?—A. Yes, sir.

Q. Has there been any free discussion of this point in your neighborhood?—A. A little.

Q. What do you think about that?—A. I think I could live under the jurisdiction of United States laws as well as I do now.

Q. You are then in favor of a change?—A. I am, most emphatically.

Q. You have lived in Kansas?—A. Yes, sir.

Q. You would like to have the same laws here as in Kansas?—A. Yes, sir.

Q. What do the colored people think about it?—A. As I do.

Q. What do the Indians say about it?—A. They do not say much about it. The largest portion of the full-bloods cannot understand it. Usually they do not think much about it.

Q. You talk Cherokee?—A. Yes, sir.

Q. And can talk with them freely?—A. Yes, sir. We want our rights, and think the United States can give them to us.

Q. How long were you in the Army?—A. Three years.

Q. Are there many colored people here who were in the Army?—A. There are as many as 300 in the Cherokee Nation.

By Mr. GROVER:

Q. Can you give some estimate as to how many colored people there are in the Indian Territory?—A. I should think 1,500.

Q. That includes men, women, and children?—A. It does.

Q. How many schools are there that the colored people attend?—A. Five.

By the CHAIRMAN:

Q. In the whole Indian Nation?—A. Yes, sir; in the Cherokee Nation.

By Mr. GROVER:

Q. Are there any colored people among the other tribes?—A. Yes, sir; and they fare well among the Creeks; in fact, just the same as the Creeks.

By the CHAIRMAN:

Q. How is it among the Choctaws?—A. I do not know about the rest of them, only that they fare well. We have a few in our neighborhood. There are also in our neighborhood two Cherokee schools. The nearest one to me is three miles. We were trying 12 years to have schools established among us.

JOHN C. FROST, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. John C. Frost.

Q. Where were you born?—A. In Tennessee.

Q. Are you an Indian?—A. I am.

Q. By adoption?—A. No, sir; by birth.

Q. To what tribe do you belong?—A. Cherokee.

Q. Do you live in the Indian Territory?—A. Yes, sir.

Q. How long have you lived here?—A. Since 1856.

Q. What is your occupation?—A. I have been farming some. At present I am in the wagon business.

Q. You are a mechanic?—A. Yes, sir.

Q. What is your idea of the allotment of the land in the Territory, sectionizing it?—A. I am in favor of that scheme. I think it would be better for the people. I think they would improve the land more than they do at present if allotted to them so that they could know which was theirs.

Q. What is the feeling of the people on that subject?—A. They are divided on the subject.

Q. What proportion of them oppose and what proportion favor such an allotment of lands?—A. I cannot say. Many are in favor of it and many are opposed to it.

Q. Has that question been discussed with any freedom in your neighborhood?—A. Not as much as it might have been.

Q. Do the people understand it fully?—A. I think the great mass of the people understand it. They have an idea they will be cheated out of their land. I know many of them favor an allotment.

Q. If it was not for the impression they have that they will in some way be defrauded out of their own lands you think many more, if not all, would favor an allotment?—A. Yes, sir; if they felt confident that the lands would be allotted among themselves, they would favor such a change. They have been made to believe that the railroads would get the larger portion of the land.

Q. What is your opinion about the change of government here, in the establishment of a civil form of government similar to that of New Mexico and other parts of the United States, with the laws of the United States extending over the Territory here and with courts of the United States in full operation, having complete jurisdiction?—A. I have always been in favor of that. I believe it would be much better for the people if we could get United States courts established among us and have a representative in Congress.

Q. You are in favor of having a Delegate in Congress, then?—A. Yes, sir.

Q. And a government here of your own?—A. Yes, sir.

Q. You think it would afford better protection for life and property if you had a civil government here over the Territory?—A. I am satisfied it would. We have laws now, but they are not enforced.

By Mr. GROVER :

Q. Is there anything else that you would like to state to the committee that has not been inquired of?—A. I do not think of anything further.

By the CHAIRMAN :

Q. Do you think any persons have been prevented by fear from expressing themselves on these subjects?—A. I do not know.

Q. Has there been a free discussion on these points?—A. I think not.

Q. Why not?—A. Many do not feel safe in so expressing themselves. There are a great many opposed to it who would be unanimously for it if they dared to express themselves. It has been only a little while since many of the people have cared to talk about it. They are now talking more freely about it than they dared to at first, five or six years ago. Many are in favor of the allotment of the lands and a Territorial form of government who express themselves against them. They see into it better now than they used to.

Q. They have begun to understand the question?—A. Yes, sir; there is more freedom of discussion.

Q. And they are more in favor it?—A. Somewhat.

Q. Do you think the people are able to conduct their own business, and manage their own affairs, and own their own property?—A. As much so as any other people. The mass of them are, but, of course, many are not.

Q. They are just as capable of managing their own affairs as any class of poor people anywhere?—A. Just as capable.

GEORGE W. DOERTHTY, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question, What is your name?—Answer. George W. Doerthty.

Q. Do you understand English?—A. Yes, sir; I can talk English.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Are you a full-blood?—A. No, sir; three-quarters Cherokee and one-quarter white.

Q. How far do you live from Vinita?—A. Six miles.

Q. Are you a farmer?—A. Yes, sir.

Q. How much land do you till?—A. I have about 30 acres under cultivation. It is in the Canadian district.

Q. Do you work it?—A. No, sir, not myself; I do not occupy the land now.

Q. What is your opinion about the allotment of the land in the Territory here?—A. I am in favor of some change.

Q. You would like to own your own land?—A. Yes, sir; I would like to suck a front teat awhile myself.

Q. You are agreed upon that subject with the common people?—A. So far as I know, the working-class would like to have a change. As it is, we have no protection for life and property.

Q. The leaders are satisfied?—A. Yes, sir; they do not want a change. There are two parties in the nation—the Ross party and the Downing party. The Ross party do not want a change; they have the front teat and the soft meat, and do not desire any change. Of course, if I was there myself I would be of their opinion. I do not blame them particularly.

Q. Have you discussed this question much among your neighbors?—A. Yes, sir.

Q. Do they understand it pretty well?—A. Yes, sir.

Q. And they think pretty much as you do?—A. Yes, sir.

Q. Has there been any disposition to intimidate you?—A. Yes, sir.

Q. Is it safe for a man to go out and advocate this change publicly?—A. No, sir; it would be very unsafe to do that.

Q. What would be done?—A. You would stand a good chance of being killed.

Q. What do you think of making a change in the form of government here, establishing a Territorial government similar to that of New Mexico, and extending the laws of the United States over you?—A. That would do; we want some change from what it is now.

Q. You know Kansas used to be a Territory of the United States; would you like it similar to that?—A. I should.

By Mr. GROVER:

Q. You want the lands divided, and then laws that will protect your rights?—A. Yes, sir.

By the CHAIRMAN:

Q. You want better protection for life and property?—A. Yes, sir; if I could have it my way.

Q. How are your schools getting along?—A. They are one-sided in these things in this country. It is owing to the kind of school altogether. There is a party line established. The party that is in power generally manages to provide schools for the members of its own party, and the other party gets no schools.

Q. What do you mean by that?—A. I mean this: There are two par-

ties in the nation—the Ross and Downing parties—and a great deal of the time the Ross party has the places, and they generally throw the schools on their side and give us nothing. We have a school-board here, and they are members of the Ross party, and do not give us any schools. We have children enough to educate. I belong to the Downing party myself.

Q. Has the Downing party been in power a little?—A. Yes, sir; and they have schools when they are in power.

By Mr. GROVER:

Q. Is there anything else that you wish to say to the committee that has not been said?—A. I can think of nothing.

NELSON MERRILL, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Nelson Merrill.

Q. Where were you born?—A. In Tennessee.

Q. How long have you been in this country?—A. Since 1839.

Q. Were you a slave?—A. I was.

Q. Where were you during the war?—A. A part of the time I was in the Cherokee Nation and part of the time in Kansas.

Q. Were you in the Army?—A. I was.

Q. Were you honorably discharged?—A. I was.

Q. When did you return to the Cherokee Nation?—A. In 1869.

Q. Did they allow you to vote?—A. Yes, sir; I have been voting.

Q. Are you not on the doubtful list?—A. I am.

Q. But you still vote?—A. I do not.

Q. Did you share in the distribution of the bread-money?—A. I was told I was on the doubtful list.

Q. Have you any land?—A. I have as much as I can plant.

Q. Do you make a comfortable living off of it?—A. No, sir; I could if I was not threatened with being put off of it.

Q. Why is that?—A. Because I am on the doubtful list.

Q. Are there many colored people in your neighborhood?—A. Yes, sir; about two-thirds of the district.

Q. How many are in the nation?—A. I suppose there are 3,000 in the nation. Many of these colored people on the doubtful list were in the Federal Army.

Q. Have they no rights?—A. No, sir; they came back just as soon as they could get back.

Q. What do they think about the question of allotting the lands among the different members of the tribe, after setting apart a sufficient portion for a school-fund; or should a sufficient tract be set apart as a reserve?—A. I cannot say.

Q. Suppose eighty acres were allotted to each member of the tribe, and secured so that it could not be alienated, and the remainder of the land sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribe—would it not improve the condition of the Indians?—A. Until I have some land of my own I cannot say anything about it.

Q. If you had an interest in the land would you be in favor of allotting it?—A. I would.

Q. Would you be in favor of a change of government, so as to have a Territorial government?—A. I think I would.

Q. Have you any protection for life and property under the present laws?—A. No, sir; we have not.

Q. What kind of a government would you like?—A. Like Kansas. I lived there several years ago, and I like that government very well.

By Mr. GROVER :

Q. Have you anything else to say to the committee?—A. We have no fair show in this nation. We have no vote, and cannot send our children to school. We have no courts where we are permitted to sit on the jury, and we are not at all satisfied with it.

Q. In your return to the Cherokee nation, did you come back within the time prescribed by the treaty of 1866? That was six months.—A. I did.

Q. How happens it that you are on the doubtful list?—A. I am there justly.

Q. You say you came back in 1869?—A. I came back in 1869, and settled on the neutral lands in 1865 in Kansas.

Q. This neutral land was in Kansas, was it?—A. Yes, sir; after Mr. Joy bought it I left.

Q. You claim that that was Cherokee land, and that while you were on it you were in the Cherokee Nation?—A. That is it.

Q. What were you doing on the neutral lands?—A. I was trying to make an improvement there, but there was so much difficulty about Mr. Joy threatening to turn me off, that I left there and came here.

Q. Have they given the colored people any schools?—A. No, sir; they have their schools down about Tahlequah, but there are none with us. They have a seminary and high school down there.

Q. They allow you to go to jail?—A. Yes, sir; and the whipping-post.

Q. Have they a whipping-post in the nation?—A. They have had two or three years.

Q. Is that abandoned now?—A. It is.

Q. Is that all you wish to say?—A. Yes, sir.

Q. One question more. Do you think any persons have been prevented so far from expressing their opinion upon these subjects?—A. I do not think there has been.

GUSS BUFFINGTON, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN :

Question. What is your name?—Answer. Guss Buffington.

Q. Where were you born?—A. In the State of Georgia.

Q. How long have you lived in this Territory?—A. I do not know. I came here a slave when the Cherokees came.

Q. Where were you during the war?—A. I was South.

Q. Were you in the Southern army?—A. No, sir.

Q. Were you taken South?—A. Yes, sir; by my master.

By Mr. GROVER :

Q. Are you an Indian by birth?—A. I cannot say that I am.

By the CHAIRMAN :

Q. Are you a farmer?—A. Yes, sir; and a blacksmith.

Q. Where do you live?—A. About ten miles from here, on the Grand River.

Q. What is your opinion about the allotment of lands among the various members of the tribe?—A. I hardly know what to say upon that

point. My people in this country are afraid of it. They are afraid of the Cherokee Indians. They think it would not be safe to give expression to really what they think they want.

Q. Do you think your people would be benefited by a change?—A. I think they would.

Q. They want a better form of government?—A. We would like to have a United States court here in the nation. That would be much better than going outside of the nation.

Q. Have you any schools here?—A. There are none open.

Q. They have not been doing well at all?—A. No, sir; they gave us a school a few days ago, merely to shut our mouths until this committee passed by.

Q. How long may that last?—A. Until the committee gets away from the nation. We had a good school started once about eight years ago.

Q. And you have had none since then?—A. No, sir; we had that about three months, and then they took it away from us, and never gave us another school since.

By Mr. GROVER:

Q. Do you wish to say anything more to the committee on this account?—A. I would like to see a change. We have as much right here as a natural-born Indian, and we would like to have the privileges extended to us that are extended to the rest.

Q. Do they allow you to vote?—A. Yes, sir; I did vote, but they have now dropped me. I am not recognized any more.

ARTHUR BEAN, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Arthur Bean.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Were you a slave?—A. Yes, sir.

Q. Where were you during the war?—A. I was in the war.

Q. Were you in the Federal Army?—A. Yes, sir.

Q. How long were you in the Army?—A. Two years and ten months.

Q. Were you honorably discharged?—A. Yes, sir.

Q. When did you return to the nation?—A. In the fall of 1866.

Q. Did you vote?—A. Once; but not since.

Q. Why?—A. Because they did not allow me.

Q. Why not?—A. They said I was not a citizen.

Q. Were you on the doubtful list?—A. I was.

Q. Did you get any of that bread money?—A. No, sir.

Q. Why not?—A. Because they said I was not a citizen, and they did not allow me.

Q. Have you been up to the citizenship court at Tahlequah to see about your rights?—A. Several times.

Q. Did they hear you?—A. No, sir.

Q. When were you down there last?—A. A year ago.

Q. Where were you during the last council?—A. I was down there.

Q. What did they say?—A. They told us to file our papers before the clerk, and they would recognize us as citizens. They put us off to the next council, but we have not received any word from the council since.

Q. How far do you live from here?—A. Fifteen miles.

Q. Are there any schools for the colored people out in your neighborhood?—A. No, sir.

Q. Have you ever had a school in your neighborhood?—A. Yes, sir;

seven or eight years ago; but it has been taken away from there. We have no schools now. They started a school a week ago among themselves who were recognized as citizens.

Q. How many colored people are there in this Territory?—A. I have no idea.

Q. How many colored men are there here who were in the Army and who are now on the doubtful list?—A. There are a great many.

Q. Are there any soldiers who were in the Southern Army who are on the doubtful list?—A. I do not think there are.

Q. Were you in the Union Army?—A. Yes, sir; I was in a Cherokee regiment made up in the nation here.

Q. Where did the regiment go?—A. It was on the Northern side.

Q. Are you in favor of the allotment of lands in severalty, so that each man may know what is his?—A. I do not know about that.

Q. Do you understand the question?—A. Quite clearly.

Q. Have you any land?—A. Yes, sir.

Q. How much do you farm?—A. Fifteen acres.

Q. Do you make a living off of that?—A. It is pretty hard work. I could have had more, but I would not cultivate it, for I had an idea it would not benefit me, because I expected to be turned off of it.

Q. What is your opinion about dividing the land in severalty among the members of the tribe?—A. I am not in favor it unless I could have my portion given me.

Q. With that understanding you would be in favor of it?—A. Yes, sir; then I could take up a section.

Q. Is there anything else you wish to say to the committee?—A. Nothing, except that we have not enjoyed all our rights and privileges in the nation. In the northern part of the Saline district we have schools. The Delawares have no schools. It has been several years since we had schools in this district.

JIM MUSKRAT, being first duly sworn, was examined by the chairman, and testified as follows, Mr. W. V. Carey acting as interpreter:

By the CHAIRMAN:

Question. What is your name?—Answer. Jim Muskrat.

Q. Where were you born?—A. In the Cherokee Nation, the Delaware district. It was the old Cherokee Nation.

Q. Do you understand this question about the allotment of lands in severalty among the different members of the tribe?—A. No, sir.

Q. And extending the laws of the United States over the Territory?—A. No, sir.

Q. And the United States court?—A. No, sir.

Q. Were you in favor of dividing the lands here, so that you could hold your own lands in severalty?—A. No, sir.

By Mr. GROVER:

Q. Are you satisfied with the present form of government here, and the way things are going along?—A. I am.

Q. Do you want the government to remain as it has been and is?—A. Yes, sir.

Q. Have you a farm anywhere?—A. Yes, sir; I have a home and a farm.

Q. Where is it?—A. Three miles from this place.

Q. What do you raise?—A. Corn, cattle, and hogs.

Q. Are you a full-blooded Cherokee?—A. Yes, sir.

LOONEY TIGER, being first duly sworn, was examined by the chairman, and testified as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. Looney Tiger.

Q. Are you a Cherokee?—A. Yes, sir.

Q. Half-breed?—A. No, sir.

Q. Were you born here?—A. Yes, sir.

Q. Do you understand this question of sectionizing the lands?—A. I do.

Q. Do you think the lands now held in common among the Indians should be divided in severalty among the different members of the tribe, without confirming the additional land-grants to certain railroads?—A. I have had an idea about it, but I do not know whether I am right or not.

Q. Are you in favor of dividing the lands in severalty, so that every one may own his own land?—A. I would not favor the allotment of the land, I think. Would that make us subject to the laws of the United States, or put a Territorial government over us?

Q. It might, but it is not very likely.—A. Do you want my individual opinion?

Q. I do.—A. I am in favor of allotting our lands, provided we can retain our own laws, customs, privileges, &c.

Q. In other words, to keep up your tribal relations?—A. Yes, sir; and our own form of government.

Q. Your nation just as it is now?—A. Yes, sir.

By Mr. GROVER:

Q. You want to have your own council and courts, and elect your own officers?—A. Yes, sir.

Q. You do not want a change in the present form of government here?—A. No, sir.

Q. Is there anything else you wish to say to the committee on this account, which has not been asked?—A. If our lands were allotted, and we would not be subject to be placed under a Territorial form of government, with United States laws over us, I would be in favor of having the lands allotted.

Q. That question could be separated. It is possible for Congress to allot the lands, without putting the other laws in force, or making any other change. Would you want the lands divided among the people in that case?—A. Yes, sir; I would favor that, but I want the present form of government to remain in the same hands where it is now.

Q. That could be done, of course, if the majority favored it.—A. If we could have our own courts, councils, county officers, &c., I would favor it.

Q. Can you write your name?—A. Yes, sir.

W. V. CAREY, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. W. V. Carey.

Q. Where do you live?—A. Cherokee Nation.

Q. In what district?—A. Coowischoowee district.

Q. Were you born here?—A. Yes, sir.

By Mr. GROVER:

Q. How old are you?—A. Twenty-two years.

Q. What is your occupation?—A. I am a student here.

Q. You have not got much Indian blood in you, have you?—A. About half; my father was a full-blood, my mother half-breed.

Q. Where do you go to school?—A. At the male seminary.

Q. Where?—A. Tahlequah.

Q. You have not paid much attention to this question of allotting the lands, have you?—A. Not much, but I have thought about it some.

Q. Well, what are your views about it?—A. I will say it would be a good thing for some people, the intelligent portion, but there are a portion of the full-bloods who are ignorant, and I do not think it would be of any benefit to them, nor to the main portion of the Cherokees.

Q. Why?—A. Because they are ignorant. They would not be competent to compete with the white people.

Q. Suppose eighty acres were allotted to each member of the tribe and secured so that it could not be alienated or sold for taxes or debts, and the remainder of the lands in the nation sold and the proceeds kept by the United States and the interest annually paid to the tribe, would it not improve the condition of the Indians and be for the benefit of life and property; could they not, in that case, work as well as they do now?—A. I suppose they could; the intelligent portion could, but the ignorant portion could not.

Q. They would not be more ignorant in that case than they are now, would they?—A. They would fool it all away.

Q. But suppose they cannot fool them away, would it not be better for them to have them allotted?—A. I don't know that it would. It would bring the white people among the full-blood Cherokees and they would not like it because they would become envious.

Q. And you think it would not benefit their condition any?—A. No, sir; I do not.

By the CHAIRMAN:

Q. What are you studying at school?—A. Geometry, Latin, arithmetic, rhetoric, spelling, and geography.

Q. Have a good school?—A. Yes, sir.

Q. Have good teachers?—A. Yes, sir.

Q. Do you propose to continue on until you graduate?—A. Yes, sir; provided I can support myself. I depend upon myself entirely.

Q. Do you teach sometimes?—A. Yes, sir.

Q. In Cherokee?—A. Yes, sir; sometimes.

Q. In the Cherokee Nation?—A. Yes, sir; Professor Williamson was one of the teachers.

Q. What is he?—A. A white man. John Vann and Joseph Thompson are teachers.

Q. Are they natives?—A. Yes, sir.

Q. Where were they educated?—A. I cannot tell where Mr. Thompson was educated. Mr. Vann is self-educated.

Q. What do you propose to do in life after you get through? Have you any particular profession or business picked out?—A. Yes, sir; I always thought I would have to be a farmer.

Q. Are there some students studying to be physicians; studying medicine?—A. No, sir; not at the present time, that I know anything about.

Q. What do you do for medical assistance?—A. At the seminary we have a native physician.

Q. Where did he study?—A. In Saint Louis.

Q. Are some going to be physicians?—A. Yes, sir.

Q. Some clergymen?—A. Yes, sir.

Q. Some lawyers?—A. Yes, sir.

Q. Have you doctors?—A. Yes, sir.

Q. Are they natives?—A. Yes, sir.

Q. Who are they?—A. Dr. Adair and Dr. F. W. McNeir and others I am unable to state, and Dr. Foreman, who is a native.

JOSIAH T. HENRY, having been duly sworn by the chairman, was examined, Mr. Carey being sworn as the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Josiah T. Henry.

Q. Are you a full-blood?—A. About one-quarter white and three-fourths Indian.

Q. Then you are three-quarters full-blood?—A. Yes, sir.

Q. Do you farm?—A. Yes, sir.

Q. Do you know anything about sectionizing the lands and holding them in severalty instead of in common, as you do now?—A. I have heard something said about the allotment of the lands.

Q. Do you know anything about the several forms of government established over this country?—A. I have heard of the allotment of the land in this country and Territorializing the government too, and that is all I know about it.

Q. What are you in favor of?—A. I am opposed to it, from my own experience, from being among the white people in the State of Kansas, and from that experience I do not think it would be any benefit to the Cherokee people.

Q. How much land do you farm?—A. I have sold my farm, but I have not very much under cultivation now.

By Mr. GROVER:

Q. Are you satisfied with the present condition of things?—A. Yes, sir.

Q. Are you satisfied with your present government and wish it to remain as it is, and the way in which you live on the lands now?—A. Yes, sir; I am satisfied with the present condition of things in the nation.

Q. Can you read and write?—A. Yes, sir; I can read and write my name in English.

JAMES A. DUNCAN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. James A. Duncan.

Q. Where were you born?—A. In the State of Georgia.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. How long have you been in the Territory?—A. I do not recollect, but I have been here since 1843.

Q. Did you move here?—A. Yes, sir; it was previous to that time, probably 1834 or 1835. The year of the removal west slips my memory.

Q. What are your views in regard to organizing a civil government here, extending the laws of the United States over the Territory, &c.?—A. My views in regard to the present situation of things are about this: we seem to be in an unsettled condition. Our financial matters are managed very improperly, I think; and I think, as well as I have posted myself in regard to the treaty of 1866, my opinion is that I would like

to get all the rights that the treaty of 1866 gives us before our lands finally run out by being given to those adopted citizens who are being brought in here as provided for in the treaty. If we could be remedied it would be very necessary that we should have it. As far as the allotment is concerned, the statute provides we could get our lands allotted equally and our rights and title permanently secured beyond all doubt. Allow us to maintain our nationality; that would be a choice of mine.

Q. You would like to have your present form of government, but hold your lands so that each man should own his own land?—A. Yes, sir; if our present statutes cannot be remedied; as it is, I prefer it with amendments.

Q. With improvements?—A. Yes, sir; with improvements.

Q. Is there anything else you want to tell the committee of your own accord that has not been inquired of?—A. I do not know that I have anything particular. I do not believe it is worth while to specify anything in regard to our financial matters. It seems that our council does not do its duty to the government in regard to our financial matters. When we have sufficient money to run our government it seems our council appropriates that so as to make our nation insolvent, so we have to go to the court and serve the government without pay and have to provide ourselves with money while attending the courts. I would be perfectly willing to serve the country for nothing provided this thing could be remedied and stay so.

Q. Are you in favor of a United States court being established in this Territory?—A. Yes, sir; I am in favor of a United States court being established in accordance with the treaty of 1866.

By Mr. GROVER:

Q. You believe that the moneys that come from the United States are sufficient to pay all the expenses of a Territory?—A. I think it is indispensable; as that is the only means we have of paying the expenses of our government, we should act within the funds in our hands. I recollect the day when we got along with less money than we do to-day.

Q. Then your plan would be, if it could be carried out, to have the lands divided among the present citizens?—A. Provided we can have our laws or present system improved upon.

Q. If you could go back to the old condition, would you like to have the lands divided up?—A. Yes, sir.

Q. Did I understand you to say you thought that if the white people from the States came in here and took up your land you would have none after a while?—A. My opinion is this: That if all our citizens had a right to dispose of their lands, there are enough land-sharks to rush in here and clean us all out in twenty-four hours.

Q. That would be the objection for allotting the lands in your mind?—A. Yes, sir; rather than have that, I would prefer a slow death like consumption; like we are now, and I would be content with it.

Q. What do you mean by land-sharks coming in here? Do you mean they would be able to purchase the land all away from the Indians?—A. I think so, provided they could do it.

Q. But suppose it were allotted to each member of the tribe so that it could not be alienated or sold for taxes or debts and the remainder of the lands of the nation sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. If it was not made secure to them, and they had the right to sell it, every one of them would do it, and scores of men in our own country would do the same thing.

Q. Suppose the land should be granted by allotment to the citizens so it should be made impossible for them to sell it, what would be the condition of the people then?—A. I imagine that it would be better. From my observations it would be better if some means were had for debarring citizens from selling their lands. The people are being educated up to it. I am unable to say the exact time, but the time is approaching when the members of the tribe would not have a foot of land. The Delawares and Shawnees have so much land secured to them. They have two chances where we have a precarious one; under the treaty they get one hundred and sixty acres. If we consume our lands, they are secure in their one hundred and sixty acres.

Q. You are not?—A. I am not; at least that is my understanding.

Q. Is there protection for life and property among you?—A. Yes, sir; provided the laws are enforced.

Q. Well, are the laws enforced?—A. No, sir; not fully.

OLDFIELDS, having been duly sworn by the chairman, was examined; Mr. Carey being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Oldfields.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. Full-blood?—A. My father was a half-breed.

Q. Was your mother a full-blood Indian?—A. No, sir; my mother was about three-fourths.

Q. Do you farm?—A. Yes, sir.

Q. How much land have you now cultivating?—A. I have a small farm of about twenty acres.

Q. Do you want any change in regard to holding your lands; as to allotting or sectionizing them?—A. No, sir.

Q. Do you want any change in the government, establishing a Territorial government here?—A. No, sir.

Q. Are you satisfied with the present state of affairs?—A. Yes, sir.

Q. You wish them to remain as they are?—A. Yes, sir.

Q. Have you any statement you desire to make to the committee in regard to the matters generally in this Territory that have not been inquired of?—A. I wish to speak in reference to the treaty of 1866. I adhere firmly to that treaty, and I would not recommend any change from the present condition of affairs not stipulated or provided for by the treaty.

Q. Is that all?—A. Yes, sir.

Q. Can you read and write?—A. No, sir.

DANIEL MUSKRAT, having been duly sworn by the chairman, was examined; Mr. Carey being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Daniel Muskrat.

Q. Are you an Indian?—A. Yes, sir.

Q. Cherokee Indian?—A. Yes, sir.

Q. Are you a half-breed?—A. No, sir.

Q. Full-blood?—A. Yes, sir; full-blood and raised among full-blood people.

Q. Can you read and write?—A. Can read and write in Cherokee.

Q. Can you understand English at all?—A. No, sir.

Q. None at all?—A. I can understand but very few words.

Q. Do you want any change in the form of government here? Do you want the Territorial government established, extending the laws of the United States over this Territory?—A. No, sir.

Q. Do you want the lands allotted, sectionized, &c.?—A. No, sir; I am satisfied with the present condition of affairs; I wish for no change.

By Mr. GROVER:

Q. What is your occupation?—A. I am a farmer.

Q. How much land have you?—A. I have inclosed in one piece about 100 acres, under cultivation.

Q. Do you raise cattle?—A. Yes, sir.

Q. Horses and hogs, &c.?—A. Yes, sir; horses, cattle, and hogs.

Q. Have you a family?—A. Yes, sir.

Q. And a wife?—A. Yes, sir.

Q. How many children?—A. Six children.

Q. Have they been adopted?—A. Yes, sir; they have.

Q. Have they been attending school?—A. Yes, sir; they have been going to school.

Q. What have they been taught?—A. They have learned to read and speak the English language.

Q. So their condition is improving?—A. Yes, sir.

Q. Is there anything that you wish to state to the committee of your own opinion that you have not stated or has not been inquired of?—A. No, sir; except that I would recommend no change.

GEORGE W. DOERTHTY recalled.

By the CHAIRMAN:

Question. Were you in the Union Army?—Answer. Yes, sir; I was in the Union Army.

Q. How long were you in the Union Army?—A. For over 4 years.

Q. Were you honorably discharged?—A. Yes, sir; I was honorably discharged.

MUSCOGEE, *November 18, 1878.*

C. R. STEVENSON, having been duly sworn, was examined.

By the CHAIRMAN:

Q. What is your name?—A. C. R. Stevenson.

Q. Where were you born?—A. In Illinois.

Q. Are you an Indian?—A. No, sir.

Q. Are you married to an Indian woman?—A. Yes, sir.

Q. How long have you been living in the nation?—A. About nine years, I guess.

Q. You are adopted into the Creek Nation?—A. No, sir; I am adopted into the Cherokee Nation.

Q. What is your occupation?—A. I am a deputy United States marshal.

Q. United States deputy marshal?—A. Yes, sir.

Q. How long have you been deputy United States marshal?—A. About eight or nine years.

Q. Have you heard much discussion in regard to these questions of allotting the lands in severalty?—A. Yes, sir; I have heard a good deal of it.

Q. Among the Indians?—A. Yes, sir.

Q. Do they generally talk about it a good deal and understand it?—
A. I do not think they understand it. They talk about it a great deal.

Q. What do they understand about it?—A. I do not know hardly what they do understand.

Q. Have any of them asked you what it meant?—A. Yes, sir; a great many have asked me what it meant—what was going to be done.

Q. Well, what is the opinion about it?—A. Some are afraid the lands will be taken from them entirely. Some think they would like to hold their lands in severalty. I suppose there are some who do not understand what you mean by allotment and sectionizing, &c.

Q. Suppose they did understand what allotment meant?—A. I think they would be in favor of it and satisfied with it.

Q. Is it not a fear with most of them that the lands will be taken away from them and given to the railroads that makes the most of them oppose it?—A. I think so; yes, sir.

Q. Is there any disposition among them to have a Territorial government established over the Territory?—A. Some are in favor of that. Some are afraid to say, or do not say anything about it. I think they are afraid to express themselves.

Q. What are they afraid of?—A. They do not think it is safe.

Q. What is your opinion about it? You are a citizen here?—A. I am.

Q. You vote in the Cherokee Nation?—A. Yes, sir.

Q. What is your opinion about allotting the lands—dividing them up in severalty among the Indians?—A. I think it would be a good idea.

Q. What do you think about changing the present form of government and establishing a civil government over the Territory, extending the laws of the United States over it?—A. I think any change would be better than it is at present. I do not think it could be damaged by a change.

Q. You think any change would be better than the present system?—
A. I do.

Q. Do you think there would be better protection for life and property in the Territory?—A. Yes, sir; I do. There is no protection for life and property now, you might say.

Q. How are the affairs of the Cherokee Nation managed?—A. I do not know anything about it.

Q. Is the nation in debt?—A. I do not know.

Q. Have you ever heard anything about the warrants of the nations?—
A. I suppose I have heard of the warrants.

Q. What do they sell for?—A. I do not know.

Q. In your judgment, are the schools managed properly?—A. I do not know anything about the school system at all.

Q. How many white men in the Cherokee Nation?—A. I do not know that.

By Mr. ADAIR:

Q. Is the Government of the United States in debt?

WITNESS. Are they in debt?

Mr. ADAIR. Yes, sir.

WITNESS. I suppose they are.

By Mr. ADAIR:

Q. Do you know how much?—A. No, sir.

Q. How many murders have been committed in the Cherokee Nation during the past twelve months?—A. I do not know that, either.

Q. Have you heard of any; if you have, please tell the committee?—
A. I do not remember of any.

Q. Do you not hear of crime being committed in the United States; robbing, stealing, murdering, &c.? According to population, within the last twelve months, do you think crime has been any greater in the Cherokee Nation than in the United States?—A. I do not think I have heard of any murders in the Cherokee Nation within the last twelve months.

Q. How are the Cherokees situated now? As a general thing, are they not friendly and peaceable? This committee has come to see how they are. Will you please tell them whether you see any fighting, or shooting among them?—A. There is a good deal of horse-stealing.

Q. Is that all done by white men?—A. The last case I know anything about was committed by Indians.

Q. But, as a general thing, are they not committed by white men who have run over into the Territory from Missouri and Arkansas, and who have come over here to hide?—A. There are white men here of that kind.

Q. They take refuge here from the States, as a general rule, do they not?—A. Yes, sir; they do.

Q. You live in the Cherokee Nation?—A. Yes, sir.

Q. You have the privilege of sending your children to school, if you choose to do so?—A. Yes, sir.

Q. You have no lands to buy?—A. I have no lands to buy.

Q. Nor taxes to pay, have you?—A. Indirectly, they pay taxes.

Q. Cannot you cultivate as much land as you want, without paying taxes?—A. Yes, sir.

Q. You can have as many places made as you want, provided you do not encroach upon any other citizen's improvements?—A. No; I do not understand it that way.

Q. Don't you understand you can make a home in Illinois district, and another in Cop-wis-coo-wee district, if you desire?—A. I do not think more than two.

Q. You could have more?—A. I have always heard you could have but two.

Q. You are in favor of carrying out the treaty stipulations between the Cherokees and the government?—A. Well, I do not know. I guess so.

Q. When you spoke of allotment, you spoke of such an allotment as the government and the Cherokees have agreed upon in the treaties?—A. I do not know that I do.

Q. Don't you think that that is what the treaty provides?—A. If that is what the treaty provides, I am not in favor of it.

Q. You cannot change it, can you?—A. No, sir; I cannot.

Q. Are you not satisfied that the Cherokee people are opposed to the establishment of a Territorial government over this Territory?—A. No, sir; I am not.

Q. You are not satisfied of that?—A. No, sir.

Q. Have you been around among the full-blooded Cherokees much within the last year?—A. No, sir; not very much within the last year.

Q. Where have you been?—A. I have been here most of the time.

Q. Could you give the names of some full-blood Cherokees who are in favor of having this country Territorialized, the lands allotted, &c.?—A. I do not know any at present; but I can give the names of some whom I have heard were in favor of it.

Q. The Cherokees have laws for the punishment of crime, have they not?—A. Yes, sir.

Q. They have civil law for the protection of property?—A. Yes, sir. They have some laws.

Q. They have a written constitution?—A. I believe so.

Q. Have you ever read that?—A. Yes, sir.

Q. Don't you think it is a good system of government?—A. It would be if carried out.

Q. Name an instance where the laws have not been enforced?—A. I can tell of one in the Canadian district.

Q. Which one?—A. The case of horse-stealing in that district.

Q. What case was that?—A. The case of Beck, where the man who stole the horse wanted to plead guilty.

Q. Were you both present?—A. No, sir.

Q. Do you know it of your own knowledge?—A. No. That is what they told me.

Q. That is "general report"?—A. Yes, sir.

Q. Everybody says that?—A. Yes, sir.

Q. Do you know whether the case was *nolle prosequi*?—A. It was not. It never went to trial.

Q. You were not there?—A. I was not there.

Q. Do you know the man personally who stole the horse?—A. He told me he was going to plead guilty.

Q. Does not the law make it the duty of every man to arrest a man charged with stealing?—A. He was already arrested.

Q. Why did you not appear against him?—A. There were plenty of others who heard the same statement from him; I believe a dozen.

Q. That is the only case you know of?—A. There were three parties concerned in that.

Q. That is the only case you know of?—A. That is the last case. I was interested in that and know better about it than the balance.

Q. Do you know anything about the general administration of our government?—A. I consider it a little bit loose.

Q. In what particular?—A. The laws may be good enough, but they are not enforced.

Q. State wherein they are not applied?—A. There is one instance, that horse-stealing case I mentioned; I might find more. There was another man who was interested in that case of stealing. There are several other cases of larceny where the parties were never arrested.

By Mr. W. P. ROSS:

Q. Do you know the grounds it was alleged upon which he was not arrested?—A. It was because the judge had not indorsed the warrant of arrest.

By Mr. ADAIR:

Q. Does not the treaty of the United States require that warrants shall be indorsed by the judge?—A. The truth is, that they did not want to try him.

Q. Well, don't you think they ought to carry out the treaty in making arrest of citizens?—A. The truth is they did not want to carry out the treaty and make the arrest.

By the CHAIRMAN:

Q. Was this horse-stealing done by a Cherokee?—A. Yes, sir.

Q. And from a Cherokee?—A. Yes, sir. There were three horses stolen—two from white men and one from a Cherokee.

By Mr. ADAIR:

Q. Has not everybody, nearly, got horses down here?—A. Yes, sir;

but there are some few left. They are pretty nearly all scattered over that district.

By the CHAIRMAN:

Q. Does anybody pay taxes here?—A. No, sir.

By Mr. ADAIR:

Q. In that respect don't you think they lay over the States?—A. I do not know whether they do or not. We have an indirect tax of just about as much as the people in the States would have to pay.

By the CHAIRMAN:

Q. Is there anything else you wish to state of your own accord that has not been inquired of?—A. I do not think of anything.

REDBIRD HARRIS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Redbird Harris.

Q. Where were you born?—A. In the State of Georgia.

Q. To what nation do you belong?—A. Cherokee Nation.

Q. How long have you lived here?—A. I have been here about twenty years.

By Mr. ADAIR:

Q. You are pretty well acquainted with the sentiments of the Cherokee people, are you not?—A. Yes, sir.

Q. What is the sentiment of the people with whom you have talked about this Territorial scheme known as a Territorial government; are the people in favor of it?—A. Generally opposed to it, I believe.

Q. They do not want any change in their government, do they?—A. No, sir.

By the CHAIRMAN:

Q. What is your occupation, Mr. Harris?—A. I am a farmer.

Q. You are a farmer?—A. Yes, sir.

Q. There is a difference of opinion among your people on the subject of territorializing the government, is there?—A. Well, a little, I suppose. The majority are opposed to it so far as my information goes. I think they would prefer to be as they are.

Q. Not very much objection to the allotment of the land, is there?—A. I do not think there are many in favor of allotting the lands.

Q. But there is not as much objection to allotting the lands as there is to a new form of government?—A. I do not think there is any more in favor of a change of the government than for the allotment of the lands. There may be a few. I have heard a few speak about it and say it might be advisable.

By Mr. ADAIR:

Q. Do not the people generally want these land-grants to the railroads repealed?—A. Yes, sir; a great many speak about that.

Q. Do they not say that they want these bonds that have been issued predicated upon these land-grants, repealed also?—A. Yes, sir.

Q. Are not these things a great source of trouble to the people?—A. Yes, sir; it is so urged.

By the CHAIRMAN:

Q. How does it trouble them?—A. By the introduction of this Territorial bill.

Q. What connection have they with the bonds; how do the bonds affect the people?—A. I believe, and the people believe, that these land-grants and bonds are the cause of the arise of all these Territorial bills that have been introduced into Congress.

Q. The railroads do not own the lands?—A. Not that I know of.

Q. The people have them yet?—A. Yes, sir.

Q. They want to keep them?—A. Yes, sir.

Q. The railroad companies have nothing to do with them?—A. Nothing at all.

Q. It does not hurt the people much to have the railroads through here?—A. I think not.

Q. Was the building of the railroad through here a good thing for the people or a bad thing?—A. I cannot say that it benefited them a great deal.

Q. Are not goods cheaper in the country than before the railroads were built?—A. Yes, sir.

Q. And are there not more of them?—A. Yes, sir; produce is down.

Q. Is not produce down everywhere?—A. Yes, sir.

Q. Do you think it was caused by the railroads?—A. I do not know. They ship produce in from the States and make it cheaper.

Q. Do you raise more than you can use?—A. Yes, sir.

By Mr. ADAIR:

Q. Don't you raise more off of a big farm than a little one?—A. Yes, sir.

Q. Has there not been a good state of feeling among the people?—A. Yes, sir.

By the CHAIRMAN:

Q. Do you think your people are capable of self-government?—A. We always thought so; yes, sir.

Q. You think you are competent and capable of managing your own affairs?—A. Yes, sir; I guess so.

Q. As well as anybody else?—A. Yes, sir.

Q. Is that the case with your people generally?—A. To manage our own affairs, yes, sir. We have done that pretty well.

Q. Don't you think you are competent to be citizens of the United States?—A. I do.

Q. You do?—A. I suppose so. I do not think it would be for our interest to become citizens of the United States.

By Mr. ADAIR:

Q. You stated that we were smart enough to manage our own affairs. Is not that one reason why you think we ought to be left alone?—A. Yes, sir.

Q. The people are as a general thing getting along peaceably and are law-abiding, are they not?—A. Yes, sir.

Q. Pretty well satisfied to remain as they are?—A. Yes, sir.

Q. You hear of no complaints, do you?—A. No, sir; none.

CHARLES HARRIS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Charles Harris.

Q. Where were you born?—A. In the State of Georgia.

Q. What county?—A. Milton County.

Q. What is your profession?—A. I am a physician.

Q. To what nation do you belong?—A. I belong to the Cherokee Nation.

Q. How long have you resided in this nation?—A. Some sixteen years.

Q. You are in practice now?—A. Yes, sir.

Q. Where were you educated?—A. I was educated at Atlanta, Georgia.

Q. Did you attend lectures there?—A. Yes, sir.

Q. Did you graduate?—A. No, sir; only attended one course of lectures.

Q. Where do you live?—A. Seven miles southeast of this place.

Q. In what district?—A. Canadian district, Cherokee Nation.

By Mr. ADAIR:

Q. You are pretty well acquainted with the sentiments of the people?—A. Yes, sir.

Q. You have traveled among them a great deal in the practice of your profession as a physician?—A. Yes, sir; a good deal.

Q. What is your impression as to the sentiments of the people in regard to territorializing this country?—A. Our own people are wholly opposed to it. In fact, I can say unanimously opposed to it.

Q. You travel about over the country a good deal?—A. Yes, sir; I practice over a large scope of country, say thirty-five or forty miles from where I live.

Q. They do not want any change at all?—A. No, sir.

Q. Are not the laws very well administered?—A. I have heard of no complaints.

Q. You live in the Canadian district?—A. Yes, sir.

Q. The same district in which Stevenson, the United States deputy marshal, lives?—A. Yes, sir.

Q. How far do you live from him?—A. Four miles.

Q. You are among the people, then?—A. Yes, sir.

Q. Have you heard of any complaints about horse-stealing, &c.?—A. None whatever.

Q. Has not the Cherokee Nation been very peaceable within the last five years?—A. Yes, sir; there has been a great change within the last five or six years. Prior to that there was some little trouble in that locality. There is none now.

Q. The people are increasing in agricultural pursuits and are cultivating the soil, and are living peaceably and are doing well?—A. That is evident to any person who has an eye and who is observant at all. There is a rapid change in agricultural pursuits. The people seem to be giving their attention to home affairs more than heretofore.

Q. Have not the schools been increasing both in number and efficiency?—A. They are giving more attention to education than formerly.

Q. A great deal more than they ever did before?—A. Yes, sir.

Q. Is not there a growing disposition among the people to educate their children?—A. Yes, sir.

Q. Have you visited our schools at Tahlequah?—A. Yes, sir.

Q. Please tell the committee how those schools are progressing?—A. As finely as could be; as much as could be desired.

Q. From your general knowledge of the Creeks they are doing well, too?—A. Yes, sir; I could say that of the Creeks. I have been among them a good deal.

By the CHAIRMAN:

Q. Is there any desire to have United States courts established in the

Ter ritory?—A. Well, I believe there is a desire to have that done. It would be more convenient for the people; it is very inconvenient the way it is now. It is for convenience' sake, I presume, that they want the court established.

Q. Is there anything further, doctor, that you desire to say to the committee that has not been inquired of?—A. Nothing that I think of.

LUCIEN B. BELL, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Lucien B. Bell.

Q. Where were you born?—A. In the State of Georgia.

Q. Are you an Indian by birth or adoption?—A. I am an Indian by birth.

Q. To what nation do you belong?—A. The Cherokee Nation.

Q. Where do you live?—A. In the Cherokee Nation.

Q. How long have you resided in this Territory?—A. Well, thirty-eight years.

Q. Have you lived here ever since you were born?—A. About that length of time. I have been out of the country a little during that time, only temporarily, however.

Q. Where were you?—A. I was in Texas.

Q. How long?—A. Eighteen months.

Q. When?—A. Part of 1853 and 1854.

Q. What is your occupation?—A. It is kind of mixed. I am farming, stock-raising, a lawyer, &c.

Q. You make yourself generally useful?—A. Yes, sir; I try to do so.

Q. Do you hold any office in the Territory?—A. Yes, sir; clerk of the Cherokee national council.

Q. How long have you been clerk?—A. Six years.

Q. Are you the chief clerk?—A. Yes, sir; I am chief clerk.

Q. What is your opinion about sectionizing the lands, allotting them in severalty among the members of the tribes, so that each one may hold his land in fee-simple?—A. Well, I do not think the people are ready for it. It would not suit me.

Q. Why would it not suit you?—A. Well, I might be ready for it myself, but speaking for the people, they have not got the intelligence and the business éxperience necessary to cope with the white men, particularly the class of white men who would first come into this country. Two-thirds of our people are Cherokees who have no knowledge at all of the ways of white men or their laws. They know nothing about titles in fee. Then they have not learned to work and make a living compared with the white people. For these reasons I do not think they could stand in the fight for a living.

Q. Can the full-bloods manage their own business?—A. They do it under our laws and under the protection they get. Our law that we pass is a special safeguard for the Cherokees. Under our constitution a man's improvements are spared to him, no matter what happens him; no matter what happens him he has a home reserved to him. We cannot have a pauper here.

Q. Do you have tramps?—A. Such as we do have are visitors. They do not belong here.

Q. What is your opinion in regard to the organization of a civil government for the better protection of life and property in the Territory, supposing each nation was allowed to retain its tribal customs and

property. Do you think the Territory would be benefited by the establishment of a Territorial government, like that of New Mexico, Arizona, &c., making the people citizens of the United States?—A. Well, I do not think any good could come of it to the Cherokees, whatever might come to the other side, or even to any Indians in it.

Q. Why?—A. The organization of a Territorial government would necessarily open this country, and there would be an influx of white population that would overrun us. It would be impossible to keep them out. The way things are now they cannot get a foothold. If it was organized into a Territorial government proper, every citizen of the United States would be entitled to come here. For that reason we would soon all be swept away. It would not take six months to populate this country and to outvote our people, and that would be outdoing us.

By Mr. ADAIR:

Q. You are well acquainted with the people all over the country, and know the public sentiment on this subject of territorializing the government; are not the people generally opposed to it?—A. The people do not want a change. There is nobody I have seen who has asked for it, except some few disaffected people. There is not a single Cherokee in the country, or I may say I do not think there are ten men of Cherokee blood, who want it. There are a few white men who have come here for the express purpose of gain, and for no other legitimate purpose, except the one hundred and sixty acres of land they hope to get in case this country is thrown open to settlement, who are desirous of anything of that kind. There is another class here who would like to rule and do not get to; and when they do not get this, they want a change.

By the CHAIRMAN:

Q. The outs are not satisfied?—A. That is what is the matter; that is the case everywhere.

Q. Do not these men who come here for the one hundred and sixty acres understand they can get it anywhere else?—A. People became infatuated about the Indian Territory. They want it because they cannot get it; then, again, their greed makes them reach out to get more. I do not think there are a hundred men who are really citizens of this country, who belong to the Cherokee Nation, who want this done. I do not believe there is one man out of fifty who wants a civil government established over this country.

By Mr. BOUDINOT:

Q. Don't you think there are one out of fifty who would like to have a United States court established?—A. I answer that by saying that our national council has instructed our delegates to ask for the establishment of United States courts here.

Q. Don't you think there are more than one out of fifty who would like to have a Delegate in Congress, should the government grant them permission to send one?—A. Well, I think if that was left to a vote of the people, they would vote to have none.

Q. Don't you think there is a division of sentiment among the people on all these questions of the allotment of the lands, the establishment of a Territorial government, the sending of a Delegate to Congress, and the organization of a United States court?—A. There might be a division of sentiment, but it is a shadow one side and substance on the other.

By the CHAIRMAN:

Q. Don't you think you have a good many fellows who would like to be a delegate in Congress?—A. Well, I think there are two in fifty who would like to hold that place.

By Mr. BOUDINOT:

Q. You are familiar with the provisions of the treaty of 1866, are you not?—A. Yes, sir; but before answering any questions on the treaty, I want to say if the committee has the treaty here I will read it.

Q. Were you ever a member of the grand council?—A. No, sir.

Q. Were you ever present at any of its sessions?—A. No, sir. I never held any office, except a clerkship in the senate. I have been one of the outs.

By the CHAIRMAN:

Q. What is the salary of the clerks?—A. About one hundred and thirty dollars a year. Sometimes when the session is a long one it gets up to one hundred and forty—to one hundred and fifty dollars.

By Mr. ADAIR:

Q. You were in Tahlequah yesterday when Senator Grover made a speech in the presence of five or six hundred Cherokees, and when that vote was taken after the speech by the senator to find out whether the parties present desired a change in the government or not?—A. Yes, sir.

Q. How did the people vote?—A. Every man present voted no.

Q. Was that a mass meeting?—A. No, sir; a meeting called by the proclamation by the principal chief, under the understanding and belief that this committee was coming to the capital of the nation in its official capacity, and the people came from every part of the nation in accordance with that proclamation. These were the people who were out of office; people who had no official connection with public affairs in the nation. They were citizens who had come expecting to meet the committee and have an opportunity to express their sentiments in its presence.

Q. Did not the council also instruct the delegates to protest against any form of a Territorial government being established over this country?—A. Yes, sir; it has been embraced in all the instructions to the delegates within the last five years.

By Mr. W. P. ROSS:

Q. There have been frequent changes in the council?—A. Yes, sir; so far as the parties are concerned both have changed in the time; these instructions come from both.

Q. What is the independent party in favor of?—A. The same as the balance.

Q. What are the Ross party in favor of?—A. The differences are individual differences.

Q. Neither party advocates any change in the form of government?—A. No, sir; we are a unit so far as the policy of our government is concerned.

Q. The people generally are well satisfied to remain as they are?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there anything of your own mind that you desire to say to the committee that has not been inquired of?—A. No, sir.

B. F. LANDRUM, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. B. F. Landrum.

Q. What nation are you a member of?—A. This nation.

Q. Where were you born?—A. In the old nation.

Q. Are you a Cherokee by birth?—A. Yes, sir.

Q. What position do you hold in the nation?—A. I am a senator.

Q. How long have you been a senator?—A. Six years.

Q. What office do you hold in the senate?—A. I am the president of the senate.

Q. How long have you been the president of the senate?—A. I have been its president two years.

Q. Is this the second year?—A. Yes, sir.

By Mr. ADAIR:

Q. You are pretty well acquainted with the people in our country, are you not?—A. Yes, sir.

Q. Are they not unanimously opposed to the establishment of a Territorial government over this country as well as to the allotting of the lands in severalty?—A. Yes, sir; so far as I have ever learned they are opposed to it.

Q. Have not the councils heretofore instructed the delegates at Washington to protest against the establishment of a Territorial government over this Territory?—A. Yes, sir.

J. M. LYNCH, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. J. M. Lynch.

Q. Where were you born?—A. In the Territory.

Q. In this Territory here?—A. Yes, sir.

Q. Are you an Indian?—A. I am.

Q. Are you a Cherokee by birth?—A. I am.

Q. What office do you hold?—A. I am a member of the senate.

Q. What district do you represent?—A. Canadian district.

Q. How long have you been a member of the senate?—A. I have been a member of the senate two years.

By Mr. ADAIR:

Q. You live in the Canadian district?—A. Yes, sir.

Q. That is the district in which Stevenson, the United States deputy marshal, lives?—A. Yes, sir.

Q. When before this committee testifying, Stevenson testified that the laws in that district are not enforced. I want to ask you if the laws are not well executed in the Canadian district?—A. Very well.

Q. You know of nobody, then, who is in favor of a Territorial government, do you?—A. No, sir; not a man.

Q. Nor any who are in favor of the allotment of the lands—sectionizing them?—A. No, sir; none.

Q. From your acquaintance with and knowledge of the people through this country, are they not all opposed to any changes whatever in the government?—A. All opposed to it.

Q. You are satisfied your citizens are opposed to it?—A. I am.

Q. Your constituents are opposed to it?—A. My constituents are opposed to it. I was elected upon that ticket.

By the CHAIRMAN:

Q. Who ran against you?—A. Several ran against me, but none were in favor of a Territorial government.

By Mr. ADAIR:

Q. If you had been in favor of it do you think you would have gotten one vote?—A. No, sir; not one.

By the CHAIRMAN:

Q. Is there anything further you wish to say that has not been inquired of?—A. No, sir; I believe not.

MUSCOGEE, INDIAN TERRITORY,
November 19, 1878.

Committee met at 10 o'clock a. m. Senators present, the Chairman and Mr. Grover. Delegates all present.

F. A. KERR, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. F. A. Kerr.

Q. Where were you born?—A. Pennsylvania.

Q. How long have you lived in the Indian Territory?—A. Ever since 1833.

Q. Are you married in the nation?—A. Yes, sir.

Q. To an Indian woman?—A. Yes, sir.

Q. To what nation do you belong?—A. Cherokee Nation.

Q. By adoption?—A. Yes, sir; by marriage.

Q. What is your occupation?—A. I am a farmer.

Q. How much land do you cultivate?—A. Not much.

Q. Would any member of your nation be benefited by a division of the lands in severalty among the members of the tribe? What are your views in regard to the question of opening this Territory to settlement and sectionizing the land? Go on and give the committee your views.—A. I have been under the impression that the allotment of the lands would be the best thing the Indians could do. I have always advocated that.

Q. Suppose eighty acres were allotted to each member of the tribe and secured so that it could not be alienated or sold for taxes or debts and the remainder of the land of the nation sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians and be for the benefit of life and property?—A. I think so.

Q. Should all the lands owned by your tribe be allotted among the members of the tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable for five years; would it not benefit your people?—A. Yes, sir.

Q. What is your view of a change of government, if each nation was allowed to retain its tribal customs and property; would the Territory be benefited by the establishment of a Territorial form of government, making each and every member of the tribe citizens of the United States?—A. I think the government could be changed and great improvements made as any other government could be.

Q. Do you think there would be greater security for life and property

in here and add to the security of the people?—A. Yes, sir; I think it would add to the prosperity of the people.

Q. To have a Territorial government established by extending the laws of the United States over you like in New Mexico and the other Territories?—A. I suppose a Territorial government—yes, sir; I will give this as what I have experienced myself. I have been badly treated. The laws are very good, but on many occasions they are not executed.

Q. How are the schools managed?—A. I think they are improving, and are managed very well now, so far as I know.

Q. How many white men are there in the Cherokee Nation?—A. Well, I have forgotten.

Q. Can you approximate the number?—A. I saw a census some time ago, and there are a great many.

Q. One-fourth of the population?—A. No, sir.

Q. How many do you think?—A. I suppose there are about five or six hundred; about that. Adopted citizens, I mean.

Q. You mean five or six hundred men?—A. No, sir; adopted citizens. I mean men and women.

By Mr. ADAIR:

Q. You have lived here how many years?—A. About forty; more than that. I have lived here since 1833—you can calculate it; forty-five years, I guess.

Q. Whom did you marry?—A. The niece of John Ross.

Q. You married into what was called the "Ross" family?—A. Yes, sir; I married a Miss Coody.

Q. How many children have you raised—children from that family?—A. Well, three; but all three are not living.

Q. Have you any children besides those?—A. Yes, sir.

Q. How many?—A. Two.

Q. Do you live in the Canadian district?—A. Yes, sir.

Q. You have all the privileges you want?—A. Yes, sir.

Q. And make as many improvements as you please on the land?—A. As I please; yes.

Q. Your children and grandchildren have free access to our schools?—A. Yes, sir.

Q. You have had your own choice for forty years to remain here or leave, and you have remained here?—A. Yes, sir.

Q. You thought it best to remain here in the nation?—A. No, sir; I did not. If I had have had the means, I never would have remained.

Q. You would have moved out?—A. Yes, sir; particularly after the treatment I received in this place—treatment in which you had a hand. Mr. Ross there is conversant with the same thing.

Mr. Ross. Speaking about Ross' place, on the west side of Grand River—

The CHAIRMAN:

Mr. Ross, that is a personal matter, and I must object to the question. (The question was overruled.)

By the CHAIRMAN:

Q. Has the Territory been benefited or injured by the construction of the railroads through it?—A. Yes, sir; I think the construction of the railroad has been a very great benefit. That has always been my view of it.

Q. Can a civil form of government be organized over the Indian Territory for the better protection of life and property?—A. Yes, sir; it can.

By Mr. ADAIR:

Q. What is the public sentiment among the Cherokees in regard to establishing a Territorial government over this country. A majority do not want it, do they?—A. I do not think they do.

By the CHAIRMAN:

Q. There is a difference of opinion among the people upon this question of territorializing the country?—A. Yes, sir; of course.

Q. There are a good many in favor of it?—A. Yes, sir; in favor of changing the government.

Q. The sentiment is growing in favor of territorializing the country, is it?—A. Yes, sir; and I think it will continue to grow as the people get to understand it.

By Mr. ADAIR:

Q. About territorializing. There are very few in favor of that?—A. Yes, sir.

Q. But the question of the allotment of the lands is to be made in accordance with treaty stipulations whenever the council asks for it, that being a separate provision from territorializing the country?—A. All your leading men say it is a separate question, but I do not think allotment is a separate question at all. I do not see it in that light.

Q. Are not the questions of territorializing the country and the allotment of the lands in severalty separate questions?—A. Of course they are.

By Mr. BOUDINOT:

Q. From your acquaintance with the feelings and opinions of the people throughout the nation, tell the committee if the idea or understanding of the people—the ignorant classes—for a Territorial government is not understood to be by them a taking away of their lands and giving them to the railroads?—A. Yes, sir; I believe so.

Q. They believe that the organization of any civil government means the taking away of their lands and giving them to the railroads and the driving of the people out of the country?—A. Yes, sir; they believe that.

Q. Has not that view or understanding been impressed upon them by such men as Colonel Adair and Mr. Ross?—A. Yes, sir.

Q. If the people simply believed that it did not mean the robbing them of their homes, but simply meant to give them a better and more perfect government, and the protection of themselves in their lives and property, do you not think they would have a different view about territorializing the country?—A. I should think so; yes, sir.

By Mr. ADAIR:

Q. Don't you think the trials and tribulations that the Cherokees passed through in Georgia and Tennessee, the Choctaws and Seminoles had in Florida, the Chickasaws had in Mississippi, has had a great deal to do with convincing them that they cannot live under a white man's government?—A. Yes, sir; I think so.

Q. Then you think the trials and tribulations the Cherokees experienced in Georgia has had some effect upon this people in this country?—A. Yes, sir; I think it has.

Q. They have had a trial of it?—A. I have always heard so.

By the CHAIRMAN:

Q. At the time these tribes were in Georgia, Florida, Mississippi, and Tennessee were they not a different class of people than they are now?—A. Yes, sir; very different here now than it was in my early days.

Q. How old were you when you left Pennsylvania?—A. I was born in 1812; I left Saint Louis for the Rocky Mountains in 1831.

Q. From your intercourse with the white people in the States, don't you think these people are capable of managing their own affairs and conducting their own government?—A. If you go into financial matters, I do not think they are capable of doing so; especially when their paper is worth two bits on the dollar.

Q. Don't you think they are smart enough to conduct their own government?—A. Yes, sir.

Q. Don't you think they are capable and competent of self-government as to become citizens of the United States?—A. Yes, sir; I have always thought so. Many years ago, in the time of General Jackson, there was a bill of that kind. It was an excellent bill.

Q. You think the finances of the nation are not well managed?—A. I only judge so from the depreciated condition of the tickets; I think you can purchase them for twenty-five cents on the dollar. I think you can purchase them for that. I saw them purchased the other day for that to pay the admission of a scholar into the seminary.

Q. Do they pay taxes upon the land?—A. No, sir; the ferries are taxed; the merchants are taxed; coal-mines are taxed. They get a revenue from that, but not much.

Q. Is there not a growing improvement in the intelligence of the people within the last five years?—A. Yes, sir; I think there has been.

By Mr. ADAIR:

Q. Don't you think that improvement is largely owing to their being let alone to manage their own affairs?—A. You have always had that, I suppose.

Q. That is the reason why we improve.—A. I do not know if things had been reversed there might have been more improvement.

Q. Do you know why the Indians left Kansas?—A. They sold their lands there.

Q. Did they leave that country as a matter of choice?—A. I suppose so.

Q. Did they not think they could better their condition by leaving and coming down here?—A. Not that I am aware of; the Delawares are now living among the whites.

Q. Very few, however.—A. Yes, sir; there are a great many living in New York.

Q. Did not a majority of the Delawares leave Kansas and come down here to live among the Cherokees?—A. I do not know how many came or what number staid in Kansas. They are not numerous at all.

Q. You have said a majority of the people are opposed to a Territorial form of government being established over this Territory?—A. Yes; I think so.

Q. Is it not your private opinion that they had to be that way with the treaties?—A. I do not think anything of the kind.

Q. You think a majority of the people ought to be consulted?—A. I suppose they ought.

The WITNESS (to Colonel Adair): I do not understand your question exactly; I cannot certify to their opinion. You are a man of high intelligence, and I think you ought to think as I think, that allotment is an advantage.

By Mr. ADAIR:

Q. But you are opposed to a Territorial government?—A. I do not know how I would be on that point. If I thought it would be an im-

provement I would favor it. It does not matter much whether I am or not; I might be in favor of it; even though it may not benefit me much it might my children.

By the CHAIRMAN:

Q. In the Territories the people make their own laws?—A. Yes, sir.

Q. If you had a Territorial government would you not willingly make your own laws?—A. Yes, sir; in all the Territories I know the government appoints all the officers.

By Mr. ADAIR:

Q. If this country was established into a Territorial government by extending the Constitution of the United States over it, do you think other citizens could be barred out and be denied the right of coming in here?—A. I do not think they would come in and take a man's land from him. Could they do it?

Q. Have they not already done it in Kansas?—A. Not that I am aware of.

Q. Not with the Osage Indians?—A. Not that I am aware.

Q. Have they not done it with the Shawnees, Creeks, and other Indians in Alabama, Mississippi, and Georgia?—A. Not that I am aware.

Q. Did they not throw our people, the Cherokees, out of doors in Georgia?—A. Not that I am aware of.

Q. You never heard that?—A. I never heard that.

Q. Did they not throw the Cherokees out of doors in Georgia?—A. I do not know. I was not there. I was never in Georgia.

Q. Did not the same thing happen to the Chickasaws and Choctaws in Mississippi?—A. I am not aware of it.

Q. Didn't they treat the Seminoles that way in Florida?—A. I do not know anything about it.

Q. And the Creeks in Alabama?—A. I do not know.

Q. Didn't they shove the Seminoles off?—A. Not that I am aware of.

Q. Didn't they shove off the Creeks?—A. I did not see it.

Q. Didn't they move the Cherokees by the point of the bayonet?—A. I do not know.

Q. Didn't they promise the people at that time they should never be moved from this country here?—A. "As long as grass grows and water flows."

Q. Don't you think the government ought to keep that promise in good faith?—A. I do not know but that the government will. Every person should keep his promise in good faith.

By the CHAIRMAN:

Q. Didn't the nation consent to the railroads coming in?—A. Yes, sir; certainly.

By Mr. ADAIR:

Q. Didn't the Cherokees grant them the right of way?—A. I understood they had the right of way and so much land whenever the Indian title should be extinguished.

Q. When the Cherokees and the government agreed with the railroads that they should have the right of way, didn't they agree at the same time that the treaty stipulations should be kept intact?—A. I am perfectly willing to answer any question, but I must see the treaty. I know nothing about the Seminoles in Florida; never was in Florida or Georgia. If you want to know of our treatment, the way I have been treated and the bad treatment I have received, I will tell you.

F. M. SCOTT, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. F. M. Scott.

Q. What nation do you belong to?—A. Cherokee Nation.

Q. Are you a Cherokee by birth?—A. No, sir.

Q. Were you born here?—A. No, sir.

Q. You are a Cherokee by adoption?—A. Yes, sir; I am an adopted citizen.

Q. How long have you lived here in the nation?—A. I came here in 1867.

Q. What is your occupation?—A. I farm for a livelihood.

Q. What is your opinion about allotting the lands and sectionizing them?—A. Well, my opinion is that the Indians will be the best off not to do it.

Q. You are satisfied with things as they are?—A. I am satisfied. I do not see how we could be better by making any change.

Q. You are satisfied?—A. I am.

By Mr. ADAIR:

Q. From your knowledge of the Cherokee people and your intercourse among them in discussing these questions, are they not all opposed to any change?—A. Every Cherokee citizen of the Cherokee Nation I have talked to yet is opposed to it.

Q. Do you live in Canadian district?—A. Yes, sir.

Q. The situation of affairs in that district is peaceable, is it not?—A. Yes, sir; about as much so as any other country.

Q. The laws are generally well executed?—A. Yes, sir; very well, except in a few instances. It is here as in other countries sometimes, our officers do not do their duty in some cases.

Q. But, as a general thing, the laws are well executed?—A. Yes, sir.

By Mr. BOUDINOT:

Q. What is your objection to the allotment of the lands?—A. Well, I do not see any reason why we could be better off by doing so. That is the main objection.

Q. You do not think it would be better for you to own your lands?—A. I have all the title I want.

Q. From what State did you come into the nation?—A. Tennessee.

Q. Did you own any land there?—A. No, sir; I know all about hard times, too.

By Mr. ADAIR:

Q. You have the privilege of cultivating all the land you want?—A. Certainly I have.

By Mr. BOUDINOT:

Q. Do you own the land?—A. I have a bill of sale to the improvements.

Q. You own the house and fences?—A. I cultivate the soil, and that is as well as if I owned it.

By Mr. ADAIR:

Q. You and your children have an interest in the products of the land?—A. Yes, sir.

By Mr. BOUDINOT:

Q. You do not know of any one who says he wants a change?—A. No, sir.

Q. You do not know of any one who is in favor of the allotment of the lands?—A. Not one.

Q. What neighborhood do you live in?—A. Spaniard Creek.

Q. Do you know of any one who wants a United States court established in this country?—A. Well, I do not know. I have heard it talked about right smart. I never pay any attention to those things.

Q. You said you heard of no one who wanted a change?—A. Well, I said I never heard of any one who wanted a Territorial government. I said I had heard several talks since this thing came up, but I never heard any one say he wanted a change in the present form of government.

Q. Is it your idea it would change the Cherokee government to organize a Territorial government?—A. It would be bound to change it, would it not?

Q. How would it change it?—A. I cannot give you any idea how it would be changed. If it stands as it is it would not be changed.

Q. Don't you think a civil government could be established under the treaty of 1866 without disturbing the present Cherokee government, or you laws, privileges, and customs?—A. I do not know.

Q. Did you ever read the treaty?—A. Yes, sir.

Q. Don't you think a civil government could be organized over this Territory without disturbing your tribal organization?—A. Have we not got a civil government now?

Q. You think you have a civil government in all cases where you might be a party in criminal and civil cases, and do you think so now?—A. It looks that way according to some things we have noticed in the Advocate lately.

By Mr. ADAIR:

Q. Don't you think you ought to have?—A. Yes, sir.

By Mr. BOUDINOT:

Q. You spoke of the Cherokee government?—A. Yes, sir.

Q. You say we have a civil government in the Cherokee Nation, and that you are satisfied with it. I say if it is cognizant to take jurisdiction all cases, criminal and civil, in which you might be a party, then you have a civil government. Has this government that jurisdiction? You are a white man; a citizen by marriage, you are entitled to as much land as you want in the nation; you are entitled to hold office, except the office of principal chief?—A. Yes, sir.

Q. Well, now I ask you whether in all respects the courts of the country have the same rights to protect your interests as between you and a Cherokee, for instance, between you and Colonel Adair?—A. They ought to have.

Q. Have they?—A. I am not exactly able to answer that question.

Q. Suppose you should shoot Colonel Brewer, a Cherokee, in Canadian district in the Cherokee Nation, do you suppose the Cherokee courts would take jurisdiction of that offense; and would you be tried by a jury of your own neighbors?—A. That is a question that has been discussed a good deal in some instances, and they do not seem to know what to think about it.

Q. Did you ever hear of an instance where a man was tried by a jury of his neighbors under those circumstances?—A. One case.

Q. What case? Don't you know that that court at Fort Smith alone has jurisdiction in all cases arising between a white man, though a citizen of the nation, and a Cherokee? Do you or do you not know it?—A. I know there has been no case, particularly, where a Cherokee

killed a white man in the country since I have lived here. For my own part I would be willing to be tried by a Cherokee court, and it looks to me as if it ought to be done. I see where it has been argued: Why cannot that be done? Why cannot we have the right to try it? I am unable to see by the treaty why they have not got that right. That is my answer to your question.

Q. Would you not prefer to be tried by citizens of your own neighborhood than be taken and tried at Fort Smith, and tried alone by a jury composed of citizens of Arkansas whom you do not know? What is your preference about that?—A. Well, if it was the law of the country we should be tried by the laws of my own country, I would rather be tried by the laws of my own country.

Q. Would you not rather be tried by your neighbors?—A. Yes, sir.

Q. If there was any law that gave you the right to be tried by your neighbors, would you or would you not prefer it?

THE WITNESS. Is it in the law so now that they might be tried? I would prefer it.

MR. BOUDINOT. No, sir; it is not so now in the law; but I ask you if the law should be changed so it could be so so, would you not prefer it?

The witness hesitating.

Colonel ADAIR (to witness). What Colonel Boudinot wants to know is whether you would not rather have a United States court established here in the Territory.

THE WITNESS. That is a matter immaterial to me.

By Mr. BOUDINOT:

Q. I asked you if you preferred to be tried by your neighbors. Now, I ask you if Congress should give you that right to be tried by your neighbors rather than by strangers, would you not prefer it?—A. I said it was immaterial to me whether we had a United States court or not.

Q. I am not asking about a United States court. I am asking you if you had the right by act of Congress would you not rather have it?—A. I have no objection to it if it were done without making any change in our present government.

Q. That would be a change so far as you are concerned?—A. Yes, sir; but then that is a matter that is immaterial to me anyway.

By Mr. ADAIR:

Q. You have been asked your opinion a good deal; I would like to ask a few questions. Have you seen any notice in the papers lately saying that Judge Parker of the United States court has decided that the Cherokee courts have criminal jurisdiction, as well as civil, over adopted citizens?—A. Yes, sir.

Q. Don't you think it is right?—A. Yes, sir.

Q. Don't you think it is wrong for that court to usurp jurisdiction over such white men, increasing the expenses of the United States court in spite of our remonstrances, and then charge it upon the Cherokees that the court is expensive?—A. Certainly I do.

Q. You do not think the court at Fort Smith has any right to take charge of this matter?—A. No, sir.

Q. The Cherokees have always imposed penalties upon criminals?—A. Yes, sir.

Q. They claim that right?—A. They claim it, but I do not know whether they get it or not.

Q. Are you in favor of any Territorial government?—A. No, sir; I opposed it; I wish the Cherokee Nation to stand as it is.

Q. You are in favor of the Indians having all their rights?—A. Yes, sir.

Q. You are in favor of the United States keeping faith with the Indians?—A. Yes, sir; I am.

Q. And carrying out the treaty stipulations with the Indians?—A. Yes, I am.

O. W. LIPE, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. O. W. Lipe.

Q. Are you a native of this Territory?—A. No, sir.

Q. Are you an Indian?—A. No, sir; I am a native of the State of New York.

Q. You are an Indian by adoption?—A. Yes, sir.

Q. How long have you lived here?—A. Forty years.

Q. What do you think about sectionizing the lands, dividing them up in severalty among the members of the tribe, and secured so they could not be sold for debt or taxes; would it improve the condition of the Indians?—A. Well, I have no opinion about it.

Q. You have not?—A. No, sir.

Q. Do you think it would be a good thing for yourself if the lands were allotted and you held your lands in fee-simple?—A. Well, I do not think one way or the other about it. I do not know whether it would financially or not.

Q. What do you think about changing the form of government?

The WITNESS. What kind of a change?

The CHAIRMAN. Well, change to a Territorial government, making each and every member of the various tribes citizens of the United States. Would the establishment of such a government as that benefit the Territory?

The WITNESS. And abolish the present local government?

The CHAIRMAN. Yes, sir.

The WITNESS. Well, so far as that is concerned, I do not think it would suit the wishes of the people.

Mr. BOUDINOT. Suppose the government should establish a civil government over the Territory to regulate all matters of difference between citizens of the United States and the Indians, with jurisdiction over all cases both civil and criminal, without disturbing their tribal organizations, laws, privileges, or customs, do you think such a government as that would benefit the Territory?

The WITNESS. Well, such a government as that I do not think would be disadvantageous; it might be advantageous.

By Mr. BOUDINOT:

Q. Do you know anything about the financial condition of the Cherokee Nation at the present time?—A. No; only so far as general matters are concerned.

Q. In what respect do you know anything about it; do you know anything about the school-fund?—A. Well, yes; I know something about the school-fund.

Q. Do you know anything about the borrowing from the school-fund for general purposes any time within the last five years?—A. I understand annually they borrow school-money for the purpose of paying the officers and council.

Q. Do you know how much they have borrowed in any one year?—A.

I have heard it said frequently—I do not say positively—probably twenty or thirty thousand dollars.

Q. Whom did you hear say that?—A. Various persons, such as the members of the senate and council, and the treasurer.

Q. Have you any idea how much has been paid for the expenses of the Cherokee delegates at Washington during the last five years?—A. No, sir; I do not know what the expenses of the delegates have been. In addition to that, I understood the treasurer to say he replaces the money borrowed from the school-fund from the annuities. There is only one thing connected with the school-fund that is not right. It is in relation to the general fund being paid in certificates as board for pupils at the male and female seminary, which goes into the warrants, and which warrants have not been paid. It is school-money used in some instances, and it is turned into the general fund in that manner. These certificates go into warrants, and they are unpaid. These warrants have been accumulating for several years. This year's and last year's have not been paid.

By the CHAIRMAN:

Q. What do they sell for?—A. They are worth from 25 to 40 cents per dollar.

Q. What are the warrants worth?—A. The warrants are worth very little more, of course. These warrants are held by the school commissioners against the nation—against the general fund.

By Mr. BOUDINOT:

Q. Tell the chairman if the impression which has been made upon the minds of the more ignorant class of Cherokees in regard to Territorial government and the allotment of the lands has not been and is that the allotting of the lands means the taking away of their lands and the giving of them to the railroads, and the depriving them of their homes. Is not that the impression they have?—A. Yes, sir; I believe the impression of the people is that a Territorial government means the annihilation of their homes and destruction of everything they possess. That is the impression they have; that is what they generally believe.

Q. Have they not the impression that the allotment of the lands means that too?—A. Yes, sir; that it means the destruction of everything.

Q. Who makes them believe that?—A. The general talk of the country as they talk among themselves.

Q. Don't the newspaper that is published at Tahlequah create that impression?—A. I do not know. Maybe the Cherokee Advocate may assist in making that impression.

Q. Does not the Cherokee Advocate call men traitors who advocate the establishment of a civil government of this Territory, the establishment of a United States court, a Delegate to Congress, and the allotment of the lands in severalty?—A. These things are thrown up by calling them "land-grabbers," "sectionizers," &c. These things are odious to the people, and are used in this country in forming political opinions.

By Mr. ADAIR:

Q. You spoke of the Cherokee Advocate creating these impressions. Is not the brother of Colonel Boudinot the publisher of that paper; Mr. W. P. Boudinot?—A. Yes, sir; for a long time.

Q. Is it not a general understanding that Colonel Boudinot's brother is opposed to a Territorial government?—A. I do not know; I cannot tell you.

Q. You never heard him speak in favor of it?—A. I never heard him speak in favor of it.

Q. Was he not chairman of a big convention that sent a petition to Congress protesting against it?—A. No, sir; I do not know anything about a convention.

Q. Don't you know they had a convention?—A. No, sir; I do not know it. I am under the impression that he advocated the allotting of the lands, but it was in a very modest way.

O. P. BREWER, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. O. P. Brewer.

Q. To what nation do you belong?—A. Cherokee Nation.

Q. Were you born in the Cherokee Nation?—A. Yes, sir; in the old nation.

Q. Do you hold any position here in the nation?—A. I belong to the commission appointed to try citizenship cases.

Q. How long have you been on that court?—A. About eight months.

Q. How many are there on that court?—A. There are three.

Q. What powers have you got; what are the duties of the judges of that court?—A. We have the power to try all cases of applicants for citizenship in the Cherokee Nation.

Q. Is the decision by that court final?—A. Yes, sir.

Q. You have no jury?—A. No, sir.

Q. Just you three judges try these cases?—A. Yes, sir.

Q. Who are the other judges besides yourself?—A. John Chambers is chairman, and George Downing.

Q. Do you sit all the time, or do you have stated periods for hearing causes?—A. We have been sitting all the time since the middle of February.

Q. Have there been any applicants, who are colored men from around Vinita, before your court?—A. Yes, sir.

Q. Have you heard them all?—A. We have heard all who have applied, or who have come before the court asking to be heard.

MUSKOGEE, INDIAN TERRITORY,
November 20, 1878.

E. M. ADAIR, having been duly sworn, was examined.

By the CHAIRMAN:

Q. What is your name?—A. E. M. Adair.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir.

Q. A Cherokee by birth or adoption?—A. A Cherokee by birth.

Q. Do you live in the nation?—A. Yes, sir.

Q. What is your occupation?—A. I am a farmer.

Q. What office do you hold in the Cherokee Nation?—A. I am a judge of the supreme court of the Cherokee Nation.

Q. Are you a lawyer?—A. No, sir.

Q. Have you studied law?—A. Well, yes, sir; I have studied law some.

Q. You never studied law at all until you were elected chief justice, did you?—A. Not a great deal.

Q. How many judges are in your court?—A. Three; two besides myself.

Q. Are they farmers, too?—A. Yes, sir.

Q. Do you have cognizance of civil and criminal cases?—A. Yes, sir; we have jurisdiction over all cases of murder and manslaughter.

Q. How many circuits have you in the nation?—A. We have three circuits in our nation.

Q. How many districts are there?—A. There are nine districts.

Q. How many districts have you? A. I have three districts, and my associates three apiece.

Q. You go around the different districts and try murder cases?—A. Yes, sir; in three districts. The districts are divided up into three circuits. We have appeal in all civil cases.

Q. Is there any appeal in criminal cases?—A. No, sir.

Q. In civil cases?—A. Yes, sir; from the circuit court to the supreme court of the nation.

Q. You hold circuit court?—A. No, sir; only in cases of murder and manslaughter.

Q. How long have you been chief justice?—A. One year.

Q. In your courts, do you allow anybody to practice law who wants to?—A. No, sir; they must have a license to practice law.

Q. Must they have studied law and been examined before they can practice?—A. If a man applies for admission to the bar and pays his license, he can practice.

Q. Then any man can practice before your court?—A. Yes, sir.

Q. What is the amount of the license that a man must pay?—A. Five dollars for the district and circuit courts, and ten dollars for all the courts in the nation.

Q. Can any man be a lawyer who pays the license?—A. Yes, sir; that is if he can get some one to vouch for his character; he must have a good character. There are some who are not allowed to practice.

By Mr. ADAIR:

Q. Don't you claim the right to examine these applicants for admission to practice before your courts?—A. Yes, sir; we claim the right.

Q. What district do you live in?—A. I live in Flint district.

Q. You are well acquainted with the people of the district, are you not?—A. Yes, sir.

Q. How do they stand upon the question of allotting the lands?—A. They are opposed to it.

Q. What are their sentiments in regard to the question of territorializing the government, making the people of this Territory citizens of the United States? Are they opposed to that?—A. Yes, sir; I can make this statement: I came from home last Sunday and held criminal court in Tahlequah on Monday; I stopped on the road, and some time in the night the people began to pass on their way to Tahlequah. They told me the people were behind, coming from the Flint district, and during the day I suppose one hundred and fifty people came up behind me from that district. They said they had been called by the principal chief by his proclamation to come to Tahlequah to express their sentiments before this committee in its official capacity, which they understood was to be in Tahlequah, to inquire about changing the government into a Territory of the United States. They said they were opposed to any change. They stated that they did not feel competent to become citizens of the United States, and they did not want the government changed. I saw these same people the next day in Tahlequah, and they there expressed themselves opposed to any change.

Q. Do you know of one man who is in favor of changing the government?—A. No, sir; I do not know one man who wants it. I saw one man who said he was in favor of it. I saw him in Tahlequah, and I remarked to the boys that he said he was in favor of a change being made. They said they wished to see him. After a while they called me and said: "Here is Mr. Walker, who wants you to show him where to vote." Before we went I explained to him what they were doing, and when he came to vote he said, "I have come to vote against a change of our government." That is the only man I ever heard say he wanted a change, and when he came to vote he voted the other way.

Q. Is he the Mr. A. W. Walker who is an adopted citizen?—A. Yes, sir.

By the CHAIRMAN:

Q. Where was he voted; at Tahlequah yesterday?—A. Yes, sir; at Tahlequah yesterday.

Q. Has there been any undue influence used to coerce the people into voting against their convictions?—A. Nothing of the kind.

Q. There has been no bulldozing, has there?—A. Nothing of the kind at all.

Q. The people have always protested against a change of government?—A. Yes, sir; always have done it.

Q. All the people want is the treaties to be carried out in good faith?—A. Yes, sir; all that they ask for is to give us our treaties, and after a while we may be competent to come into the Union as a State.

Q. They are willing to leave it to the national council under the treaty of 1866, are they not?—A. Yes, sir; our council acts for the people, and of course they leave it to the council.

Q. The treaty provides whenever the council shall ask for it then the government may be changed and the lands sectionized?—A. Yes, sir.

Q. You have a good opportunity of knowing the sentiments of our people?—A. Yes, sir.

Q. Are they not more peaceable now and for some time past than they have been during the past five years?—A. Yes, sir; I have as good an opportunity of knowing their sentiments as most people. I speak both languages, and I have as good an opportunity of knowing their opinions on these questions as anybody else has of knowing them.

Q. The people generally are more contented among themselves?—A. Yes, sir; they seem to be enjoying themselves more than they have ever been. They are living in perfect peace and harmony.

Q. The laws are well administered, are they not, so far as you know?—A. Yes, sir; I hear of no complaints.

By the CHAIRMAN:

Q. Your people generally are engaged in farming, are they?—A. Yes, sir.

Q. They carry on their farms themselves?—A. Yes, sir.

Q. Manage their own business?—A. Yes, sir; they manage their own business.

Q. They can read and write generally in their own languages?—A. No, sir; but we are educating our children very fast. I suppose we would have been further advanced had it not been for the late rebellion. Of course we are making every effort to educate our people, and in the course of time we may be able to cope with any people. In their present condition the people are not competent to do so. They all cannot read and write.

Q. A large majority can do it?—A. No, sir.

Q. Can the half-breeds?—A. Yes, sir.

Q. Can the full-bloods?—A. Yes, sir; some of the full-bloods can read and write.

Q. Can any of the full-bloods read and write the English language?—A. No, sir.

Q. Can they read and write in their own language?—A. O, yes; nearly all can do that.

Q. They transact their own business?—A. Well, no, sir; I cannot say that they do that altogether.

Q. Who attends to their farms for them?—A. They transact that.

Q. Don't they sell their own produce themselves?—A. They may have an interpreter.

Q. I do not mean that. I mean, if he has cattle to sell, does he know what he wants for them?—A. Well, he may.

Q. Is he competent to do it?—A. Sometimes he may be cheated out of his money by men trading.

Q. But, as a general rule, do you think they are competent to buy and sell?—A. Yes, sir. I cannot say that they are really competent; for I could trade with a full-blooded Indian and cheat him out of his produce.

Q. And you might be able to cheat some white men?—A. Yes; but not so much so as an Indian.

Q. I suppose the white men and half-breeds in the Territory are competent to manage their own business?—A. Yes, sir.

Q. Who does the work for them?—A. They generally do it themselves. They are industrious, and do not cultivate large farms.

Q. They are an economical people, are they?—A. Yes, sir.

By Mr. ADAIR:

Q. From the fact that our treaties provide that these changes cannot be done without our consent, and until the national council shall request it, do you think we ought to be left alone?—A. Yes, sir; I believe the people should be left alone and not disturbed for a while any way.

Q. The treaty leaves it with the Indians whether they shall be changed or not—whether we want it?—A. Of course, that is all we claim.

Q. From your knowledge of the Cherokee people, do not you think they wish and show every disposition to comply with the treaty obligations with the United States Government?—A. Yes, sir.

Q. On the other hand, they want the government to do the same?—A. Yes, sir.

Q. They generally treat white people, non-citizens, civilly in their intercourse with them?—A. Yes, sir.

Q. Are they not in good friendly understanding with the citizens of border States around them?—A. I have heard of nothing to the contrary.

INDIAN TERRITORY,
Muscogee, November 20, 1878.

C. V. ROGERS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. C. V. Rogers.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. By birth?—A. Yes, sir.

Q. What position do you hold in the nation?—A. The office of the district judge.

Q. How long have you been a judge?—A. About twelve months.

Q. What is your opinion in regard to the question of allotting the lands in severalty, or should they be allotted among the members of the tribe, after setting apart a sufficient portion for a school fund, or should a portion of each tract be reserved and made inalienable after five or ten years?—A. I am opposed to it.

Q. Suppose 80 acres were allotted to each member of the tribe and secured so that it could not be alienated or sold for taxes or debts and the remainder of the land in the nation sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. I do not think so; I am opposed to it.

Q. Are you in favor or opposed to the establishment of a Territorial government? If each nation was allowed to retain its tribal customs and property, making each and every member of the tribe citizens of the United States, would you favor that?—A. Yes, sir; I am opposed to that, too.

Q. Can a civil form of government be organized over the Indian Territory for the better protection of life and property?—A. Life and property are protected now.

Q. Do you not believe that your nation would be benefited by the repeal of those parts of the acts of Congress under which the several railroads claim title to the land in the Indian nation?—A. Yes, sir; I do.

Q. What do you think about the establishment of a United States court here, extending the United States laws over the Territory, so that you would have a court like that at Fort Smith?—A. I am opposed to that, too.

By Mr. ADAIR:

Q. Are you a judge?—A. Yes, sir.

Q. From what district?—A. I am judge of the Coowiscoowee district.

Q. Is that the district in which is Vinita?—A. Yes, sir; it is.

Q. From your knowledge and acquaintance with the people, personally and officially, do you not believe they are opposed to any change in the government here?—A. Yes, sir.

Q. They are opposed to territorializing the government or allotting the lands and the establishment of the United States courts?—A. Yes, sir; they are opposed to all that; I know of no one in my neighborhood or anywhere else who is in favor of it.

Q. They are all opposed to it?—A. Yes, sir.

Q. From your official connection in the district you have had an opportunity of learning the opinions of the people?—A. Yes, sir; I have.

By the CHAIRMAN:

Q. Are you a lawyer?—A. No, sir.

Q. What is the jurisdiction of your court?—A. All civil cases under \$100, and I try all misdemeanor cases where the amount is under \$100.

Q. Is there any appeal from your court?—A. Yes, sir; where the amount is over twenty-five dollars.

Q. There is an appeal to the circuit court?—A. Yes, sir.

Q. Is there any appeal in any criminal cases?—A. No, sir; in cases of felony and larceny it is imprisonment from one to seven years.

Q. You do not try capital cases?—A. No, sir; only misdemeanor cases

where the amount is specified as being under one hundred dollars in value.

Q. Is there anything further you desire to state to the committee that has not been inquired of?—A. I think of nothing else.

JACOB H. BARLES, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Jacob H. Barles.

Q. Are you an Indian?—A. No, sir.

Q. Are you a Cherokee?—A. No, sir.

Q. A Cherokee by adoption?—A. Yes, sir.

Q. How long have you lived in the Territory?—A. About five years.

Q. Where were you born?—A. In the State of New Jersey, Morris County.

Q. What is your occupation?—A. Merchandising, milling, farming, &c.

Q. What do you think about this question of allotting the lands? Should all the lands owned by the tribe be allotted among the members of the tribe, after setting apart a sufficient portion for the school fund, or should a portion of each tract be reserved and made inalienable for five or ten years? Would it not benefit the people?—A. I think it is a bad thing for the people.

Q. Suppose eighty acres were allotted to each member of the tribe, so that it could not be alienated or sold for taxes or debts, and the remainder of the land in the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. I do not think it would improve the Indians.

By Mr. ADAIR:

Q. You live in the Coowischoowee district?—A. Yes, sir.

Q. You have had a good opportunity to get acquainted with the people in that district and you know their country?—A. Yes, sir.

Q. From your associations and knowledge of the people, do you not think they are opposed to any Territorial form of government being established over this country; opposed to any change of the government whatever?—A. Yes, sir; they are opposed to any change whatever, so far as I know. There may be a man occasionally in favor of it.

Q. He is a Delaware?—A. Yes, sir.

Q. But how do the Delawares stand generally on this question?—A. Opposed to a Territorial government, for they have tried it, and that is the reason they moved to this country.

Q. The Delawares tried dissectionizing in the State of Kansas?—A. Yes, sir; and were cheated out of all their lands, and had to come to this country.

By the CHAIRMAN:

Q. Is there anything that you desire to state to the committee that has not been inquired of?—A. I believe not, sir.

WILLIAM M. MCCrackEN, having been duly sworn by the chairman, was examined:

By the CHAIRMAN:

Question. What is your name?—Answer. William M. McCracken.

Q. Are you an Indian?—A. Yes, sir.

Q. By adoption?—A. No, sir.

Q. By blood?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. What is your occupation or profession?—A. I am a member of the national council.

Q. That is the office you hold?—A. Yes, sir. I farm some, trade some, and raise stock, &c.

Q. How long have you been a member of the national council?—A. About a year or more since I was elected.

Q. What is the desire of your people in regard to a change in the government, the allotment of the land, and the establishment of the United States courts in this country?—A. So far as I am aware, I know of no Indian who is not opposed to it; they are unanimously opposed to any change.

By Mr. ADAIR:

Q. You are a sheriff?—A. Yes, sir.

Q. And you were elected to the council?—A. Yes, sir.

Q. From what district?—A. From the Coowischoowee district.

Q. You have had a good opportunity all your life to know Cherokee people?—A. Yes, sir.

Q. You have been raised among them?—A. Yes, sir.

Q. And you are satisfied they are opposed to a Territorial government?—A. I am satisfied that, so far as I know anything about it, they are. I have talked with a great many of them, and they are opposed to any change whatever.

Q. You never heard of Mr. Ross intimidating the people in any way, did you?—A. Never.

Q. Have you ever heard of our attempting anything of the kind?—A. I never have.

Q. There has been a good deal said about our intimidating the people; have you ever heard of my doing so?—A. I never did hear of your doing so.

Q. Nor Mr. Ross?—A. Never.

By the CHAIRMAN:

Q. Suppose a man should come here and come out in favor of allotting the lands, territorializing the government, &c., could he have a free expression of his opinion?—A. No one would interfere with him, so far as I know of.

Q. They would respect his opinions, would they?—A. Yes, sir.

By Mr. ADAIR:

Q. There haven't been any threats made against Mr. Boudinot that you know of, have there?—A. Nothing that I know of. I have heard a good many speak about Mr. Boudinot, but they did not make threats.

By Mr. WILLIAM P. ROSS:

Q. You were here when the Board of Indian Commissioners were here, when this question was submitted to the people?—A. Yes, sir.

Q. Is it not true that we had about 4,600 voters, and we had out of that number 4,300 votes cast against territorializing the country?—A. I don't recollect the exact number, but every person in our district voted against it.

By the CHAIRMAN:

Q. What is your district?—A. The Coowischoowee district.

Q. When was the vote taken?—A. In the winter of 1874 or '75.

Q. Was it over the whole Territory, or just in this district?—A. All over the Territory.

By Mr. ADAIR:

Q. So far as you know, the people are getting along peaceably and well?—A. Yes, sir; so far as I know, they are.

Q. How are the schools doing?—A. Doing well.

J. W. DANIELS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. J. W. Daniels.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee?—A. Yes, sir.

Q. By birth?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Do you hold any position in the Territory—any office?—A. I am a member of the council or lower house.

Q. From what district?—A. From the Delaware district; the district did not take its name from the tribe.

Q. How many members have you from your district?—A. Four members in the lower house, and two in the senate, or upper house.

Q. What pay do you get per day?—A. Four dollars per day.

Q. Well, what are the sentiments of the people in regard to a change of government, the allotment of the lands, the establishment of a Territorial government, &c.?—A. They are opposed to it.

By Mr. ADAIR:

Q. That district is one of the largest districts in the nation?—A. Yes, sir; except the Coowiscoowee district.

Q. How do the people of your district stand upon this Territorial question?—A. They stand almost unanimously against any change in our present form of government.

Q. You don't know of anybody in the district who is in favor of a Territorial government?—A. I cannot say that I do.

Q. There has never been any intimidation used in that district?—A. Of course there has not been.

Q. You never heard of any intimidation used by Mr. Ross or myself?—A. No, sir.

Q. Never have interfered with it in any way, have we?—A. Not that I ever heard of.

By Mr. WILLIAM P. ROSS:

Q. What are the views of your people in your nation in reference to the allotment of the lands, sectionizing them, &c.?—A. I think they are against it, simply because the candidates who were sent to Tahlequah were elected upon that principle.

Q. Your people are engaged principally in farming?—A. Well, I don't think they farm to any great extent.

Q. Are you a farmer?—A. Yes, sir.

Q. How many acres have you under cultivation?—A. I have about 50 acres under cultivation.

Q. What do you raise?—A. We raise cattle in that portion of the country where I live.

Q. The people in your district are able to attend to their own business

pretty well, are they not?—A. They do it, any way; there are no complaints.

By the CHAIRMAN:

Q. Don't you think they are competent to be citizens of the United States?—A. I cannot say.

Q. You would, would you not?—A. I don't know; I don't know anything about the laws of the United States. I am satisfied with their present condition, and would rather not risk a change to make it better; it might be worse.

Q. You are satisfied with the present condition of affairs?—A. Yes, sir.

By Mr. ADAIR:

Q. And the people generally are living in peace and are satisfied?—A. Yes, sir.

Q. You hear of no complaints in your district?—A. No, sir.

JOHN T. DREW, having been duly sworn by the chairman, was examined as follows:

By the CHAIRMAN:

Question. What is your name?—Answer. John T. Drew.

Q. Are you an Indian?—A. Yes, sir; I am.

Q. By birth?—A. Yes, sir; by birth.

Q. A Cherokee?—A. Yes, sir.

Q. Where do you live?—A. Here, in the Cherokee Nation.

Q. What office do you hold in the Territory?—A. That of solicitor-general.

Q. Are you a lawyer by profession?—A. No, sir; I am not.

Q. What is your occupation?—A. I am a farmer.

Q. What are your duties as solicitor-general?—A. I have several duties; the first is that I am required, when called upon by the different district solicitors, to give my opinion in writing as to the construction of a general law they might ask about; I am also required to give my opinion to the chief, the treasurer, and auditor of public accounts as to the construction of the law. I am also, when called by the principal chief, required to represent the nation before any of the courts of the nation in which the Cherokee Nation is interested.

Q. What is your salary as solicitor-general?—A. Five hundred dollars per year.

Q. How long have you been solicitor-general?—A. I was commissioned about a year ago.

Q. What are your sentiments in regard to this question of allotting the lands and territorializing the government?—A. Well, I am opposed to it.

By Mr. ADAIR:

Q. You are pretty well acquainted with the sentiments of the people of the country?—A. Yes, sir.

Q. Are not our people generally opposed to any Territorial government?—A. Yes, sir.

Q. Are they not opposed to the allotment or sectionizing of the lands?—A. Yes, sir.

Q. You live in this Canadian district right here?—A. Yes, sir.

Q. You generally have good order in that district?—A. Yes, sir.

Q. The people are law-abiding and peaceable? You don't know of any disturbances down there any more than in any other district?—A. No, sir.

Q. The condition of the country at this time is generally peaceable, is it not?—A. It is; yes, sir.

Q. Very little crime being committed in the country?—A. Very little.

Q. And it has been so for the past year during your administration?—A. Yes, sir.

Q. Have you ever heard of anybody using intimidation towards the people on this Territorial question?—A. No, sir.

Q. Has anybody tried to bulldoze the people about it?—A. No, sir.

Q. They have always had their own choice about this question?—A. Yes, sir.

Q. You have never heard of my threatening anybody about it?—A. No, sir.

Q. Nor Mr. Ross, nor any of our public men?—A. No, sir; not one.

By the CHAIRMAN:

Q. Did you appear for the nation before this citizenship court?—A. Yes, sir.

Q. How many cases have been heard before that court?—A. Something like 230 have been before that court.

Q. Since how long a time?—A. Since February last.

Q. How many have been created citizens?—A. Something like twelve cases.

Q. Twelve cases out of 230 cases?—A. Yes, sir. I say 230 cases tried. There have been a great many parties who have had notice served upon them to appear before that court, but they did not appear, and the court gave judgment against them by default.

Q. Is that judgment by default final?—A. I guess it is; at least I think it should be.

Q. How do you serve notices upon the people?—A. We serve notice upon them to appear before the court and show cause why they should not be tried as intruders in the country and be compelled to leave.

Q. Who makes out the lists of doubtful citizens?—A. The lists are made out by the different solicitors in the different districts.

Q. How many districts are there?—A. We have nine districts.

Q. And that list is sent up to you?—A. No, sir; it is reported to the chief.

Q. Is there any delay in hearing cases after a man applies to the court?—A. Well, sometimes there may be delay in the evidence by one party or the other.

Q. Do you know of any cases of colored people from the Cherokee Nation who have got claims before that court and who could not be heard?—A. No, sir; none.

Q. Do you know the case of Daniel Landrum?—A. No, sir; I do not remember it just now.

Q. You have no record with you now, have you?—A. No, sir.

Q. Where are the records kept; at Tahlequah?—A. Yes, sir.

Judge T. BREWER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. T. Brewer.

Q. How often does that court sit?—A. It has been in continuous session since the 11th of February.

Q. Every day?—A. Yes, sir; nearly every day.

Q. What pay do you get?—A. Four dollars per day.

Q. How many cases have you heard since February?—A. As well as I remember, about 237.

Q. Are you a lawyer?—A. I am not.

Q. Are you versed in the law at all?—A. No, sir; I never studied law except the Cherokee laws; I understand the Cherokee laws—I have read them.

Q. Do you know of the cases of any colored people that have made application before the citizenship court, and who have not been heard, or who have been put off from time to time without a hearing?—A. No, sir; there have been no cases put off only by their own request.

Q. Do you know anything about the case of Daniel Landrum?—A. I do not remember anything about his case.

Q. Do you know anything of the case of a man by the name of Davis?—A. Yes, sir; I do.

Q. Do you remember the circumstances of his case?—A. I do not, sir.

Q. Do you decide cases against a man without his being heard?—A. No, sir, never. In the first place we issue an order notifying them to appear and put in their claims first within forty days, and after the expiration of that time we issue notice on the parties. These cases were transmitted to us by the council; they were all classified and passed through the council and the court; we had their names and papers all arranged, and then served notice upon them giving them sixty days to come and put in their cases, and where they did not come within sixty days we allowed them three days of grace, and then issued judgment by default.

Q. Is there any appeal from that decision?—A. No, sir; none that I know of.

By Mr. ADAIR:

Q. Have you not extended the same leniency to the colored people as you have to the Cherokees or white people?—A. Yes, sir; the same.

Q. Made no distinction?—A. None whatever.

Q. So in this court the cases were all classified, and the parties were requested to put in their evidence?—A. That is my understanding.

Q. You had a letter recently, I think last June, sent out from the Interior Department, telling these colored people that they need not go before the court?—A. Yes, sir.

Q. It seems, if there is any embarrassment about it, the Interior Department at Washington is to blame?—A. It looks so to me.

Q. In the first place, didn't we have a supreme court to take jurisdiction over these cases?—A. Yes, sir; in 1873, I believe, we had such a court.

Q. Subsequently didn't we authorize one of our judges or chief justices to hold sessions each year?—A. Yes, sir.

Q. Was it not in that way and along up to the time of the organization of this court?—A. Yes, sir; they held their sessions at Gibson and Tahfequah one month each year.

Q. Haven't they had the privilege of coming before the council?—A. Yes, sir.

Q. In the mean time, haven't the negroes who failed to appear before them been permitted to remain here?—A. Yes, sir.

Q. Are permitted to remain in the country and raise stock and cattle?—A. Yes, sir.

Q. And farm all the land they want to?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. The Cherokees have never made an effort to dispossess any of them, have they?—A. No, sir; never that I have heard of.

By Mr. ADAIR:

Q. Do you know whether the Cherokees issued their emancipation

proclamation before the President of the United States issued his?—A. I have heard so.

By the CHAIRMAN:

Q. Suppose a person against whom judgment by default had been rendered; is there any way in which his case may be reopened for a rehearing?—A. Yes, sir; we have done so.

Q. For instance, these persons who were here before this committee, I told them that they ought to go to Tahlequah to be heard. Now, will you hear them?—A. Yes, sir; I will allow them to put in their claims. There was one or two.

Q. What are the sentiments of the people generally about this territorializing question—organizing Territorial government over the Indians?—A. So far as I know, they are opposed to it. I don't know a single Cherokee Indian of any kind in favor of it.

Q. Has there been any undue influence used to influence the people against that question?—A. No, sir; so far as I know they have had a perfectly free expression of opinion upon it.

By Mr. ADAIR:

Q. You have been superintendent of the public schools and ought to know?—A. Yes, sir; and I have visited all the school districts, and that is the sentiment of all the people so far as I know.

Q. How are the schools getting along?—A. They are doing well.

Q. You have heard no complaints?—A. No, sir.

Q. The people are satisfied, are they not, with the government as it is?—A. Yes, sir.

Q. They do not want any change?—A. No, sir.

Q. Is there anything that you desire to state to the committee that has not been inquired of?—A. No, sir.

B. F. LANDREM recalled.

By the CHAIRMAN:

Question. Do you know anything about the case of Daniel Landrem, who claims he is a citizen of this nation, and whose name has been put upon this doubtful list?—Answer. He was a slave, born here, who went into the Army. He was with me when the war commenced.

Q. Did he belong to you?—A. Yes, sir; at that time.

Q. Do you know anything about the claim he makes, or of any effort he has made to have his claim allowed?—A. I do not think he ever made any; if he did I do not know anything about it. He came back here in the spring of 1868.

Q. You know that to be a fact?—A. That is the first I saw of him. I came back in the year 1866. He came where I was living in 1868, and I hired him to work for me that spring.

Q. May he not have been back in the Territory without your knowing it?—A. O, yes; I guess he could.

Q. You lived at Tahlequah?—A. No, sir; I lived up in the Delaware district, east of Vinita.

Q. Then he might have been at Tahlequah, making his claims, for all that you know?—A. Yes, sir; he might.

By Mr. ADAIR:

Q. He never told you anything about it?—A. No, sir.

Q. You never heard of it?—A. No, sir.

SAMUEL H. BENGE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. What is your name?—Answer. Samuel H. Benge.

Q. Are you an Indian?—A. Yes, sir.

Q. By birth?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir; a Cherokee.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Well, what is your opinion about this Territorial question; do you think the people are in favor of it, or opposed to it?—A. They are opposed to it.

By Mr. ADAIR :

Q. Captain Benge, you are well acquainted with the people all over the Cherokee Nation, and will you please state to the committee how they stand on this Territorial question, the allotment of the lands, and sectionalizing them, &c.?—A. Well, I am pretty well acquainted with the country; in fact I talk the Cherokee language better than I talk the English language, and in talking with the Cherokee people I find they are opposed to any change in the government whatever.

Q. Our council every year has instructed the delegations going to Washington to oppose the Territorial government over this country, has it not?—A. Yes, sir.

Q. Have you any knowledge of anybody in this country at any time intimidating or bull-doing our people to scare them into making a Territorial government?—A. No, sir.

Q. Do they not have their own way about it?—A. They have their own way about it.

Q. Have you ever heard of Mr. Ross attempting to intimidate the people?—A. No, sir.

Q. Have you ever heard of my attempting to bull-doze them?—A. No, sir; I never saw anything of it.

Q. You were at Tahlequah yesterday?—A. Yes, sir.

Q. Tell the committee what happened there.—A. Yesterday I left Tahlequah, and there were 3,000 men there who expected this committee, and a vote was taken on this question, and they were all opposed to the organization of a Territorial government.

Q. Do you remember that three years ago there was a protest gotten up against any change in the government?—A. Yes, sir.

Q. You lived in the Illinois district?—A. Yes, sir.

Q. Is that the district in which William P. Boudinot, a brother of Colonel Boudinot, resides?—A. Yes, sir.

Q. You had a convention there?—A. Yes, sir.

Q. Who was the presiding officer of that convention?—A. William P. Boudinot was the presiding officer; he made a speech on this question.

Q. Did you ever hear him express himself against it?—A. Yes, sir.

Q. He has always been that way?—A. Yes, sir.

Q. Do you know any member of the family who is in favor of a Territorial government except Col. E. C. Boudinot?—A. None except the colonel.

Q. All his family have been opposed to it, and Mr. Waite, too?—A. Yes, sir; I serve with Mr. Waite in the council.

Q. State to the committee what army you served in during the war.—A. I served in the Union Army.

Q. Were you an officer in the Union Army?—A. Yes, sir; I was first lieutenant, Company A, Third Indian Regiment.

By the CHAIRMAN:

Q. Were you an officer in the Army?—A. Yes, sir; I was a lieutenant.

By Mr. WILLIAM P. ROSS:

Q. In reference to the allotment of the lands to the country, what is your opinion as to the sentiment of the people of the country upon that question?—A. Well, the people are opposed to it. Whenever that question is agitated in any way here it excites the people; they are not accustomed to any changes.

Q. Don't you think this agitation has operated against the advancement of civilization and retarded the progress of the nation?—A. Yes, sir; it has hurt the prosperity of the nation a great deal.

By Mr. ADAIR:

Q. As a general thing the people are peaceable?—A. Yes, sir.

Q. You hear of no complaints?—A. I hear of no complaints.

Q. They are satisfied to remain as they are?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there anything else you would like to state that has not been inquired of?—A. Nothing that I think of.

Capt. H. DOWNING, having been duly sworn, was examined by the chairman.

Mr. Bengé sworn as interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Huckleberry Downing.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you an Indian by birth?—A. Yes, sir.

Q. A full-blood?—A. Yes, sir.

Q. A full-blood Cherokee?—A. Yes, sir.

Q. What is your occupation?—A. I am in the executive council.

Q. That is the office you hold?—A. Yes, sir.

Q. What is your occupation?—A. Farmer.

Q. And a member of the executive council?—A. Yes, sir.

Q. Well, what are your sentiments in regard to the allotment of the lands?—A. I am opposed to it.

By Mr. ADAIR:

Q. The whole Cherokee people are opposed to the territorializing of the government, all are opposed to the allotment of the lands?—A. Yes, sir.

Q. Have you ever heard of anybody trying to intimidate the people from expressing their own opinions, in any way, upon this question?—A. Not one.

Q. You never heard of Mr. Ross or me intimidating the people?—A. No, sir.

By the CHAIRMAN:

Q. How many members are there in the executive council?—A. Three members.

Q. This is a cabinet?—A. Yes, sir.

By Mr. ADAIR:

Q. What army did you serve in during the war?—A. The Union Army.

Q. Did you get any pay for property destroyed during the war?—A. No, sir.

Q. Who destroyed your farm?—A. Both armies, Federal and Confederate soldiers.

JESSE THOMPSON, having been duly sworn by the chairman, was examined, Captain Bengé being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Jesse Thompson.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the legislature and speaker of the lower house.

Q. Well, what are your sentiments in regard to territorializing the government, sectionalizing lands, &c.?—A. I am opposed to it.

By Mr. ADAIR:

Q. What is the sentiment of the people upon the question of allotting the lands?—A. The people are opposed to it.

Q. What are their sentiments in regard to territorializing this government, extending the laws of the United States over it so that the citizens shall become citizens of the United States?—A. The people are opposed to any change whatever; they are opposed to a Territorial government.

Q. Haven't the people had their own way about expressing their views upon this question? Just go on and state to the committee whether there has been any intimidation used toward them by anybody.—A. They are all opposed to that; nobody influences them whatever in expressing their feelings; they never would consent to a change at all.

Q. They are satisfied with the present condition of affairs?—A. Yes, sir.

Q. You hear of no complaints?—A. No, sir.

Q. The people are living peaceably and getting along pretty well?—A. Yes, sir.

Q. It has been alleged that some one of us has been bull-doing the people to prevent them from expressing an opinion upon this question; have you ever heard anything about it?—A. I never heard of it.

Q. In what army did you serve during the war?—A. In the Union Army.

Q. In what regiment?—A. In the Second Indian Regiment.

By the CHAIRMAN:

Q. Is there anything that you desire to state to the committee that has not been inquired of?—A. No, sir; I believe not.

JOHNSON ROBBINS, having been duly sworn by the chairman, was examined, Captain Bengé being the interpreter.

Question. What is your name?—Answer. Johnson Robbins.

Q. Are you an Indian by birth?—A. I am mixed with white and Cherokee.

Q. What is your occupation?—A. I am a farmer.

Q. Do you hold any office in the Territory?—A. I am a senator of the Cherokee Nation.

Q. How long have you been a senator?—A. This is my fourth year.

Q. Is the council in session now?—A. It is; yes, sir.

By Mr. ROSS :

Q. You live in Goingsnake district ?—A. Yes, sir.

Q. You are pretty well acquainted with the sentiments of the people of your district, are you not ?—A. Yes, sir.

Q. What is the view of the people in regard to the allotment of the lands, sectionalizing them, &c. ?—A. They are opposed to it.

Q. What is the sentiment of the people in regard to the territorializing of the people, of the government, &c. ?—A. They are opposed to a Territorial government being established over the Territory.

Q. Do you know any one in your district in favor of these measures, or any of them ?—A. I do not know of any.

Q. Did you ever hear of any ?—A. No, sir.

Q. Do you know of any one in the nation in favor of these measures ?—A. No, sir; I never heard of any.

By Mr. ADAIR :

Q. Have you ever heard of any intimidation being used toward the people on these questions by anybody of authority in the nation ?—A. None that I ever heard of.

Q. You never heard of Mr. Ross intimidating them ?—A. No, sir.

Q. You never heard of my using intimidation toward them ?—A. No, sir.

Q. Were you a soldier in the Union Army ?—A. Yes, sir.

By the CHAIRMAN :

Q. How long were you a soldier in the Union Army ?—A. Three years; from the time I enlisted I served three years.

WILSON HARE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. Wilson Hare.

Q. Are you an Indian ?—A. Yes, sir.

Q. By birth ?—A. Yes, sir.

Q. A full-blood ?—A. Yes, sir.

Q. What is your occupation ?—A. Farmer.

Q. What office do you hold ?—A. I am in the council.

Q. To what house do you belong ?—A. I am a member of the lower branch of the legislature.

Q. In what district do you live ?—A. Tahlequah district.

Q. What is your opinion as to territorializing, sectionalizing the government, &c. ?—A. I am opposed to it.

By Mr. ADAIR :

Q. You represent a Tahlequah district ?—A. Yes, sir.

Q. How do you think your district stands upon this Territorial question ?—A. There are none in that district in favor of a Territorial government being established in this country.

Q. How do you think your district stands upon the question of sectionalizing the lands, dividing them up in severalty ?—A. That none of them are in favor of sectionalizing the country.

Q. Have they not had their own way in expressing their opinions upon these questions and exercising their own minds in every case ?—A. They all understand the different treaties, that this country is theirs, that it was granted to them by treaty forever, and that they have a right to adopt a government of their own choice, and this is their own choice of government, and they do not want any change.

Q. Were you in the Union Army during the war?—A. Yes, sir.

Q. Were you an officer in the Army?—A. I was first sergeant of a company.

Q. How long did you serve?—A. I served three years.

Q. So you were in one of the Union regiments?—A. Yes, sir; I was.

ROACH YOUNG, having been duly sworn by the chairman, was examined, Captain Bengel being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Roach Young.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee Indian?—A. Yes, sir.

Q. A full-blood?—A. I don't know; I never heard any one say that I was a full-blood Indian.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Do you hold any office in the Territory?—A. Yes, sir; I am a member of the upper house.

Q. That is generally called the senate?—A. Yes, sir.

Q. What district do you represent?—A. The Illinois district.

Q. Well, what is your opinion in regard to this question of allotting the lands, dividing them up into severalty, &c.?—A. I am opposed to all that.

By Mr. ADAIR:

Q. Please tell the committee what the sentiment of your people is in reference to the territorializing of the government and the allotment of the lands, dividing them into severalty, and the establishment of the United States courts, sending a Delegate to Congress, &c.—A. I don't know a single person in the Illinois district in favor of territorializing the government and sectionizing the lands.

Q. Were you in the army?—A. Yes, sir.

Q. What army?—A. I served in the Union Army.

Q. What regiment?—A. The Third Indian Regiment, Company E.

Q. Are there a great many colored people in your district?—A. Yes, sir; a good many.

Q. Where do they live?—A. Towards the mouth of the Arkansas River and the Illinois River.

Q. Do they vote and serve upon the jury sometimes?—A. They all come together and vote together sometimes. So far as the juries and jurors are concerned they are about half, sometimes not so many.

Q. They are mixed up every way?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. How many schools do you have for the colored people in that district?—A. I don't recollect whether any changes have been made; there is one at Fort Gibson, and one at Greeley, and one at Greenleaf. The school went down and they moved to a different locality where there were more children.

Q. The people as a class are well contented; I mean the colored people?—A. Yes, sir; I know nothing to the contrary.

Q. They attend to their own business?—A. Yes, sir.

Q. They enjoy the same privileges as the Cherokee citizens?—A. Yes, sir.

Q. And they seem to be getting their rights as the Cherokees themselves?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there anything else that you wish to say to the committee that has not been inquired of?—A. No, sir.

SAMUEL L. SMITH, having been duly sworn by the chairman, was examined, Captain Bengé being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Samuel L. Smith.

Q. Are you an Indian?—A. Yes, sir.

Q. Full-blood?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. What office do you hold in the Territory, if any?—A. I am a senator at present.

Q. From what district?—A. Saline district.

Q. What is your opinion in regard to territorializing the government and sectionizing the lands?—A. I am opposed to it.

By Mr. ADAIR:

Q. How do your people stand upon the question of territorializing the government, sectionalizing the lands, establishing the United States courts, &c.?—A. I do not know of any persons who are in favor of territorializing the government, or who are in favor of the allotment of the lands.

Q. What is your profession?—A. I am a preacher.

Q. Do you preach in the district where you live?—A. I do.

Q. You are a circuit preacher?—A. Yes, sir; I am a circuit rider.

Q. You travel around a good deal?—A. Yes, sir; I do.

Q. Have the people ever been forced or intimidated in any way upon these questions?—A. I never heard there was any danger or intimidation.

Q. Do they not have their own way about it?—A. Yes, sir; they have all voted their own way upon it.

Q. What army were you in during the war?—A. I was in the Union Army.

Q. Were you an officer?—A. No, sir.

R. M. WOLFE sworn as interpreter.

TAYLOR SIXKILLER called as a witness and sworn by the chairman.

By the CHAIRMAN:

Question. What is your name?—Answer. Taylor Sixkiller.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee Indian?—A. Yes, sir.

Q. You are a full-blood?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Do you hold any position in the nation?—A. Yes, sir.

Q. What position?—A. I am a member of the lower house.

By Mr. ADAIR:

Q. What district do you represent in the council?—A. Goingsnake district.

Q. How do the people stand upon the question of the allotment of the lands?—A. They are not any in favor of it.

Q. How do they stand in regard to territorializing the government and extending the laws of the United States over the Territory?—A. They are not in favor of that either.

Q. Do you know any in Goingsnake district who are in favor of the allotment of lands or the territorializing the government?—A. I don't know of a single person.

Q. Have you ever heard of any intimidation being used to prevent a free expression of opinion upon these questions?—A. No, sir.

Q. They all have had their own way, have they?—A. Yes, sir; they are free upon the subject.

By Mr. WILLIAM P. ROSS:

Q. Did you come from Tahlequah this morning?—A. Yes, sir.

Q. Were there a great many people there when you left?—A. Yes, sir; there were a great many people there.

Q. Have you any idea how many?—A. I cannot say exactly.

Q. Make a rough guess.—A. Probably 2,000, probably not so many.

Q. What was the object of their coming there; did they come there with the expectation of seeing this honorable committee, and for the purpose of expressing themselves upon this subject?—A. That was their expectation and their object in coming.

Q. A vote was taken, and part of them did express themselves last evening, did they not?—A. Yes, sir; they did.

Q. Did they vote in favor of territorializing the government?—A. They were all opposed to it.

Q. Did they vote in favor of sectionalizing the country or did they oppose it?—A. They were all opposed to it.

Q. How did the vote stand?—A. The vote was one sided, altogether.

Q. All voted against it?—A. Yes, sir; all were against sectionalizing the lands and territorializing the government.

Q. The vote was unanimous?—A. Yes, sir.

Q. Were you in the army?—A. Yes, sir; I was a soldier.

Q. What army?—A. In the Federal Army.

By the CHAIRMAN:

Q. Is there anything else that you desire to say to the committee that has not been inquired of?—A. No, sir.

Rev. JOHN SEVIER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John Sevier.

Q. Can you understand English?—A. Yes, a little.

Q. Are you a Cherokee Indian?—A. Yes, sir; I am a Cherokee Indian.

Q. Full-blood?—A. No, sir; I am not a full-blood.

Q. Are you a half-breed?—A. Yes, sir.

Q. Do you hold any office in the Territory?—A. Yes, sir; I do.

Q. What office do you hold?—A. I am a member of the lower house of the national council.

Q. How are your people upon the question of sectionalizing the lands, allotting them, &c.?—A. I have not even heard of any person who was in favor of sectionalizing or allotting the lands.

Q. What district do you represent?—A. The Coowischoowee district.

By Mr. ADAIR:

Q. Are you a minister of the gospel?—A. Yes, sir; I am.

Q. Have you traveled about a good deal over the nation?—A. Yes, sir; I am a minister of the gospel and I travel over four districts every year through the nation.

Q. Are you not satisfied from your experience in riding around through these districts that the people are all opposed to territorializing the government and the allotment of the lands, in these districts in which you have been?—A. That is the case; they are opposed to it. When I hear any person speaking about this subject, they seem to regard there is some great danger coming over them.

C. J. HANKS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. C. J. Hanks.

Q. Are you an Indian?—A. I am a Cherokee, sir.

Q. By birth?—A. Yes, sir; by blood.

Q. Do you hold any office in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a senator.

Q. What district do you represent?—A. The Canadian district.

Q. How do your people feel in regard to this question of sectionizing the lands and territorializing the government and extending the laws of the United States over it?—A. Well, I do not believe I have heard that question discussed; it is not a political question at all, from the fact that the majority are opposed to a Territorial government being established, the sectionizing of lands, &c., and you might say there is not one man in fifty in favor of the allotment of lands. It is not a political question at all among our people.

By Mr. ADAIR:

Q. They are unanimous in their opposition to the establishment of a Territorial government as well as the allotment of the lands, or any change whatever?—A. Yes, sir; unanimously opposed to a Territorial form of government; and, in fact, we have never considered the question in any manner at all until the people asked for it.

By the CHAIRMAN:

Q. The people of your own country?—A. Yes, sir.

By Mr. WILLIAM P. ROSS:

Q. The treaty of 1866 provides that it cannot be done until it is requested by the people through their representatives?—A. Yes, sir; we rely upon the United States Government to comply with the treaty obligations; when we see fit to ask for it, we will do so.

By the CHAIRMAN:

Q. Do you not think the people are capable of being citizens of the United States if they were to ask for it?—A. Probably a few are, but those few feel it their duty to protect those who are ignorant and not capable of being citizens of the United States. They feel that it is a part of their duty as well as patriotism to the country.

By Mr. ADAIR:

Q. Are you acquainted with the United States deputy marshal, named Stevenson, who testified before this committee yesterday?—A. Yes, sir; I have known him for several years; he lives ten miles from where I do.

By Mr. ADAIR:

Q. Have you ever heard of any person in the Cherokee Nation endeavoring to use any intimidation whatever upon the people on this question of territorializing the country and the allotment of the lands?—A. No, sir.

Q. Haven't the people had their own choice and their own way of thinking about it?—A. Yes, sir; so far as I know of the government of the Cherokee Nation, every man is entitled to the freedom of speech and freedom of expression.

Q. There has been no intimidation?—A. None whatever; so far as I am concerned, I will speak out and will not have any fear of any interference whatever. I was never interfered with.

By the CHAIRMAN:

Q. Do you think there would be any cause for fear if a person should advocate openly these questions?—A. None whatever; I would not have the least fear. As far as Stevenson is concerned, I have heard him admit he would "give himself away" if he would answer certain questions in Judge Parker's court. I feel it my duty to state that, because he had been here talking about our people, and because he has attacked our people, and he did that in the United States courts.

THOMAS W. LEIP, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Thomas W. Leip.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Do you hold any office in this Territory?—A. Yes, sir.

Q. What office?—A. I am a senator.

Q. What district do you represent in the council?—A. The Coowis-coowee district.

Q. What is your opinion of the sentiments of your people about sectionalizing the land, dividing them up into severalty, so that each member shall hold his own in fee?—A. I know of nobody in favor of it at all.

Q. What is your sentiment in regard to territorializing the country, extending the laws of the United States over it, and make the members of the tribe citizens of the United States?—A. I am opposed to that.

A. All satisfied as to this question; are you?—A. All satisfied; that is, so far as I know.

By Mr. ADAIR:

Q. You have traveled over the country a great deal, have you not?—A. Yes, sir.

Q. As a general thing, the people are opposed to territorializing this country and making them citizens of the United States?—A. Everybody I saw is opposed to it.

Q. They are opposed to the allotment of the lands also?—A. Yes, sir.

Q. You acted as a clerk of the district before you were elected to the senate?—A. Yes, sir; I did.

Q. You had a fine opportunity to ascertain the sentiment of the people upon these questions, did you not?—A. Yes, sir; I did.

Q. And the half-breeds and Delawares and everybody are opposed to it?—A. Yes, sir; as far as I heard.

By Mr. WM. P. ROSS:

Q. During your last election this question of territorializing the country and sectionalizing the lands, did it or did it not form any element in the contest?—A. It formed no element in the contest at all that I know of. It was not an issue.

By Mr. ADAIR:

Q. It was not raised?—A. It was not raised.

Q. It could not be an issue, because everybody is opposed to it?—A. Yes, sir; I understood I was represented before this committee as having run upon a ticket on that issue. I wish to give the committee to understand that I did not run upon any such issue; I wish to deny that representation.

By the CHAIRMAN:

Q. When were you elected?—A. This is my second term.]

Q. When does that term expire?—A. My time expires this fall.

Q. How long have you been in the senate?—A. I have been in the senate two years.

Q. Have you anything to say to the committee that has not been inquired of?—A. No, sir; nothing.

JOHN CHILDERS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John Childers.

Q. Are you an Indian?—A. Yes, sir.

Q. Full-blood?—A. No, sir.

Q. Half-breed?—A. Yes, sir.

Q. Do you hold any office in the nation; if so, what?—A. Yes, sir; I am a senator.

Q. A senator, are you?—A. Yes, sir.

Q. What district do you represent?—A. I represent the Sequoyah district.

Q. How long have you been a senator?—A. This is my second term.

Q. What is the feeling of your people in regard to this question of sectionizing the lands, dividing them up into severalty, and territorializing the government?—A. I do not think they want any change.

Q. They do not want any change?—A. No, sir.

Q. They are satisfied with it as it is?—A. Yes, sir; they are satisfied to remain as it is.

Q. How are the schools in your district?—A. They are doing very well.

Q. How many are there?—A. Well, I do not remember exactly how many there are in the district.

Q. Are they kept open during a part of the year or half the year?—A. Yes, sir.

By Mr. ADAIR:

Q. The people seem to be contented with the present condition of affairs in the Territory?—A. Yes, sir.

Q. They are satisfied?—A. They are satisfied.

Q. They do not want any change?—A. They do not want any change.

Q. Are the people progressing in civilization?—A. Yes, sir; I think so.

JOHN R. VANN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John R. Vann.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Where do you live in the Cherokee Nation?—A.

Q. Are you an Indian?—A. I am.

Q. A Cherokee?—A. Yes, sir.

Q. Do you hold any office in the Territory?—A. I hold an office in connection with the schools.

Q. What school?—A. Our female seminary.

Q. What position do you hold in connection with that seminary?—A. I am the superintendent of the schools.

Q. How many students have you in that school?—A. One hundred and fifteen at present.

Q. Do you teach the higher branches?—A. Yes, sir.

Q. Do you teach the languages, &c.?—A. Yes, sir.

Q. You have lived here all your life?—A. Yes, sir.

Q. Born and raised here?—A. Yes, sir.

Q. What is the sentiment of your people in regard to sectionizing the lands, allotting them in severalty, &c.?—A. As far as I can ascertain, they are decidedly opposed to it, sir.

By Mr. WILLIAM P. ROSS:

Q. From your official connection with the people you have had an excellent opportunity, in traveling over the country as superintendent of the schools, to know something of their feeling in regard to this question?—A. Yes, sir, I have traveled over the country pretty thoroughly, and know a large section of it.

Q. From your observation you think the people are opposed to any change in their government?—A. Yes, sir; *decidedly* opposed to it.

Q. What are the warrants issued by the nation worth?—A. The warrants on the general fund are worth, I suppose, about sixty cents. The warrants on the school-fund are at par.

Q. How long have you been connected with the school?—A. Ten years.

Q. Do you know whether or not there has been any of the school-fund expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposition to the organization of a civil government over said Territory; and whether any of such money has been taken from the school-fund of any such tribe, and diverted from its legitimate purposes?—A. Well, sir, I cannot say that there has been.

Q. You do not know of any of your own knowledge?—A. I do not know of any; no, sir. Allowances have been made upon the poor-fund, but only for a short time; it does not interfere with the system or working of the schools at all.

Q. What authority had they to make this allowance?—A. I do not know that they had any authority; it was done by the national council.

Q. They borrowed from the school-fund for the general fund?—A. Yes, sir; for temporary purposes.

Q. How long would they have this loan?—A. Sometimes for a period of two or three months.

Q. The schools, so far as you know, have got the full benefit of the funds devoted to school purposes?—A. Yes, sir.

Q. In what condition are the schools?—A. The schools are in a flourishing condition.

By Mr. ROSS:

Q. The amounts that have been borrowed from the school-fund have been invariably reimbursed, have they not?—A. That is my understanding; yes, sir.

Q. The schools in the nation are in a good condition?—A. Yes, sir; generally neighborhoods are, so far as advancing in moral law; but I think upon the whole there is as much interest felt in education in the schools as in any I have ever visited.

Q. Have you a superintendent of the public schools of the nation?—A. No, sir; the public schools are under a board of education.

Q. Has that board of education a head?—A. Yes, sir; and a president and secretary.

Q. Do you issue reports?—A. Yes, sir.

Q. Have you one?—A. Not with me.

Q. Could you send one to this committee?—A. Yes, sir; I have a tabulated statement and statistics for the last year—what they paid to last June, 1878—it gives the result of the two preceding terms; a scholastic year, consisting of forty weeks—two terms of twenty weeks each. This statement gives the result of the two last terms; that is, the term that commenced last January, and the term that closed last June.

Q. How long during the year is your school open?—A. The male high school continues forty weeks; the scholastic year consists of two terms of twenty weeks each; there is a short vacation, but we teach forty weeks.

Q. Have you a high school for girls also?—A. Yes, sir.

Q. How many are in attendance?—A. One hundred.

Q. Where is it located?—A. At Park Hill.

Q. Where is Park Hill?—A. Three miles from Tahlequah.

Q. Have you any free high schools in the nation?—A. Well, we have a school that answers the purpose of a high school; it is an orphan school at Saline, upon the Grande River, thirty miles from Vinita.

Q. That is a good school?—A. Yes, sir.

Q. Were you educated in the Territory here?—A. Mainly in the Cherokee schools, with the exception of several years.

Q. You were at school in the States too, were you not?—A. Yes, sir; I attended college in Washington County, Arkansas.

Q. Are your schools that are established here in the Territory as good as those in the States, in your judgment, taking the same grade of schools?—A. I think so, sir. I think our standard of examination of teachers compares favorably with those in the States—that is, the county examination in the States; and the same branches are taught and the same text-books are used that are taught upon some branches. I see no reason why the schools should not be as good except in a few instances where the children do not speak the same language. In this case, of course, there are some drawbacks to the schools.

Q. Do you teach the English language in the schools?—A. We teach the English language in the schools; yes, sir.

Q. Is there anything that you would like to speak about of your own accord that has not been inquired of?—A. No, sir.

JOHN L. ADAIR, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John L. Adair.

Q. Where were you born?—A. In the State of Georgia.

Q. Are you an Indian?—A. I suppose I am; I claim to be one.

Q. Where do you live?—A. In the Cherokee Nation.

Q. How long have you lived in the Territory?—A. Ever since it was a Territory—since the year 1839.

Q. Do you hold any position in the nation?—A. Yes, sir.

Q. What is it—what position do you hold?—A. I am a member of the board of education.

Q. Do you hold any office on that board of education?—A. Yes, sir; I am its secretary.

Q. How many are on that board?—A. The board is composed of three persons.

Q. How are your schools getting along?—A. Very well, indeed.

Q. Have you got any of your reports with you?—A. No, sir.

Q. Can you produce one?—A. If you remain here any length of time I can send one to you, as well as the statistics for the school.

Q. How many schools have you?—A. We have eighty primary schools in the Cherokee Nation.

Q. They are all doing well?—A. Yes, sir.

Q. What is the average attendance of the schools?—A. The aggregate is about thirty to each school.

Q. Do you know how many children you have in your schools daily?—A. No, sir.

Q. You haven't the statistics in your report?—A. No, sir.

Q. You never made any report of that?—A. No, sir; I suppose there are about 3,000. We had aggregated all our schools and it was about 2,800.

Q. Your estimate is that there are about 3,000 children attending school in your nation?—A. Yes, sir; and they are doing exceedingly well; much better than they have been doing for years.

Q. How are your high schools doing?—A. They are very prosperous.

Q. How would they compare with the schools of a similar grade in the States?—A. I think they would compare favorably with the same grade of schools in the States.

Q. You have traveled in the States, and have paid some attention to school matters?—A. I was in Washington City and visited the schools there.

Q. How long have you been connected with the schools?—A. Ever since last winter.

Q. How were you elected; by the council?—A. I was nominated by the chief and confirmed by the senate.

By Mr. ADAIR:

Q. You are pretty well acquainted with the people of your country generally, and from your knowledge of them, are they not opposed to any change in the government, Territorializing it, or sectionalizing the lands, or allotting them in severalty?—A. I do not think I know a single man in favor of Territorializing the government, or who is in favor of any change whatever. I have no hesitation in saying that I know of no native Cherokee—there may be some adopted Cherokees who may be in favor of it, but I know of no man with Cherokee blood in his veins who wants a change of our relations with the Government of the United States.

By the CHAIRMAN:

Q. Is there anything that you desire to state of your own accord that has not been inquired of?—A. No, sir; I do not think of anything now.

JESSE ROSS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Jesse Ross.

Q. Where were you born?—A. In the Cherokee Nation.

Q. Were you a slave?—A. Yes, sir.

Q. Where do you live?—A. In the Cherokee Nation.

Q. What is your occupation?—A. Farmer.

By Mr. Ross:

Q. You have a large population of colored people in your district?—

A. Yes, sir.

Q. How many colored schools are there, do you know?—A. Three that I know of.

By the CHAIRMAN:

Q. Colored schools do you say?—A. Yes, sir.

Q. Where?—A. In the Illinois district.

Q. How many colored people are there?—A. I do not know.

Q. Have you got as many schools as you need?—A. Yes, sir; at present.

By Mr. Ross:

Q. The colored people of the district are pretty well satisfied with the condition of affairs?—A. So far as I know, they are.

Q. Do they enjoy the same rights as other Cherokees do?—A. Yes, sir.

Q. Have they a right to vote as other citizens?—A. Yes, sir.

Q. Do they sit upon the juries?—A. Yes, sir.

Q. Did you ever sit upon a jury?—A. Yes, sir.

Q. Quite a common thing in that district, is it not, for a colored man to sit upon the jury?—A. Yes, sir.

Q. Are there any colored people there on the doubtful list?—A. I do not know, sir; very few, if any.

By Mr. ADAIR:

Q. You do not want a Territorial government established here, do you?—A. No, sir.

Q. You do not want the lands allotted to you?—A. No, sir.

By the CHAIRMAN:

Q. Do you know what it is?—A. Well, I don't know but little.

Q. You do not know what it means by Territorial government, sectionizing the lands, &c., do you?—A. I do not know.

By Mr. ADAIR:

Q. You are well satisfied with affairs as they are now?—A. Yes, sir.

Q. You are satisfied with the schools?—A. Yes, sir.

Q. The people are living in peace and quiet in that district, are they not?—A. Yes, sir.

Q. Generally pretty well contented?—A. Yes, sir.

By Mr. Ross:

Q. You have a right to enter upon and cultivate as much land as you are able to?—A. Yes, sir.

Q. Nobody disturbs you?—A. No, sir.

By the CHAIRMAN:

Q. Did you ever hear of any colored people in that district going to Tahlequah before the citizenship court to prove their rights?—A. No, sir; I never saw anything of it.

Q. Did you ever hear of any of them participating in the distribution of the bread money?—A. I never heard of it.

Q. Is there anything that you desire to tell the committee? If so, go on and state it.—A. I believe not, sir.

JOHN F. LYONS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John F. Lyons.

Q. Are you an Indian?—A. I am a white man, a citizen of the Cherokee Nation.

Q. Then you are an Indian by adoption?—A. Yes, sir.

Q. What is your occupation?—A. I am a lawyer.

Q. Do you hold any office in the Territory?—A. I am attorney commissioned and appointed under an act providing for the appointment of a special commission to try and to settle questions of Cherokee citizenship on the part of the nation.

Q. Appointed by the council?—A. Yes, sir.

Q. Do you know anything about these cases in Coowiscoowee district?—A. Yes, sir; we have had cases from that district.

Q. Do you know anything about the cases from the Coowiscoowee district?—A. Yes, sir; we have had cases from both of these districts.

Q. Some people have been here complaining that they cannot be heard, that they have been in the nation six months as provided for in the treaty; do you know anything about these cases?—A. No, sir; I do not know of any cases. I would like to explain that the Commissioner of Indian Affairs in his letter to the chief of the nation recommended that there should be some court where these people could be heard, and the council by this act established this court of citizenship.

Q. When was that letter written?—A. December, 1866.

Q. What did it grow out of?—A. It grew out of a letter to the principal chief reporting the number of intruders in the nation, and he wrote to the Commissioner of Indian Affairs to remove the intruders out of the district. In the correspondence the Commissioner recommended that there should be a court established to give these parties a chance. He told the chief that the papers had been sent on there. The colored people had gone to Coffeetown, Kansas, the time had expired, and the papers were sent to Washington. On the face of these papers the Commissioner said they had a *prima facie* right to it, that there must be some court to adjudicate their claims. The national council formed a court without expense to the Government of the United States. He said in his letter that they ought to have sixty days given them; we had issued the papers to parties in both districts and they received two letters from the Commissioner of Indian Affairs, and I sent *scire facias* to come and show why they should not be declared intruders under the treaty of 1866. Some came, others did not come at all, and we declared them intruders and took judgment against them by default under the instructions of the Commissioner, and under the act creating the court. They have all had an opportunity to prove their rights; every opportunity has been given them, and every indulgence granted them.

Q. You are aware that the Commissioner has repudiated that court?—A. No, sir.

Q. Are you not aware that the department wrote a letter saying they need not recognize that court?—A. No, sir.

Q. That is what has led these people astray?—A. Yes, sir.

Q. Have you the letter here?—A. Yes, sir. These people have all had an opportunity to have their rights under the ninth article of the treaty of 1866. They have had an opportunity to come and prove them under the sixty days' notice, but before that notice expired I gave them notice through the Cherokee Advocate newspaper, forty days before I served

the sixty day's notice, and I gave them three days more; and after they had expired I gave them twenty days more, and then they did not appear.

Q. When was that?—A. This summer, the summer of 1878.

Q. After the letter of the Commissioner?—A. No, sir.

Q. The action of the court was before the letter of the 16th of July, 1878?—A. Yes, sir.

Q. How long before?—A. Two or three months.

Q. Had they all had notices served by officers of the court before this letter of Mr. Leeds had been written, and before it had been received by the parties they could not take notice of it because it had not been received, the intention was to mislead them by parties having purposes of their own to serve?—A. The fact of the matter is these colored people do not know when they came back—they came back after the treaty.

Q. Perhaps most of them do not know when the treaty was made?—

A. No, sir; most of them do not know it.

Q. Is there any remedy for those people?—A. There is no remedy for these people. There is no remedy under the law unless the council should take them in as an act of humanity.

Q. Do you think it is much of an act of humanity to take in people into a country or community that have been born in and always lived in the country?—A. I don't think it would be much humanity, but inasmuch as their government did not do it, I don't see why we should.

Q. What other government does not do it?—A. The United States Government does not do it.

Q. They do not banish them, do they?—A. No, sir; not as a general thing.

By Mr. ADAIR:

Q. These people had never been driven out of the Cherokee Nation, had they?—A. No, sir; not at all.

By the CHAIRMAN:

Q. Are they not liable under the intercourse law?—A. They are.

By Mr. ADAIR:

Q. On this territorializing question, what is your opinion as to the establishment of a Territorial government and the allotment of the lands, &c.?—A. I have never heard anybody express themselves on the subject than as against any change of the present government.

By the CHAIRMAN:

Q. How long have you been a citizen?—A. Since 1871. I had been through here previous to that time, and had attended the council in the Territory.

By Mr. ADAIR:

Q. As a general thing the laws are well executed, are they not?—A. Yes, sir.

Q. Life and property are secure?—A. Yes, sir.

Q. Did you act as secretary to Mr. William P. Ross, the principal chief?—A. Yes, sir.

Q. Everybody has been tried alike in the courts under the law?—A. Yes, sir, they have.

Q. Have there been any distinctions?—A. No, sir; none.

Q. Have you ever heard of any intimidation being used by Mr. Ross, preventing a free expression of opinion upon this subject of territorializing the government, or anything of this sort?—A. I have not heard of it.

Q. You never heard of my using intimidation to the people?—A. No, sir.

By the CHAIRMAN:

Q. Is there anything that you desire to say to the committee that has not been inquired of? If so, please state it?—A. Nothing further, except to submit the following communication from the executive department of the Cherokee Nation, transmitting to the committee the act creating a court and the commission, and ask that they be made a part of my testimony:

“EXECUTIVE DEPARTMENT CHEROKEE NATION.

“I, William F. Rasmus, assistant executive secretary of the Cherokee Nation, do hereby certify that the annexed printed copy of an act of the Cherokee National Council, entitled ‘An act providing for the appointment of a special commission to try and to settle claims to Cherokee citizenship,’ approved December 5, 1877, is a true and literal copy of the original, as per executive file of the same.

“Given under my hand and the seal of the Cherokee Nation, at Tahlequah, C. N., this 18th day of November, A. D. 1878.

“WM. F. RASMUS,
“*Ass’t Exec. Sec’y C. N.*”

“*Acts and resolutions.*

“AN ACT providing for the appointment of a special commission to try and settle claims to Cherokee citizenship.

“Whereas it is of the utmost importance to the Cherokee Nation that the claims of certain persons to citizenship hereof be speedily and permanently settled by competent authority: Therefore,

“SEC. 1. Be it enacted by the national council, That there be and is hereby created a special commission, to be designated ‘The Commission on Citizenship.’

“The commission on citizenship shall consist of three members, to be nominated and commissioned by the principal chief, with the advice and consent of the senate; they shall constitute a ‘tribunal of last resort’ in the hearing and determining of causes hereinafter designated, and none others.

“The national council, in joint session, shall elect one of the three commissioners (elect) to act as president.

“They shall at the same time elect one attorney for the nation, who shall also be commissioned by the principal chief, and who, with the solicitor-general, shall act for the nation in all cases undergoing adjudication by the commission.

“The commission on citizenship and the attorney for the nation, before entering upon their duties, shall qualify to support the constitution and laws of the Cherokee Nation, and to discharge their duties without fear or favor, and to the best of their ability. The president of the commission on citizenship shall preside at the sessions of the same. In his absence or inability to serve, the senior (by age) member present shall preside. Any two members of the commission shall be competent to transact business.

“The commission on citizenship shall have authority to appoint and qualify one clerk and one interpreter, and to define their respective duties.

“They shall also have the right to command the presence and service of the sheriff, or his deputy, of the district wherein they may hold their

session; whenever the services of such sheriff or deputy shall not be available, then they (the commissioners) may, in their discretion, appoint some other citizen of the nation as a substitute, and who shall act in lieu of a sheriff.

"The commission on citizenship shall have cognizance of and exercise complete jurisdiction over all cases arising under the constitution and laws of the Cherokee Nation, involving the right to citizenship of said nation, as hereinafter specified:

"1st. Of all cases wherein a claimant to citizenship has applied to the supreme court or to the national council, and wherein the court or council has failed to adjudicate the same, whether it originated in the national council or was transmitted thereto for review from the supreme court.

"2d. Of all cases where the national council has adjudicated the same by a decision adverse to the claimants, and where such rejected claimants have appealed from the jurisdiction of the Cherokee Nation to that of the United States subsequent to the date of the Cherokee treaty of July 19, 1866, and whose cases have been reported by the United States agent, under instructions from the Department of the Interior, to the principal chief, and are now on file in his office.

"3d. Of all cases where the claimants have ignored the authorities of the Cherokee Nation and appealed to those of the United States.

"4th. Of all cases where citizenship has been granted and there is presumptive evidence of fraud having been perpetrated to secure the same; or where citizens of the United States have married into this nation in violation of the law prohibiting the marriage of persons previously married without having obtained a divorce.

"5th. Of all cases of persons of African descent, arising under the Cherokee treaty of July 19, 1866, where the applicant claims to have complied with the requirements of the treaty, but has failed to receive recognition as a citizen by competent authority.

"In decreeing the right to citizenship in the Cherokee Nation, the commission shall be governed by the provision contained in the 5th section amendments to article 3 of the constitution, to wit:

"All native-born Cherokees, all Indians and whites, legally members of the nation by adoption, and freemen who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion, and are now resident therein, or who may return within six months from the 19th day of July, 1866, and their descendants, who reside within the limits of the Cherokee Nation, shall be taken and deemed to be citizens of the Cherokee Nation; and in addition thereto shall include all applicants, *bona-fide* residents, who are of Cherokee parentage, and who may be of not less than the half-blood."

"The recognition of the right of citizenship in the Cherokee Nation, by virtue of the foregoing provisions, shall not be deemed as conferring the like right upon any person not an Indian, who may be connected with such person by blood or affinity, unless such person shall comply with the provisions of article 18, chapter 10, new code, relating to inter-marriage.

"The commissioners on citizenship may admit as evidence, in any of the cases named herein, the oral testimony of witnesses under oath, the decisions, records, or other papers, or the certified copies thereof, in the clerk's office of the national council, or of the supreme court of the Cherokee Nation, or other affidavits taken before any court of record in the United States, duly authenticated, pertaining to any case brought before it under this act, and shall give such weight as to the credibility

of such evidence, in making up their judgment thereon, as they may deem it entitled to. They may in their discretion limit the number of witnesses that may be introduced to establish the same fact in any one case, and fix the period for hearing and determining the same.

"The commissioners shall keep in a book to be used for that purpose, a docket of all cases tried, with their decision thereon; a copy of such decision to be furnished to the claimant, whether admitted or not, and such decision shall be final.

"The evidence in every case tried by the commission shall be carefully arranged, labeled, and numbered to correspond with the docket, and be filed for preservation with the national records.

"Any person who shall be guilty of attempting, by bribes, intimidation, perjury, or any manner of unlawful means, to establish the claims of any applicant for citizenship, or by such means to defeat it, shall be deemed guilty of felony, and on conviction thereof by any court of competent jurisdiction shall suffer all the pains and penalties imposed for the commission of such offense in any other case. And if such person be an attorney he shall likewise be forever barred from practicing before any of the courts of this nation.

"The commission on citizenship shall, for the accommodation of parties, hold their session at Tahlequah and Fort Gibson, the time of meeting and continuance at either of said places to be fixed by themselves: Provided, however, That they shall, within ten (10) days after the approval of this act, hold a preliminary meeting at Tahlequah, for the purpose of organizing; when they shall by public notice announce the time and place of holding their first session for the trial of cases.

"The members of the commission on citizenship shall receive severally for their services the sum of four dollars per day, and the attorney, clerk, and interpreter the same (four dollars per day), payment to be made from the general fund, on preferred warrants of the principal chief, based on estimate for services rendered, duly certified by the president and clerk, as the same shall be required by the commission while in the discharge of duty.

"Witnesses summoned and appearing for the nation shall be allowed the same pay as is allowed witnesses in criminal cases, payable in the same manner, upon certificates issued, recorded, and reported by the clerk of the commission.

"The commission shall, through the office of the principal chief, and not later than the second (2d) Monday of November next, report the result of their proceedings for the information of the national council: Provided, That all claimants for citizenship embraced within the provisions of this act who shall refuse or fail to bring their cases before the commission on citizenship for adjudication, and all such as shall be rejected by the commission, shall be held as intruders, and shall be reported by the commission to the principal chief as such, and the principal chief shall at once demand of the Secretary of the Interior, or of the President of the United States, their immediate expulsion from the limits of the Cherokee Nation.

"TAHLEQUAH.

"Approved December 5, 1877.

"CHARLES THOMPSON."

GEORGE DOWNING, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. George Downing.

Q. Where do you live?—A. In the Cherokee Nation.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir.

Q. Full-blood?—A. Yes, sir.

Q. Do you hold any office in the Territory?—A. I am a member of the board or commission to try citizenship cases.

Q. How long have you been in the court?—A. I have been the judge since last December.

Q. What are your opinions in regard to the sectionalizing the country, allotting the lands in severalty, territorializing the government, &c.?—A. I am opposed to it.

By Mr. ADAIR:

Q. State the sentiment of the people upon this question of sectionizing the country and allotment of the lands, the establishment of the United States courts, &c.—A. The Cherokees neither want a Territorial government established, nor the lands allotted, nor a United States court.

Q. They are satisfied as they are?—A. Yes, sir.

Q. Did you ever hear a Cherokee Indian say he was in favor of these measures?—A. No, sir.

By the CHAIRMAN:

Q. Do you believe your nation would be benefited by the repeal of those parts of the acts of Congress in which the several railroads claim title to the lands in the Indian Territory?—A. I do.

Q. Do you think you are capable of holding lands in severalty, with all the rights of citizenship, in fee-simple?—A. I do not think the more ignorant classes are.

Q. Should all the lands owned by your nation be allotted among the members of the tribe after setting apart a sufficient portion for a school-fund, or should a portion of each tract be reserved and made inalienable for five or ten years, would not it benefit your people?—A. I do not think it would.

Q. Suppose 80 acres were allotted to each member of the tribe and secured so that it could not be alienated, or sold for taxes, or debts, and the remainder of the lands of the nation sold and the proceeds kept by the United States, and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians and be for the benefit of life and property?—A. No, sir; I do not think it would.

Q. What proportion of your friends and neighbors are in favor of such allotment of lands? Do you think any persons have been prevented by fear from any expression of their opinion upon this subject?—A. No, sir.

Q. Has there been free discussion of these points? If not, why not?—A. The people discuss it who want to, but the people do not like to talk about it.

Q. If each nation was allowed to retain its tribal customs and property, would the country be benefited by the establishment of a Territorial government making each member of a tribe citizens of the United States?—A. No, sir.

Q. Can a civil form of government be organized over the Indian country for the better protection of life and property?—A. Life and property are protected now.

Q. Has the Territory been benefited or injured by the construction of the railroad through it?—A. I do not think the railroad has benefited the country much.

At 5.25 p. m. the committee adjourned.

Rev. JOSEPH THOMPSON, having been duly sworn, was examined.

By the CHAIRMAN :

Question. What is your name ?—Answer. Joseph Thompson.

Q. Are you an Indian ?—A. Yes, sir.

Q. By birth or adoption ?—A. By birth.

Q. What is your profession ?—A. I am a minister.

Q. What denomination ?—A. Methodist.

Q. How long have you been here in the Indian Territory ?—A. I have been here about thirty-seven years.

Q. Then you were born here ?—A. Yes, sir.

By Mr. ADAIR :

Q. What office do you hold in the church, Mr. Thompson ?—A. I am a presiding elder of the Cherokee district.

By the CHAIRMAN :

Q. That is the Cherokee Nation ?—A. Yes, sir. There is one circuit in the Cherokee Nation and the Creek Nation.

By Mr. ADAIR :

Q. You have had an opportunity to learn the sentiments of the people on this question of sectionizing their lands, have you not ?—A. Well, yes, sir; I have heard the opinions of nearly all with whom I have come in contact.

Q. Then, sir, from your contact with the people, how do they stand upon the questions of sectionizing their lands, dividing them up in severalty, and territorializing their government, so as to make them citizens of the United States ?—A. They are almost, with no exception, opposed to any change of the government; almost unanimously opposed to the allotment of the lands, in my opinion.

Q. The people generally have the privilege of expressing themselves freely upon this subject ?—A. Yes, sir.

Q. Without any intimidation ?—A. I believe so.

Q. Did you ever hear of Mr. Ross or me using any intimidation or threats against anybody for expressing his opinion on any of these subjects ?—A. Never did.

Q. They consider it their privilege to express their own opinions upon these questions ?—A. Yes, sir.

Q. Have they not sent protests to Congress protesting against these changes ?—A. Yes, sir.

Q. Have they not instructed their members of the national council to protest against these changes ?—A. Yes, sir.

Q. Has not the council instructed and authorized the delegates at Washington to protest against the territorializing their country ?—A. Yes, sir.

Q. You know all about the country, having to travel over it a good deal in your profession; are not the people throughout the country friendly and peaceable ?—A. Yes, sir; they are at peace and there is harmony all over the nation at the present time, and has been for some time past.

Q. Their relations with the Cherokees and with the adjoining States are of a cordial character ?—A. Yes, sir.

Q. And in their intercourse with the people of the States they are friendly ?—A. I do not know anything to the contrary.

By the CHAIRMAN :

Q. Have you ever resided in the States ?—A. I was about three years

in Tennessee at school; with that exception I have resided altogether in the Cherokee Nation.

Q. Has the condition of the people improved within the last few years?—A. Yes, sir; rapidly.

Q. In education also?—A. Yes, sir; schools are increasing; property is increasing; they are more industrious; they are building more churches than they have ever done before. The church property is increasing every year.

Q. What is the number of the membership in your denomination in the Cherokee Nation?—A. We have a membership, I think it is, of twelve hundred and sixty-five.

Q. That number in the whole nation?—A. That number in the whole nation. I have not got the statistics of the circuit in the Creek Nation; I have not had time to get them up.

Q. What do you think it is?—A. The charge I have includes that at Muskogee and Eufaula. I have not had an opportunity of visiting them since I have been in charge of the Cherokee district.

Q. How long have you been in charge of the Cherokee district?—A. About twelve months.

Q. You have been preaching, too?—A. Yes, sir.

Q. The number in the whole nation is 1,245; what is it in the Creek Nation?—A. Not less than one hundred.

Q. What other denomination, in the Cherokee Nation?—A. We have the Baptist.

Q. That is the largest?—A. Yes, sir.

Q. What is the membership, do you suppose?—A. I suppose the membership is between 2,000 and 3,000 members.

Q. Are there any other denominations?—A. The Presbyterians; not very large. They claim a membership of one hundred; the Moravians, seventy.

Q. How many Catholics?—A. We have none.

Q. Any Catholics in the Creek Nation?—A. Very few, if any. There is no organized church of that denomination in the Creek Nation.

Q. In your intercourse with the people throughout the Territory do you think, as a class, they are competent to manage their own affairs as a people?—A. I do. I have meetings among the full-bloods—what I call quarterly meetings—it is a very large congregation. We met on Friday and we were there on Saturday and Sunday. That meeting was perfectly friendly, and there was as good order there as I ever saw anywhere else.

Q. Are they not as intelligent as a people as you see generally in the States, taking them as a mass?—A. Well, the full-blooded portion are not. The fact is, the full-bloods have not the intelligence because they have not had the means at their command. They have only a few books in the nation in English. The number of those who read English is increasing.

Q. Do they not all read and write in their own language?—A. A large number do; yes, sir.

Q. Do as many read and write their own languages as the poorer classes in the States read and write in English?—A. Yes, sir.

Q. Do they compare favorably with what is known as the poorer classes in the States in this respect?—A. Yes, sir.

Q. Do you not think, as a class, they are more intelligent?—A. Yes, sir. Their opportunities are increasing every year, and perhaps they do have more general information.

Q. Don't you think they show more disposition to learn than the poor

whites out in the States?—A. Yes, sir; they show a very praiseworthy desire to learn. They attend school regularly, and the schools are well attended.

Q. Have you ever preached in the States?—A. In Missouri some; yes, sir.

Q. In Arkansas, too?—A. Yes, sir; and in Arkansas.

Q. In the churches where you have preached in those States, don't you think the people here in your churches understand you as well as they did in the States?—A. Yes, sir; I think they do.

Q. Don't they understand you as well as any congregation in the States?—A. Yes, sir; I think so.

Q. Do you preach in English or Cherokee?—A. In English.

Q. Does your congregation understand you—I mean all?—A. No, sir. I preach through an interpreter in a number of the churches, not all. In one-third of the churches, I presume, I preach through an interpreter.

Q. What is the order of the country; quiet?—A. We have very quiet meetings. They have never been disturbed by any cause.

Q. Has the peace of the neighborhood, within the last five years, improved?—A. It has improved; yes, sir. I have never had any difficulty at my meetings. I have heard of there being disturbances at the meetings, but it was never done at any of mine. I have heard less of it in the last year than formerly.

Q. Is not the order of the Territory improving?—A. Yes, sir; I think so.

Q. There is less violence than existed a year ago?—A. Yes, sir; that is my opinion.

Q. Less murders being committed?—A. Yes, sir.

By Mr. ADAIR:

Q. Don't we have very stringent laws to protect religious assemblies?—A. Yes, sir; the laws are very rigid. The law gives to those assemblies the privilege of protecting themselves, and they have done so.

By the CHAIRMAN:

Q. What is your salary a year?—A. Six hundred dollars.

Q. What do your associates get?—A. The same.

Q. How often do you sit?—A. Once a year.

Q. What time?—A. October.

Q. How long do you sit?—A. Three months.

Q. Is there anything further you would like to say, of your own account, not inquired of?—A. I would like to make this statement: Speaking about the Cherokee Nation learning to read and write. I learned it in one hour. I could read and write it in one hour.

R. M. WOLFE, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. R. M. Wolfe.

Q. Are you an Indian?—A. Yes, sir.

Q. A Cherokee?—A. Yes, sir.

Q. Were you born here?—A. Yes, sir; born here.

Q. What is your profession?—A. I have no particular profession.

Q. Well, then, what is your occupation?—A. I follow farming, and am an interpreter for the council.

Q. You have been interpreter for the council?—A. Yes, sir; and a clerk in a store.

By Mr. ADAIR:

Q. You speak the Cherokee language, do you not?—A. Yes, sir; better than English.

Q. You understand the people of our country pretty well, do you not?—A. Yes, sir.

Q. You have been a clerk in a store?—A. Yes, sir.

Q. How do the people understand these questions of territorializing the country, allotting the lands, sectionalizing them, &c.?—A. So far as I have learned anything, they are in favor of the country remaining as it is.

Q. The full-bloods want the country to remain as it is, do they?—A. Yes, sir.

Q. The half-breeds, also?—A. Yes, sir; all.

Q. The people, generally, are satisfied with the government and do not want any change?—A. So far as I have learned, they do not. They do not desire any change whatever, for the reason that they are not ready for it.

Q. They do not want any change whatever; are satisfied to remain as they are?—A. No, sir; they want no change. They are satisfied to remain as they are. The laws allow them to do as they see fit as they are.

Q. So far as you know the country is quiet and peaceable?—A. It is.

Q. You have heard of no disturbances?—A. No, sir.

Q. The people are satisfied as they are?—A. Yes, sir.

At this point the chairman notified the Cherokee commissioners that the committee could examine no more Cherokee witnesses, as the time had been assigned to the Creek Nation for the examination of Creek witnesses.

NOTE.—Statements referred to by Mr. Adair at the end of testimony for Cherokee Nation.

NOVEMBER 20, 1878.

MOSES N. ADAMS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Moses N. Adams.

Q. What is your occupation?—A. Chaplain, United States Army.

Q. Where are you situated?—A. Fort Gibson.

Q. How long have you been in the Army?—A. Two years last February.

Q. How long have you been at Fort Gibson?—A. Two years last March.

Q. Had you lived upon the frontier before that?—A. Yes, sir.

Q. Where?—A. In Minnesota, in 1848; then a Territory.

Q. Then you have had long experience and acquaintance with the Indian character?—A. Yes, sir; I then came as a missionary of the American Board of Foreign Missions to the Sioux Nation, and was stationed at Lac-qui-parle, Minn.

Q. You have been with the Indians more or less ever since?—A. Yes, sir. I have been acquainted with them more or less ever since.

Q. What is your opinion of the condition of affairs since you have been here?—A. Well, I have known something of the history of the

Cherokee, Creek, Seminole, and other nations, from my earliest recollection, and expected a great degree of civilization before I came. On arriving here I was gratified to find that much progress had evidently been made in their civilization, and a very commendable degree of interest has been taken in their educational matters. I am satisfied that the great incentive to real and substantial improvement has been wanting among the people, as I believe in consequence of their not owning their lands in severalty, or even having any hope of becoming actual owners of the lands. In consequence of this they seem to be waiting for something I cannot tell what. My impression is if they could be brought under common laws such as are provided for by the Constitution of the United States, and could become owners of real estate in severalty for themselves and their children, and if at the same time the treaty relations with them could be so amended so that they could become citizens of the United States, that change would more than counterbalance any other change that could be provided for them.

Q. It is your opinion, from your observation among them, that they are fit for self-government and fit to become citizens of the United States?—A. I do not know any reason why they should not be regarded as such. I believe them to be capable of true civilization and susceptible of all the responsibility and advantages of true civilization.

Q. Is there anything else that you think of that you would like to say to the committee that has not been inquired of?—A. No, sir; I do not know upon what points you want my special views.

Q. Since you have been here has there been much crime, in your opinion; are the laws executed as they should be to give protection to life and property?—A. No, sir; not independent of the United States Government.

Q. The laws are not executed?—A. No, sir; not without the aid of the United States Government.

Q. Don't you think if the troops were not here there would be more disorder than there is?—A. O, yes; undoubtedly.

Q. You think these are necessary?—A. Yes, sir; the officers could not enforce law but through the efficiency of the United States marshals and the aid of the United States troops.

Q. Have there been many murders committed since you have been out here?—A. Some. I do not know if they are greater in proportion than in the States. I am inclined to think not, in proportion to the number of the inhabitants.

Q. Are the Indian laws executed here or not?—A. I think they are not fully executed, and then I think there are some very commendable efforts made to punish crime and execute the laws. It is hardly proper to say they are fully executed.

Q. Did you in your testimony state what you stated to me privately, that you thought if some provision was made to secure their land in severalty they would be given an incentive to make improvements upon them?—A. Yes, sir; I said I thought the lack of that was one of the great drawbacks to improvements.

Q. And you state that from your experience with the Sioux in Minnesota?—A. I have seen it demonstrated to my own satisfaction that it is possible to take a blanket Indian from the plains and give him to understand that he is to take one hundred and sixty acres of land; that it will not or shall not be taken from him; that that shall be his and his children's after him—I have seen those men with an ax and a scythe placed in their hands mowing and reaping, and I have seen them advance just as other people in the United States, and make efforts to real-

ize results. I know of no reason why it could not be so here among the tribes of this Indian Territory.

Q. That is all you want to say?—A. I believe that is all I think of that would be proper for me to say.

MUSKOGEE, *November 20, 1878—3 p. m.*

WILLIAM P. BOUDINOT, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. William P. Boudinot.

Q. What is your occupation or profession?—A. I am an attorney at law.

By Mr. E. C. BOUDINOT:

Q. Give your opinion in regard to the propriety of allotting the lands and the organization of a civil government for the better protection of life and property. Any views you may have on that subject, give them as tersely as you can. How long have you lived here?—A. Since 1848. So far as the allotment of the lands are concerned, I have been known and am known yet as one in favor of the allotment of the lands among the individuals of the nation, according to the treaties of 1835 and 1866. I first advocated it the year before the war closed, before I heard of the treaty.

Q. In 1865?—A. Yes, sir; the following year before the war closed. The question was new to the people at that time. I did not hear anything more of it until Colonel Phillips advocated the same thing at Tahlequah.

Q. What Phillips is that?—A. Hon. W. A. Phillips, of Kansas.

Q. He advocated the same thing as Tahlequah?—A. Yes, sir; at the time he was a candidate for citizenship.

Q. Was he present at the time?—A. Yes, sir.

Q. Was it through his petition that the effort was made?—A. No, sir; I think not. The proposition was made by one of his friends. He had numerous friends in that country and has now, I suppose.

Q. He applied for citizenship and advocated the division of the lands in severalty?—A. He did not apply for it, but he advocated that among the people. The next move I had in connection with it was made when I was the editor of the *Cherokee Advocate*. I advocated the division of the land in severalty as being the best thing for the Cherokees to do and secure them to themselves under the treaty. I did not finish my arguments upon the question during that term. I held the office for a year and my proposition dissatisfied a portion of the people, and when I came to run for the same office again I was told if I would drop that question they would allow me to run, and would elect me if I would drop that subject and say nothing about it.

By the CHAIRMAN:

Q. How are the editors elected?—A. By the national council.

Q. Did you get a salary?—A. Yes, sir; I had a salary of one thousand dollars a year. I was elected for the second term with the understanding that nothing was to be said about allotment. I said nothing about it during the second term.

Q. How long did it last?—A. Two years. That is as far as I had anything to do with it. I am known to support those views from that time

to this. Never changed my views either publicly or privately about it, although there has been no occasion to make them public.

By Mr. BOUDINOT :

Q. Do you think there is a strong feeling among those who understand the question properly to have the lands allotted?—A. Among the intelligent people, I think so. Among those who understand the question the belief is general, so far as I have been able to ascertain, that that would be the best policy for the Cherokees to pursue. But that does not include a majority of the people; a majority does not understand it, and they oppose it. It was for that reason that I wished to advocate it in the paper.

Q. What do they understand it to mean? Do they confound the allotment of the lands with the other question of territorializing the country, and understand it to mean that it will be a means of introducing the white people here and the giving of their lands to the railroads?—A. Yes, sir; and certain persons of both parties, for the purpose of arousing influence against it, condemn the policy in their speeches for various reasons. This is done among a certain class that cannot be reached in English; that class is still opposed to it, and if not made to understand it they will always remain opposed to it. That is my opinion. There was a time, a period when Colonel Bell ran for chief, and he made that an issue, and it was the only time that that issue, that I know of, has ever been made in the Cherokee country. He made public speeches and advocated the allotment of the lands and their division in severalty.

By the CHAIRMAN :

Q. Was he elected?—A. No, sir; he was not elected.

By Mr. BOUDINOT :

Q. When was that?—A. I cannot give the year; I think it must have been in 1870. I am not positive.

Q. Do you remember how many votes he got?—A. No; I do not know. It was a new thing, and he was opposed by both of the candidates for both parties here. He went around accompanied by L. B. Bell.

Q. He accompanied him?—A. Yes, sir.

Q. And was known to indorse his sentiments?—A. That is the way I understand it. I never heard him speak publicly, but he went around with him. He is the nephew of James Bell. Since that time the temper of the people has been opposed to allotment, because it has been connected in their minds with the idea of depriving them of their lands.

By the CHAIRMAN :

Q. The people have been made to believe that?—A. Yes, sir; they have been made to believe it, and they do believe it, that is a majority of the people do, while the minority, who understand the subject, are strong in favor of the allotment of the lands as being the best way of preserving the lands to the Cherokees.

Q. Is there any intimidation in regard to men who advocate these measures?—A. I cannot say that I know of any particular intimidation; only when a thing is unpopular to the general feeling, it is not safe to make free with expressing opinions in favor of it.

Q. That is because the laws are not sufficiently strong to protect persons?—A. Well, the laws have not been sufficient, but since our new code was passed I could not say they are not sufficient now. There was

a time when there was but very little law, when, I know, property and life were not safe in this country, and it attracted the attention of the legislature; so they ordered a revision of the laws, and a new code was passed. Since that code was passed, so far as my observation extends, I think property has grown more secure than it was before.

By Mr. BOUDINOT:

Q. What is your view about the organization of a United States court? Is it the same among those who understand it—the people of both parties in favor of it as provided for in the treaty?—A. Yes, sir; it is. They desire everything to be carried out provided for in the treaty. The treaty provides for a United States court to be established in the country, and there is no objection whatever to it so far as I have heard anybody say anything about it.

Q. Do you think the people of the country will be willing that the provisions of the treaty in regard to the organization of a civil government, under the eighth article of the Choctaw and Cherokee treaty, shall be carried out? Would that be acceptable to them?—A. Speaking in regard to the Cherokee people alone, I could only speak in regard to the action they took in reference to the Ocmulgee constitution, which provided for a civil government under the treaty, taking all the tribes together in the Indian Territory. That organization was made by the general council of the tribes, and was concurred in by several tribes, but was not concurred in by the Cherokees.

Q. What are your views about a Delegate to Congress? What is your idea about what would be acceptable to the people here if they understood that question?—A. That question has never come up before the people in any shape that I am aware of.

Q. What are your own views?—A. My own views are if a Delegate to Congress could have the same influence that the delegation has it would save thousands of dollars in money that has been annually spent at Washington, and about which there was so much complaint. That question, however, has never come up before the Cherokees that I know of.

Q. Have you examined the treaty of 1866 pretty thoroughly?—A. Yes, sir.

Q. Your opinion as a lawyer; don't you think a civil government could be organized without disturbing the tribal organizations in this country?

The WITNESS. You ask me if that is possible under the treaty of 1866?

Mr. BOUDINOT. Yes, sir.

The CHAIRMAN. From your acquaintance with this people, do you think they are fit for self-government?

The WITNESS. Do you mean the Indians?

The CHAIRMAN. Yes, sir; everybody living here, whites, Indians, negroes, and everybody else. Do you think they are fit to conduct a Territorial government?

The WITNESS. If I understand what is required of citizens of the United States, they are qualified so far as that is concerned. I can say they are fit to carry on any government of their own they see fit to adopt.

By the CHAIRMAN:

Q. Do you know anything about the school fund?—A. The first I knew of it was several years ago in the council, when it was proposed to borrow from the school fund in order to make use of the money for other purposes by Col. W. P. Ross, who was in the council at that time.

There was considerable opposition to it in the council, but it succeeded. They carried the thing, and since that time it has been customary to borrow from the school fund. It was determined to pay out of the general fund next time. There was a good deal of opposition to it at first, because it was considered as an unlawful use of the school fund. There has not been any opposition to it since.

Q. They pretend to repay it when they get money?—A. Yes, sir; they repay it out of the next general annuity.

By Mr. BOUDINOT:

Q. How long do they have to wait before they repay that fund?—A. They wait some months.

Q. How many months?—A. The session is in November, and the money comes in February or March, somewhere along there.

Q. In the mean time the school fund is deprived of the amount they borrow?—A. Yes, sir.

MUSKOGEE, INDIAN TERRITORY,
November 20, 1878.

C. R. STEVENSON recalled and examined.

By Mr. BOUDINOT:

Question. Have you received any dispatch from the United States marshal at Fort Smith to the effect that your life was in danger or not?—Answer. Yes, sir; I received the dispatch that has just been read there, and which is as follows:

[Copy of telegram.]

"FT. SMITH, ARK., Aug. 24, 1878.

"C. R. STEPHENSON, *McA.*:

"This side of Muskogee persons have been stopped by masked men, with shot-guns, looking for you.

"D. P. UPHAM."

That message was repeated to McAlester at that time. It was sent here by General Upham.

Q. Who is General Upham?—A. Marshal for the western district of Arkansas.

By the CHAIRMAN:

Q. You are one of his deputies?—A. I am, sir.

Q. How many murders have been committed here within the last five years in the Indian Territory?—A. I cannot tell exactly, but I think there have been fifty, at the lowest calculation. I suppose more than that, but then there have been that many.

Q. Has any one been hanged for it?—A. Ever since Judge Parker has been judge there have been a good many hanged by the United States court.

Q. In their own Territory here?—A. Four or five in the Cherokee Nation here.

NOVEMBER 20, 1878.

THOMAS F. FRENCH, having been duly sworn, was examined.

By the CHAIRMAN:

Question. Are you an Indian?—Answer. I am.

Q. To what nation do you belong?—A. Cherokee Nation.

Q. Born and raised here, were you?—A. Yes, sir; born and raised here.

Q. What are you, a farmer?—A. Yes, sir; I raise some stock.

By Mr. BOUDINOT:

Q. What is your opinion as to the allotment of the lands?—A. I would like to see the lands allotted. I think it would be an advantage for the people to have it. Those are my sentiments. I have always spoken above-board.

Q. Do you think there are a good many people in your neighborhood who think as you do?—A. I have talked with several, and they agree with me.

Q. You think those who understand it are in favor of it?—A. Yes, sir; those to whom it has been explained always tell me they agree to it.

By the CHAIRMAN:

Q. Do you think your neighbors here are fit to manage their own business and be citizens of the United States and carry on their own government as well as anybody else?—A. Yes, sir; I think they know the value of a dollar as well as anybody. I think they are as fit to govern themselves well as anybody.

NOVEMBER 20, 1878.

JOHN B. MOORE, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John B. Moore.

Q. What is your occupation?—A. I am United States commissioner here.

By Mr. BOUDINOT:

Q. You are United States commissioner?—A. Yes, sir.

Q. Please tell the committee what your views are in regard to the protection which citizens of the United States and others have in regard to civil matters.—A. They have no protection for civil matters; the United States court has no jurisdiction in this Territory. The nearest approach to it is imprisonment bonds.

Q. That is where a person gives bail and goes security for some citizen of the nation?—A. Yes, sir; they can levy upon his property here.

Q. That is, the Indians dispute it and claim it is a stretch of authority to enforce a civil contract?—A. Yes, sir; there is no way to enforce it.

Q. In regard to contracts between citizens of the United States and of this Territory, there is no court to take jurisdiction over such matters?—A. None at all.

Q. There is no court where citizens of the United States could get redress in matters of civil contract?—A. No, sir; I, an individual United States citizen, may have a bill of sale for stock, but unless I take possession of the stock at the time, there is no possible way for me to enforce that sale. An Indian may have a bill of sale for stock and he can take them at any time.

By the CHAIRMAN:

Q. Suppose he turns the stock over to you and you keep it?—A. I could not hold it here in the Territory. I could sell it, but I could not hold it unless I was a licensed trader. I could take it and sell it and he would have no remedy, because there is no tribunal for him to get redress.

WILLIAM McLAIN, having been duly sworn, was examined.

By the CHAIRMAN:

Question. Are you an Indian?—Answer. Yes, sir; I am.

Q. Are you a Cherokee Indian?—A. Yes, sir.

Q. Were you born and raised here?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Tell the committee what your views are in regard to the condition of the country as to the protection which persons have under the law.—

A. I think the laws of this country are good enough. I am satisfied with them to remain as they are.

Q. You are perfectly satisfied with them?—A. Yes, sir.

By the CHAIRMAN:

Q. What do you think of allotting the lands in severalty?—A. I have been led by the leading men of the nation. They make me believe it would be one of the worst things we can do, and I still entertain that opinion.

By Mr. BOUDINOT:

Q. You get those views from what you learn from them?—A. Yes, sir.

Q. They lead you to believe that the lands will be taken away from you?—A. Yes, sir; that is what they have taught me, and I never believed otherwise.

W. L. SCOTT, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. W. L. Scott.

Q. Are you an Indian?—A. No, sir; I am a white man.

Q. Where were you born?—A. Tennessee.

Q. How long have you been here?—A. Eleven years.

Q. What do you do?—A. Farm.

Q. Farm for yourself?—A. Yes, sir.

Q. Did you marry in the nation?—A. Yes, sir.

Q. Married a Cherokee woman?—A. Yes, sir.

Q. How much land do you cultivate?—A. About forty acres.

Q. Well, what do you think about this question of allotting the lands, sectionizing them?—A. I think it would be the worst thing that could be done, from the way I have been taught to look upon it since I have been here. I was a boy when I came here, and I have been brought up among the Cherokees, and know nothing about the question. I am satisfied with the laws, with the exception of one thing—that is, they never have done anything with men who steal our horses. I would like to have something done with a horse-thief when he has been caught.

Q. You are satisfied with the laws?—A. Yes, sir; with the exception of that one thing.

Q. You except to the way in which the laws are carried out?—A. Yes, sir; I except to the way in which they are carried out.

By Mr. BOUDINOT:

Q. Your idea of allotment is from what you get from other parties?—A. Yes, sir.

Q. You know nothing about it except what you get from other parties?—A. I do not know how it would be.

By the CHAIRMAN:

Q. Would you like to own your lands yourself?—A. I do own them.

Q. You cannot sell them?—A. I bought them, and paid \$600 for them.

By Mr. BOUDINOT:

Q. You bought the improvements?—A. No, sir; I paid it for the land more than anything else.

Q. You do not know the difference between buying land and improvements?—A. I did not see any improvements upon it. I bought the land.

NOVEMBER 20, 1878.

RICHARD NEAL, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Richard Neal.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Cherokee Indian?—A. Yes, sir.

By Mr. BOUDINOT:

Q. Have you any views about the allotment of lands? What are your views?—A. I have been advocating that thing ever since it came up.

Q. Do you think it would be best for the people?—A. Yes, sir; if we could divide the lands among ourselves; that is the way I want it done, within ourselves.

Q. Do it so as to secure every man his proportion by such title that it cannot be taken from him. You would be in favor of doing that, would you?—A. Yes, sir.

STATEMENT BY CHARLES B. WINFIELD, ADMITTED IN EVIDENCE BY ORDER OF THE CHAIRMAN.

Question. Are you in favor of allotment of the lands?—Answer. I am.

Q. Are you a citizen of the Cherokee nation?—A. I am an adopted citizen. I believe holding our lands in severalty would be beneficial to the whole people of the nation. Am in favor of a court, a Delegate to Congress would object to a Territorial form of government for the present.

CHARLES B. WINFIELD.

Sworn to and subscribed before me this 19th day of November, A. D. 1878.

[SEAL.]

A. P. GOODYKOONTZ,
Mayor Dowlingville, C. N.

STATEMENT OF COL. E. C. BOUDINOT.

E. C. BOUDINOT.

By the CHAIRMAN:

Question. What statement have you to make upon the subject-matter of these resolutions?—Answer. The resolutions make it the duty of this committee, as I understand it, to inquire and report—

1st. If any railroad authorized by Congress to be constructed in the Indian Territory has "issued bonds of any kind, predicated upon the conditional land grants of such road in the Indian Territory." And if so, the committee is instructed "to ascertain in whose possession the bonds are, and for what purpose."

2d. The committee is instructed also "to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school-funds of any of such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purposes." And

3d. The committee is "instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations."

These are the only subjects of inquiry which the Senate of the United States has directed this committee to make.

The testimony as to whether the Indians are opposed to a territorial government and to a division of their lands in severalty, or as to whether any considerable number are in favor of such propositions, may be of general interest, and may affect the question of the *expediency* of legislating for the Indian Territory, but it can in no possible way affect the subjects of inquiry as contained in the resolutions.

As to that part of the resolutions concerning railroad bonds I know nothing.

What statement I have to make will have reference to the other subjects of inquiry.

Whatever may be said by the Indian delegates to the contrary, I affirm that the *records* prove that a large majority of the people of the Indian Territory are in favor of the establishment of a "*civil government*" over them. I will not be content, as these delegates and their witnesses are, with simple assertion, but will produce the proof.

The eighth article of the Choctaw and Chickasaw treaty of 1866 is in these words:

"ART. 8. The Choctaws and Chickasaws also agree that a council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

"1. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe lawfully resident in said Territory shall be taken under the direction of the superintendent of Indian affairs, by competent persons to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

"2. The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations respectively who may assent to the establishment of said General Assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said General Assembly by the chief or chiefs and head men of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the number and proportions indicated.

"3. After the said census shall have been taken and completed, the Superintendent of Indian Affairs shall publish and declare to each tribe

the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate, but thereafter the time and place of the sessions of the General Assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days; and *provided*, that the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

"4. The General Assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said territory; the arrest and extradition of criminals escaping from one tribe to another; the administration of justice between members of the several tribes of the said territory and persons other than Indians and members of said tribes or nations; the construction of works of internal improvement; and the common defense and safety of the nations of said territory. All laws enacted by said council shall take effect at the time therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No laws shall be enacted inconsistent with the Constitution of the United States or the laws of Congress or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations, except as herein provided for.

"5. Said council shall be presided over by the Superintendent of Indian Affairs; or, in case of his absence from any cause, the duties of the superintendent, enumerated in this article, shall be performed by such person as the Secretary of the Interior shall indicate.

"6. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all proceedings of said council, and to transmit a true copy thereof, duly certified by the Superintendent of Indian Affairs, to the Secretary of the Interior, immediately after the session of said council shall terminate. He shall be paid five hundred dollars, as an annual salary, by the United States.

"7. The members of said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer.

"8. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory, with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

"9. Whenever Congress shall authorize the appointment of a Delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in the said council.

"10. And it is further agreed that the Superintendent of Indian Affairs shall be the executive of the said Territory, with the title of 'Governor of the Territory of Oklahoma'; and that there shall be a secretary of the said Territory, to be appointed by the said Superintendent; that the duty of the said governor, in addition to those already imposed on the Superintendent of Indian Affairs, shall be such as properly belongs to an executive officer charged with the execution of the laws which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory, and an interpreter; the said marshal to appoint such

deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

"11. And the said marshal and the said secretary shall each be entitled to a salary of \$500 per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior; it being understood that the said fee-lists may at any time be corrected and altered by the Secretary of the Interior as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be \$500, to be paid in like manner by the United States.

"12. And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations; the object being to create a laudable ambition to acquire the experience necessary for political officers of importance in the respective nations."

"13. And whereas it is desired by the said Choctaw and Chickasaw Nations that the said council should consist of an upper and lower house, it is hereby agreed that, whenever a majority of the tribes or nations represented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house, consisting of one member from each tribe entitled to representation in the council now provided for, the relations of the two houses to each other being such as prevail in the States of the United States, each house being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerks of each house to make out and transmit to the Territorial secretary fair copies of the proceedings of the respective houses immediately after their respective sessions, which copies shall be dealt with by the said secretary as is now provided in the cases of copies of the proceedings of the council mentioned in this act. And the clerks shall each be entitled to the same per diem as members of the respective houses, and the presiding officers to double that sum."

The preliminary steps have already been taken by the Government of the United States and by the Indians to carry out the stipulations of this article of the Choctaw and Chickasaw treaty; the census has been taken; the number of delegates the several nations are entitled to in the "council" or "general assembly" has been fixed; the council has been convened six times, and appropriations have been made by Congress for its expenses. For the last two years, however, no appropriations have been made, and consequently the council has not met, though every year the Indian nations (except the Chickasaws) elect delegates to it. It has been argued that the organization of this council has fulfilled all the objects of the treaty respecting it; but this cannot be, for had that been all that was contemplated by the United States and the Choctaw and Chickasaw Nations of Indians, nothing more would have been provided for in the treaty. But if it had stopped at this, both parties to the treaty would have invited the ridicule of every sensible person in the country; for to organize a legislature with specific legislative powers without providing for other departments of a government would have been absurd. But the other departments of a civil government were provided for in this treaty, as I have shown.

The Cherokees, by the 12th article of their treaty of 1866, also agreed

to the organization of this council or legislature, with the identical legislative jurisdiction granted in the Choctaw and Chickasaw treaty referred to. (See articles 12 and 13 Cherokee treaty, pages 802 and 803, vol. 14, United States Statutes at Large.)

The 3d section of the 12th article of the Creek treaty of 1866 provides for this legislature in the same words. (See vol. 14 Statutes at Large, pages 788 and 789; also, the 3d section of the 7th article of the Seminole treaty of the same year, vol. 14 Statutes at Large, page 759.)

By reference to the articles of the treaties I have mentioned, it will be found that the Choctaws, Chickasaws, Creeks, Seminoles, and Cherokees agreed, by their treaties of 1866, to the organization of a general civil government over their territory.

The organization of such a government would be satisfactory to me, and, as these treaties were ratified by the councils of these nations, I feel justified in saying it would be acceptable to the people of these nations.

But I have further and stronger proof, if possible, that the Indians of this Territory recognize the importance of a general civil government over it. In 1871, or late in 1869—for the exact date does not appear in the record which I quote—the first general council or legislature was convened at Okmulgee, in the Creek Nation. The Choctaws, Chickasaws, Creeks, Seminoles, and Cherokees were represented in such council. The representatives of these nations appreciated the necessity for the organization of a civil government over the Territory, and did their best to establish one.

As evidence of this I refer you to page 602 of the Congressional Globe of 1871, proceedings of January 19, vol. 82.

As it substantiates my assertion that these Indian nations, through their representatives, recognized the importance of organizing a government with more extensive powers and jurisdiction than the tribal governments existing, I ask that the constitution of the Indian Territory, providing for all the parts of a general civil government, be incorporated in my statement.

The constitution is as follows:

CONSTITUTION OF THE INDIAN TERRITORY.

Whereas the people of the nations of Indians inhabiting the Indian Territory have agreed by treaty with the Government of the United States, and been by its agents invited to meet in general council under the forms prescribed by the treaties of 1866, and the action thereon of the Government of the United States, having thus met to frame the laws and arrange the machinery of a government for the country occupied and owned by them, in order to draw themselves together in a closer bond of union for the better protection of their rights, the improvement of themselves, and the preservation of their race, and relying on the guidance and favor of Almighty God to carry out in a consistent and practicable form the provisions of said treaties at the earliest practicable day, do hereby enact and promulgate the following as the constitution or organic law of the said Indian Territory:

ARTICLE 1.

SEC. 1. All that portion of country bounded on the east by the States of Arkansas and Missouri, and on the north by the State of Kansas, on the west by the Territory of New Mexico and the State of Texas, and on

the south by the State of Texas, which has been set apart and guaranteed by the treaties and laws of the United States as a permanent home for the Indians therein lawfully resident, or such as may be in like manner settled therein hereafter, for the purposes of this constitution shall be known and styled as "The Indian Territory."

SEC. 2. Each of the nations of Indians, who by themselves or through their representatives may enter this confederacy, do agree that the citizens of each and every one of said nations shall have the same rights of transit, commerce, trade, or exchange, in any of said nations as he has in his own, subject only to consistency with existing treaty stipulations with the United States and the laws regulating trade and intercourse, and under such judicial regulations as are hereinafter provided. But no right of property or lands, or funds owned by any one nation, shall be in any manner invaded by citizens of another nation; and it is hereby distinctly affirmed that the rights of each of these nations to its lands, funds, and all other property shall remain the sole and distinct property of such nations. Any Indian nation now represented in this general council, or which may hereafter enter in a legal manner, or be now in said Indian Territory, may be admitted to representation and all the privileges of this joint government, by accepting and agreeing, through their proper authorities, to the provisions of this constitution

ARTICLE 2.

SEC. 1. The powers of this government shall be divided into three distinct departments, to be called the legislative, the executive, and the judicial departments of the Indian Territory.

SEC. 2. No person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE 3.

SEC. 1. The legislative power shall be vested in a general assembly, which shall consist of a senate and a house of representatives; and the style of their acts shall be: "Be it enacted," or, "Be it resolved by the general assembly of the Indian Territory."

SEC. 2. The senate shall consist of one member from each nation whose population is two thousand citizens, and one member for every additional two thousand citizens or fraction greater than one thousand: *Provided*, Nations with populations less than two thousand may unite and be represented in the same ratio: *And provided further*, That the Ottawas, Peorias, and Quapaws shall be entitled to one senator, and the Senecas, Wyandotts, and Shawnees to one senator, and the Sacs and Foxes to one senator.

SEC. 3. No person shall be eligible to a seat in the general assembly but a *bona fide* citizen of the nation which he represents, and who shall have attained to the age of twenty-five years.

SEC. 4. The house of representatives shall consist of one member from each nation, and an additional member for each one thousand citizens or fraction thereof greater than five hundred.

SEC. 5. The members of the senate and house of representatives shall be elected by the qualified voters of their respective nations according to their laws and customs, and shall hold their office for the term of two years. Vacancies that may occur shall be filled in like manner.

SEC. 6. The senate when assembled shall choose a president and its other officers, and the house of representatives a speaker and other officers; and each shall judge of the qualifications and returns of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 7. Each branch of the general assembly shall keep a journal, and determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offense.

SEC. 8. The general assembly shall have the power to legislate upon all subjects and matters pertaining to the intercourse and relations of the nations of the Indian Territory; the arrest and extradition of criminals escaping from one nation to another; the administration of justice between members of the several nations of said Territory and persons other than Indians and members of said nations; and the common defense and safety of the nations of said Territory. But the said general assembly shall not legislate upon matters other than those above indicated. The general assembly shall meet annually on the first Monday in June at such place as may be fixed upon at their first regular session.

SEC. 9. Members of the general assembly and other officers, both executive and judicial, before they enter upon the duties of their respective offices, shall take the following oath or affirmation, to wit:

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the Indian Territory, and that I will faithfully and impartially discharge, to the best of my ability, the duties of the office of —, according to law: so help me God."

SEC. 10. The members of the general assembly shall be paid four dollars per day while in actual attendance thereon, and four dollars mileage for every twenty miles going to and returning therefrom on the most direct traveled route, to be certified by the presiding officer of each house: *Provided*, No member shall be allowed *per diem* compensation for more than thirty days at any annual session.

SEC. 11. Members of the general assembly shall, in all cases except of treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same.

SEC. 12. No power of suspending the laws of this Territory shall be exercised unless by the general assembly or its authority. No retrospective law nor any law impairing the obligation of contracts shall be passed.

SEC. 13. Whenever the general assembly shall deem it necessary to provide means to support the government of the Indian Territory, it shall have power to do so; but no revenue shall be raised not actually necessary and in accordance with law, uniform in its operations throughout the Territory.

SEC. 14. All bills making appropriations shall originate in the house of representatives; but the senate may propose amendments, or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 15. The house of representatives shall have the sole power of impeaching. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be on oath or affirmation, and shall be presided over by the chief justice; and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 16. The governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under this government; but the party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, and punishment according to law as in other cases.

SEC. 17. The salaries of all officers created under this constitution, not otherwise provided, shall be regulated by law; but no increase or diminution shall be made in the same during the term for which said officers may have been elected or appointed.

ARTICLE 4.

SEC. 1. The executive power of this Territory shall be vested in a governor, who shall be styled the governor of the Indian Territory, and whose term of service shall be two years, and until his successor shall have been elected and qualified. He shall be elected by the qualified electors of each nation, on the first Wednesday in April, at the usual places of holding elections of the several nations. The returns of the election of governor shall be sealed up and directed to the secretary of the Territory, who shall open and publish them in the presence of the senate and house of representatives in joint session assembled. The person having the highest number of votes shall be declared governor by the president of the senate; but if two or more shall be equal and highest in votes, then one of them shall be chosen by the majority, by joint ballot of both houses of the general assembly.

SEC. 2. The manner of conducting and determining contested elections shall be directed by law.

SEC. 3. No person shall be eligible to the office of governor who shall have not attained to the age of thirty years.

SEC. 4. Whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office until another governor shall be duly qualified. In case of death, resignation, removal from office, or other disqualification of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall fill the office until the president of the senate shall have been chosen and qualified to act as governor.

SEC. 5. The governor shall receive, at stated times, for his services, a compensation to be fixed by law, which shall be neither increased nor diminished during the period for which he shall have been elected; nor shall he receive, within that period, other emolument from the Indian Territory.

SEC. 6. The governor shall, from time to time, give to the general assembly information in writing of the state of the government, and recommend to its consideration such measures as he may deem expedient, and shall take care that the laws be faithfully executed.

SEC. 7. The governor, on extraordinary occasions, may, by proclamation, convene the general assembly at the seat of government, to legislate upon such matters only as he may recommend.

SEC. 8. When vacancies occur in offices, the appointment of which is vested in the governor, by and with the consent of the senate, he shall have power to fill such vacancies by commission, which shall expire at the end of the next session of the general assembly.

SEC. 9. The governor may grant pardons and respites, and remit fines for offenses against the laws of this Territory, and shall commission all

officers who shall be appointed or elected to office under the laws of the Territory.

SEC. 10. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approves he shall sign it; if not, he shall return it, with his objections, to the house in which it may have originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present of that house, it shall become a law; but in such case the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall be a law unless sent back within three days after their next meeting.

SEC. 11. There shall be a secretary of said Territory, who shall be appointed by the governor, with the advice and consent of the senate, and who shall hold his office for two years, and whose duties shall be prescribed by law. He shall also act as treasurer of the Territory until otherwise provided. Before entering upon his duties as treasurer he shall give bond with such sureties as may be required by law. No money shall be drawn from the treasury but by warrant from the governor and in consequence of appropriations made by law. There shall also be appointed in like manner one marshal, who shall have power to appoint such deputies as may be authorized. There shall likewise be appointed one attorney-general and two district attorneys, whose duties and terms of office shall be defined by law.

SEC. 12. All commissions shall be in the name and by the authority of the Indian Territory, and be sealed with the seal and signed by the governor and attested by the Secretary of the Territory.

ARTICLE 5.

SEC. 1. The judiciary department of the Indian Territory shall be vested in a supreme court, three district courts, and such inferior courts as may be provided by law; but their jurisdiction shall not interfere with the civil and criminal jurisdiction retained to each separate nation by the treaties of 1866.

SEC. 2. The supreme court shall be composed of three judges, who shall be appointed by the governor, with the approval of the senate, as district judges. Two of said judges shall form a quorum of the supreme court for the transaction of business. Their terms of office shall be six years, provided that the office of one of said judges shall be vacated in two years, of one in four years, and of one in six years, so that at the expiration of each two years one of said judges shall be appointed as aforesaid. The judge appointed for six years shall be the first chief justice of the supreme court, and upon the expiration of his term the senior judge in office shall be thereafter the chief justice.

SEC. 3. The supreme court shall meet at the capital, commencing on the first Mondays in June and December of each year. The supreme court shall be a court of appellate jurisdiction from the district courts and original jurisdiction in such cases as may be prescribed by law.

SEC. 4. The supreme and district judges shall have power to issue writs of *habeas corpus*, and other process necessary to the exercise of their appellate or original jurisdiction.

SEC. 5. The district courts shall have original jurisdiction of all cases, civil and criminal, arising from the trade or intercourse between the several nations, and all cases arising under the legislation of this government as may be prescribed by law.

SEC. 6. Writs of error, bills of exceptions, and appeals may be allowed from the final decisions of the district courts in such cases as shall be prescribed by law.

SEC. 7. It shall be the duty of the general assembly to divide the Indian Territory into three districts, which shall be as nearly equal in territory and population as may be practicable, assign one of the three judges to each district, and provide for the holding of terms of the district court in each at such times and places as may be deemed expedient.

SEC. 8. No person shall be appointed a judge of any of the courts until he shall have attained to the age of thirty years, and be a person of good character and suitable qualifications.

SEC. 9. No judge shall sit on a trial of any cause in which he may be interested, or in which he is connected to either of the parties by affinity or consanguinity, except by consent of the parties; and in case of disqualification of any judge the vacancy shall be filled as may be prescribed by law.

SEC. 10. All writs and other process shall run in the name of the Indian Territory, and bear test and be signed by the clerk issuing the same.

SEC. 11. Indictments shall conclude: "Against the peace and dignity of the Indian Territory."

SEC. 12. Each court shall appoint its own clerk, whose duty and compensation shall be fixed by law.

ARTICLE 6.

SEC. 1. The general assembly may propose such amendments to this constitution as three-fourths of each branch may deem expedient; and the governor shall issue a proclamation directing all civil officers of the Territory to promulgate the same as extensively as possible, within their respective districts, at least six months previous to the annual sessions of the national councils of the nations parties hereto; and if three-fourths of such national councils, at such next annual sessions, shall ratify such proposed amendment, they shall be valid to all intents and purposes as part of this constitution.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare—

SECTION 1. That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit, and they shall have at all times the inalienable right to alter, reform, or abolish their form of government as may be lawfully provided for.

SEC. 2. The free exercise of religious worship and serving God without distinction of creed shall forever be enjoyed within the limits of this Territory: *Provided*, That the liberty of conscience shall not be so con-

strued as to excuse acts of licentiousness or justify practices inconsistent with the peace, safety, and good morals of this Territory.

SEC. 3. No religious tests shall ever be required as a qualification to any office of public trust in this Territory.

SEC. 4. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of this privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

SEC. 5. The people shall be secure in their persons, houses, papers, and possessions from all unreasonable searches, seizures, and intrusions; and no warrant to search any place or to seize any person or thing shall be issued without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 6. In all criminal prosecutions, the accused shall have a speedy trial by an impartial jury of the district wherein the crime shall have been committed; the right of demanding the nature and cause of the accusation; of having compulsory process to procure witnesses in his favor; of having the right to be heard by himself and counsel; of not being compelled to testify against himself, nor to be held to answer to any criminal charge but on information or indictment by a grand jury.

SEC. 7. All prisoners shall be bailable before conviction by sufficient surety, except for a capital offense where the proof is evident or the presumption great.

SEC. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted; and all courts shall be open, and every person for an injury done him in his person, reputation, or property, shall have remedy as the law directs.

SEC. 9. No person, for the same offense, shall be twice put in jeopardy of life or limb, and the right of trial by jury shall remain inviolable.

SEC. 10. No person shall be imprisoned for debt.

SEC. 11. The citizens shall have the right in a peaceable manner to assemble for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances or other purposes by petition, address, or remonstrance.

SEC. 12. The privilege of the writ of *habeas corpus* shall not be suspended unless the public safety should require it.

SEC. 13. All powers not herein expressly granted by the nations parties to this constitution are reserved by them, respectively, according to the provisions of their several treaties with the United States.

SCHEDULE TO THE CONSTITUTION.

In order to organize the government of the Indian Territory and secure practical operation for the same, it is hereby ordained, and the provisions of this schedule shall be of the same binding force as the constitution of which it is a part, that it shall be the duty of the secretary of this general council to transmit a duly authenticated copy of this constitution to the executive authority of each nation represented in the general council, and to ask the acceptance and ratification of the same by the councils or people of the respective nations.

Upon receiving from such authority notifications of its acceptance and ratification by national councils representing two-thirds of the population of the nations represented in the general council, it shall be his duty to promulgate such fact, and to call a session of the general council from the nations ratifying this constitution, at such place as the present session may designate for its next meeting.

It shall be the duty of the general council, when so assembled, to adopt such measures as may be necessary to secure the election of the governor and members of the general assembly, and to fix the time of the first meeting of the said assembly, whose duty it shall be to perfect the organization of the government of the Indian Territory under the provisions of the foregoing constitution: *Provided*, That this constitution shall be obligatory and binding only upon such nations and tribes as may hereafter duly approve and adopt the same.

ENOCH HOAG,

Superintendent of Indian Affairs, President.

G. W. GREYSON, *Secretary.*

This constitution was ratified by three of the nations, as I am informed—the Choctaw, Creek, and Seminole—and rejected by the Cherokee, by a small majority, and by the Chickasaw Nations.

Again, at a session of the general council of the Indian Territory convened on May 3, 1875, a special committee was appointed to draught a constitution for the government of the Indian Territory. This duty was performed by such special committee, and I ask to incorporate as a part of my testimony the following constitution as agreed upon by that special committee:

CONSTITUTION OF THE INDIAN TERRITORY.

PREAMBLE.

We, the Indian people of the Indian Territory, having the inalienable right to ordain and establish a form of government for ourselves, in order to secure to ourselves and our posterity the right of life, liberty, property, and pursuit of happiness, and having assented to the treaties of 1866 for that purpose, and having been invited by the action thereon of the Government of the United States and by its agents to meet in General Council under the forms prescribed by the said treaties of 1866, to frame the laws and arrange the machinery of a government of the country occupied and owned by us, in order to draw ourselves together in a closer bond of union for the better protection of our rights, for the improvement of ourselves, and preservation of our race, being assembled at Okmulgee, Creek Nation, on the 1st day of September, 1875, and relying on the guidance and favor of Almighty God to carry out our said rights in a consistent and practicable form, do hereby, in the name of and for the Indian Nations lawfully resident in the Indian Territory enact, establish, and promulgate the following Constitution and form of Government, and do mutually agree with each other to form ourselves into a free and independent nation, not inconsistent with the Constitution, Treaties, and laws of the United States governing trade and intercourse with Indians.

ARTICLE I.

SEC. 1. All that portion of country bounded on the east by the States of Arkansas and Missouri, on the north by the State of Kansas, on the west by the Territory of New Mexico and the State of Texas, and on the south by the State of Texas, which has been set apart and guaranteed by the treaties and laws of the United States as a permanent home for the Indians therein lawfully resident, or such as may be in like manner settled therein hereafter, for the purposes of this constitution shall be known and styled as "The Indian Territory."

SEC. 2. Each of the nations of Indians who, by themselves or through their representatives, may enter this confederacy, do agree that the citizens of each and every one of said nations shall have the same rights of transit, commerce, trade, or exchange in any of said nations as he has in his own, subject only to consistency with existing treaty stipulations with the United States and the laws regulating trade and intercourse, and under such judicial regulations as are hereinafter provided. But no right of property or lands, or funds owned by any one nation, shall be in any manner invaded by citizens of another nation; and it is hereby distinctly affirmed that the rights of each of these nations to its lands, funds and all other property shall remain the sole and distinct property of such nation. Any Indian Nation now represented in this General Council, or which may hereafter enter in a legal manner, or be now in said Indian Territory, may be admitted to representation and all the privileges of this joint government, by accepting and agreeing, through their proper authorities, to the provisions of this constitution.

ARTICLE II.

SEC. 1. The powers of this government shall be divided into three distinct departments, to be called the Legislative, the Executive, and the Judicial Departments of the Indian Territory.

SEC. 2. No person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE III.

SEC. 1. The legislative power shall be vested in a General Council, which shall consist of a Senate and House of Representatives; and the style of their acts shall be, "Be it enacted," or "Be it resolved by the General Council of the Indian Territory."

SEC. 2. The Senate shall consist of one member from each nation whose population is two thousand citizens, and one member for every additional two thousand citizens or fraction greater than one thousand: Provided, nations with populations less than two thousand may unite and be represented in the same ratio; And provided further, That the Ottawas, Peorias, and Quapaws shall be entitled to one Senator, and the Senecas, Wyandottes, Shawnees, and Modocs to one Senator; and the Sac and Foxes and Kickapoos to one Senator; and the Pottawatomies and Absentee Shawnees to one Senator.

SEC. 3. The House of Representatives shall consist of one member from each nation, and an additional member for each one thousand citizens, or fraction thereof greater than five hundred.

SEC. 4. No person shall be eligible to a seat in the General Council but a bona-fide citizen of the nation which he represents, and who shall have attained to the age of twenty-five years.

SEC. 5. The members of the Senate and House of Representatives shall be elected by the qualified voters of their respective nations, according to their laws or customs, and shall hold their office for the term of two years. Vacancies that may occur shall be filled in like manner.

SEC. 6. The Senate, when assembled, shall choose a president and its other officers, and the House of Representatives a Speaker and other officers; and each shall judge of the qualifications and returns of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and

compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 7. Each branch of the General Council shall keep a journal and determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same offense.

SEC. 8. The General Council shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the nations of the Indian Territory; the arrest and extradition of criminals escaping from one nation to another; the administration of justice between members of the several nations of the said Territory, and persons other than Indians and members of said nations; and the common defense and safety of the nations of said Territory. But the General Council shall not legislate upon matters other than those above indicated. The General Council shall meet annually on the first Monday in December, at such place as may be fixed upon at their first regular session.

SEC. 9. Members of the General Council and other officers, both Executive and Judicial, before they enter upon the duties of their respective offices, shall take the following oath or affirmation, to wit: "I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the Indian Territory, and that I will faithfully and impartially discharge, to the best of my ability, the duties of the office (——) according to law. So help me God."

SEC. 10. The member of the General Council shall be paid four dollars per day while in actual attendance thereon, and four dollars mileage for every twenty miles going to and returning therefrom on the most direct travelled route, to be certified by the presiding officer of each house; provided, no member shall be allowed per diem compensation for more than thirty days at any annual session.

SEC. 11. Members of the General Council shall, in all cases except of treason, felony, or breach of the peace, be privileged from arrest during the session of the General Council, and in going to and returning from the same.

SEC. 12. No power of suspending the laws of this Territory shall be exercised unless by the General Council or its authority. No retrospective law, nor any law impairing the obligation of contracts shall be passed.

SEC. 13. Whenever the General Council shall deem it necessary to provide means to support the Government of the Indian Territory, it shall have power to do so; but no revenue shall be raised not actually necessary and in accordance with law uniform in its operations throughout the Territory.

SEC. 14. All bills making appropriations shall originate in the house of representatives; but the senate may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 15. The house of representatives shall have the sole power of impeaching. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be on oath or affirmation, and shall be presided over by the chief justice, and no person shall be convicted with the concurrence of two-thirds of the members present.

SEC. 16. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under this government; but the

party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, and punishment according to law, as in other cases.

SEC. 17. The salaries of all officers created under this constitution, not otherwise provided, shall be regulated by law, but no increase or diminution shall be made in the same during the term for which said officers may have been elected or appointed.

ARTICLE IV.

SEC. 1. The executive power of this Territory shall be vested in a governor, who shall be styled the Governor of the Indian Territory, and whose term of service shall be two years, and until his successor shall have been elected and qualified. He shall be elected by the qualified electors of each nation on the first Wednesday in April, at the usual places of holding elections of the several nations. The returns of the election of governor shall be sealed up and directed to the secretary of the Territory, who shall open and publish them in the presence of the senate and house of representatives in joint session assembled. The person having the highest number of votes shall be declared governor by the president of the senate; but if two or more shall be equal and highest in votes, then one of them shall be chosen by the majority of votes by joint ballot of both houses of the general council.

SEC. 2. The manner of conducting and determining contested elections shall be regulated by law.

SEC. 3. No person shall be eligible to the office of governor who shall not have attained to the age of thirty years.

SEC. 4. Whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, the president of the senate shall serve out the unexpired term thereof. In case of the death, resignation, removal from office, or other disqualification of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall fill the office until the governor shall have been chosen at the next regular election and qualified.

SEC. 5. The governor shall receive, at stated times, for his services, a compensation to be fixed by law, which shall be neither increased or diminished during the period for which he shall have been elected; nor shall he receive, within that period, other emoluments from the Indian Territory.

SEC. 6. The governor shall, from time to time, give to the general council information in writing of the state of the government, and recommend to its consideration such measures as he may deem expedient, and shall take care that the laws be faithfully executed.

SEC. 7. The governor, on extraordinary occasions, may, by proclamation, convene the general council at the seat of government, to legislate upon such matters only as he may recommend.

SEC. 8. When vacancies occur in offices, the appointment of which is vested in the governor, by and with the consent of the senate or officers elected, he shall have power to fill such vacancies by commission, which shall expire at the end of the next session of the general council.

SEC. 9. The governor may grant pardons and respites and remit fines for offenses against the laws of this Territory, and shall commission all officers who shall be appointed or elected to office under the laws of the Territory.

SEC. 10. Every bill which shall have passed both houses of the general council shall be presented to the governor; if he approve, he shall sign it; if not, he shall return it, with his objections, to the house

in which it may have originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present of that house, it shall become a law; but in such case the votes of both houses shall be determined by yeas and nays; and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the general council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 11. There shall be a secretary of said Territory, who shall be appointed by the governor, with the advice and consent of the senate, who shall hold his office for two years, and whose duties shall be defined by law. There shall also be appointed, in like manner, one marshal, who shall have power to appoint such deputies as may be authorized by law. And he shall give bond with sufficient sureties in such manner as may be prescribed by law. There shall be a treasurer of the said Territory, who shall be elected by the general council for the term of two years, and whose duties shall be prescribed by law. Before entering upon his duties as treasurer, he shall give bond with such sureties as may be required by law. No money shall be drawn from the treasury but by warrant from the governor, and in consequence of appropriations made by law. There shall be elected, by the said council, one attorney-general and three district attorneys, whose duties and terms of office shall be defined by law.

SEC. 12. All commissions shall be in the name and by the authority of the Indian Territory, and be sealed with the seal and signed by the governor and attested by the secretary of the Territory.

ARTICLE V.

SEC. 1. The judicial department of the Indian Territory shall be vested in a supreme court, three district courts, and such inferior courts as may be provided by law; but their jurisdiction shall not interfere with the civil and criminal jurisdiction retained to each separate nation by the treaties of 1866.

SEC. 2. The supreme court shall be composed of the three judges, who shall be elected by joint ballot of the general council, as district judges. Two of said judges shall form a quorum of the supreme court for the transaction of business. Their terms of office shall be six years, provided that the office of one of said judges shall be vacated in two years, of one in four years, and one in six years, so that at the expiration of each two years one of said judges shall be elected as aforesaid. The judge elected for six years shall be the first chief justice of the supreme court, and upon the expiration of his term the senior judge in office shall be thereafter the chief justice.

SEC. 3. The supreme court shall meet at the capital, commencing on the first Monday in June and December in each year. The supreme court shall be a court of appellate jurisdiction from the district courts, and original jurisdiction in such cases as may be prescribed by law.

SEC. 4. The supreme and district judge shall have power to issue writs

of habeas corpus and other process necessary to the exercise of their appellate or original jurisdiction.

SEC. 5. The district court shall have original jurisdiction of all cases, civil and crimina, arising from the trade or intercourse between the several nations, and all cases arising under the legislation of this government, as may be prescribed by law.

SEC. 6. Writs of error, bills of exception, and appeals may be allowed from the final decisions of the district courts in such cases as shall be prescribed by law.

SEC. 7. It shall be the duty of the general council to divide the Indian Territory into three districts, which shall be as nearly equal in territory and population as may be practicable, assign one of the three judges to each district, and provide for the holding of terms of the district court in each at such times and places as may be deemed expedient.

SEC. 8. No person shall be elected a judge of any of the courts until he shall have attained to the age of thirty years, and who is a person of good character and suitable qualifications.

SEC. 9. No judge shall sit on a trial of any cause in which he may be interested, or in which he is connected to either of the parties by affinity or consanguinity, except by consent of the parties; and in case of disqualification of any judge the vacancy shall be filled as may be prescribed by law.

SEC. 10. All writs and other process shall run in the name of the Indian Territory, and bear test and be signed by the clerk issuing the same.

SEC. 11. Indictments shall conclude "against the peace and dignity of the Indian Territory."

SEC. 12. Each court shall appoint its own clerk, whose duty and compensation shall be fixed by law.

SEC. 13. Judges shall not charge juries with regard to facts proved, but may state the testimony and the law.

ARTICLE VI.

SEC. 1. The General Council may propose such amendments to this constitution as three-fourths of each branch may deem expedient; and the Governor shall issue a proclamation directing all civil officers of the Territory to promulgate the same as extensively as possible within their respective districts at least six months previous to the annual sessions of the National Councils of nations parties hereto; and if three-fourths of such National Councils at such next annual sessions shall ratify such proposed amendments, they shall be valid to all intents and purposes as part of this Constitution.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

SEC. 1. That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit; and they shall have at all times the inalienable right to alter, reform, or abolish their form of government as may be lawfully provided for.

SEC. 2. The free exercise of religious worship, and serving God without distinction of creed, shall forever be enjoyed within the limits of this Territory: *Provided*, That the liberty of conscience shall not be so con-

strued as to excuse acts of licentiousness or justify practices inconsistent with the peace, safety and good morals of this Territory.

SEC. 3. No religious test shall ever be required as a qualification to any office of public trust in this Territory.

SEC. 4. Every citizen shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of this privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

SEC. 5. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable searches, seizures, and intrusions; and no warrant to search any place, or to seize any person or thing, shall be issued without describing the place to be searched and the person or thing to be seized, as nearly as may be, nor without good cause shown, supported by oath or affirmation.

SEC. 6. In all criminal prosecutions, the accused shall have a speedy trial by an impartial jury, of the district wherein the crime shall have been committed; the right of demanding the nature and cause of the accusation; of having the witnesses to testify in his presence; of having compulsory process to procure witnesses in his favor; of having the right to be heard by himself and counsel; of not being compelled to testify against himself, nor to be held to answer to any criminal charge but on information or indictment by a grand jury.

SEC. 7. All prisoners shall be bailable before conviction by sufficient surety, except for a capital offense where the proof is evident or the presumption great.

SEC. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted; and all courts shall be open, and every person, for an injury done him in person, reputation, or property, shall have remedy as the law directs.

SEC. 9. No person, for the same offense, shall be twice put in jeopardy of life or limb, and the right of trial by jury shall remain inviolate.

SEC. 10. No person shall be imprisoned for debt.

SEC. 11. The citizens shall have the right, in a peaceable manner, to assemble for their common good, to instruct their representatives and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

SEC. 12. The privilege of the writ of *habeas corpus* shall not be suspended, unless the public safety should require it.

SEC. 13. All power not herein expressly granted by the nations parties to this Constitution, are reserved by them respectively, according to the provisions of their several treaties with the United States.

SEC. 14. No person who denies the existence of God or a future state of rewards and punishment, shall hold any office in the civil departments of this Indian Territory, nor shall be allowed his oath in any court of justice, neither shall the Bible be prohibited as a text book in any school in this Territory.

Schedule to the Constitution.

SEC. 1. In order to organize the Government of the Indian Territory and secure practical operation for the same, it is hereby ordained—and the provisions of this schedule shall be of the same binding force as the Constitution, of which it is a part—that it shall be the duty of the Secretary of this General Council to transmit a duly authenticated copy of this Constitution to the executive authority of each nation

represented in the General Council, and to ask the acceptance and ratification of the same by the Councils or people of the respective nations. Upon receiving from such authority, notification of its acceptance and ratification by National Councils, representing two-thirds of the population of the nations represented in the General Council, it shall be his duty to promulgate such fact, and to call a session of the General Council from the nations ratifying this constitution, at such place, as the present session may designate for its next meeting. It shall be the duty of the General Council, when so assembled, to adopt such measures as may be necessary to secure the election of a Governor and member of the General Council, and to fix the time of the first meeting of the said Council, whose duty it shall be to perfect the organization of the Government of the Indian Territory, under the provisions of the foregoing Constitution: *Provided*, That this constitution shall be obligatory and binding only upon such Nations and tribes as may hereafter duly approve and adopt the same.

SEC. 2. The oath of office may be administered by any of the Judges of this Indian Territory, until the General Council shall otherwise direct

It is immaterial to my position whether either of these constitutions were ratified by the general council or by the different nations; it proves beyond controversy that the sentiment of the people of the Territory in favor of the organization of some kind of a civil government over the Territory "for the better protection of life and property" is overwhelming. I think this character of evidence is material, not because it proves that the Indians desire the organization of a civil government over the Territory, though it abundantly establishes that fact; but because it shows that the representatives of the Indians have in the most formal, public, and deliberate manner testified to the necessity of organizing a general civil government over the Territory for the better protection of life and property.

I most heartily concur in the sentiment of the people of the Indian Territory, expressed through their representatives, that the organization of a civil government over them is a matter of paramount necessity. The question is not, Should the Oklahoma bills now pending be passed? but it is, Should not a civil government be organized which would afford adequate protection for life and property in cases where the present tribal governments or the existing intercourse laws cannot furnish it? Such a government I am in favor of, and such a government can be organized without interfering in the least with their present tribal organizations.

The proposition to establish a Territorial government over this Indian Territory has been denounced by the Indian delegates and by several prominent papers in this city and elsewhere as "a job," and "a scheme to rob the Indians of their lands and give them to the railroads," and I have been charged with advocating such a scheme. There is not the least foundation for such statements. The Franklin bill gives every acre of land in severalty to the Indians, by impregnable titles, and absolutely repeals all conditional grants of land to any railroad in the Territory. In the face of all this, the bill is called by some "a scheme to rob the Indians of their lands and give them to the railroads."

Gen. E. S. Parker—a full-blooded Indian—in his report as Commissioner of Indian Affairs, in 1870, referring to the organization of the general council, said:

"One important result will be the establishing of more intimate relations with each other, the recognition of the bonds of a common

brotherhood, and perhaps a confederation which will be tantamount to, and be accepted by Congress as, a Territorial government for the Indian Territory." (See vol. Message and Docs., 1870-'71.)

The Secretary of the Interior, in his report of 1871-'72 (see volume Message and Documents, 1871-'72), in speaking of the anomalous condition of the Indian Territory, said:

"The foregoing facts induce me to regard it as of the utmost importance to the success of the existing policy that the Indian Territory be organized under a Territorial government," &c.

In the same year President Grant, whom these delegates have repeatedly declared to be the true and steadfast friend of the Indians, said:

"I recommend to your favorable consideration also the policy of granting a Territorial government to the Indians in the Indian Territory west of Arkansas and Missouri and south of Kansas. In doing so, every right guaranteed to the Indian by treaty should be secured."

In 1875 the Commissioner of Indian Affairs recommended the establishment of a civil government over the Indian Territory, and said:

"The need of this Territory to-day is a government of the simplest form possible, and in my judgment a government similar to that provided for 'the territory of the United States northwest of the river Ohio' (Statutes at Large, vol. 51), preliminary to the organization of a general assembly, would, I think, be best adapted for the Indian Territory at present, both on account of its simplicity and its economy." (See volume Message and Documents, 1875-'76, page 736.)

In the same year the Secretary of the Interior in his report said:

"The condition of the Indian Territory south of Kansas has not changed during the year, and will not materially change for the better until some steps are taken to give its inhabitants a more efficient government."

The Commissioner of Indian Affairs, in his annual report of 1876, under the head of "Government for the Indian Territory," used this language:

"The anomalous form of government, if government it can be called, at present existing in the Indian Territory must soon be changed. * *

"Any such change would undoubtedly be resisted by many among the Indians themselves. In the so-called "nations" are a number of educated, intelligent, ambitious men, who under the present system are leaders of their people, controlling their affairs and the expenditure of their revenue. They very naturally deprecate any change which will endanger such power. They argue with great earnestness that the adoption of a Territorial form of government would be followed by an influx of white men into the Territory, and that the ultimate result to the Indians would be dispossession of homes and pauperism. Such a possibility could, however, be averted by an allotment of land to each Indian, made inalienable to white men," &c. (volume Message and Documents, 1876-'77, p. 670).

The Secretary of the Interior, in his report of the same year, in commenting upon these recommendations of the Commissioner, said:

"For the general government of the Indian, the Commissioner recommends three principles of policy, which he supports by able and convincing arguments, and in which I most heartily concur."

And again, in the same report, he said:

"The Commissioner's recommendations for the allotment of lands to Indians in severalty—such allotments to be inalienable for a term of years—must ultimately be adopted, and I warmly favor its consideration."

President Grant, in his annual message of that year (page 5, Message and Documents, 1876-77), indorses the views of the Commissioner and Secretary in these words:

"The subject of Indian policy and treatment is so fully set forth by the Secretary of the Interior and the Commissioner of Indian Affairs, and my views so fully expressed therein, that I refer to their reports and recommendations as my own."

Scarcely an annual message of General Grant's can be found in which he does not recommend to Congress the organization of a Territorial government over the Indian Territory and a division of lands in severalty among the Indians. Yet he is universally considered among the Indians as the best friend they have ever had in the Presidential chair.

In the ninth annual report of the Board of Indian Commissioners, for the year 1877, page 7, I find these words: "The ultimate solution of the Indian question is the absorption of all Indians into the body-politic, and their endowment with all the rights and duties and responsibilities of citizenship." And the board closes its report, page 10, with the following recommendations, among others, viz: "1st. Government of Indians by law; 2d. Division of reservation lands and homestead rights."

This report is signed by Clinton B. Fisk, chairman, Saint Louis, Mo.; E. M. Kingsley, New York; A. C. Barstow, Providence, R. I.; B. Rush Roberts, Sandy Spring, Md.; W. H. Lyon, New York; John D. Lang, Vassalborough, Me.; D. H. Jerome, Saginaw, Mich.; E. N. Stebbins, New Brunswick, N. J.; Wm. Stickney, Washington, D. C.

In a report of the Committee on Indian Affairs, Forty-fourth Congress, second session, recommending the establishment of a Territorial government over the Indian Territory, these sentences occur:

"There can be no doubt that if a Territorial form of government is organized, the expenditures could be very largely reduced, and that a very much better application of the trust-funds could be made, and that proper educational systems could be devised, which would be for the permanent benefit for the tribes.

"For over a generation the Commissioner and the agents among these tribes have reported that there could be no real advance toward civilization until each head of a family had allotted to him a homestead in severalty. Scarcely a report from the Commissioner of Indian Affairs can be opened without finding the same recommendation, either from the Commissioner or the Indian agent. The propriety of this must be apparent to every one. The individual Indian lacks the incentive to industry which comes from personal ownership, and till this is remedied there can be comparatively but little hope of his improvement. But any allotment of the land has been constantly opposed by the Indians, and is, if left to themselves, quite improbable."

This report is signed by Hons. A. M. Scales, chairman; W. W. Wilshire, A. R. Boone, William A. J. Sparks, Charles E. Hooker, C. H. Morgan, J. H. Seelye, H. F. Page, and John Q. Tufts.

The present Commissioner of Indian Affairs, in his annual report of 1877, recommends, among other things, "The endowment of the Indians with lands, divided into forms of convenient size, the title to which shall be vested in individuals and inalienable for twenty years; and the promotion in every feasible way of the knowledge of agriculture and a taste for agricultural pursuits among them."

The present Secretary of the Interior (Message and Documents, p. 813) says: "The enjoyment and pride of the individual ownership of property being one of the most effective civilizing agencies, allotments of small tracts of land should be made to the heads of families on all

reservations, to be held in severalty under proper restrictions, so that they may have fixed homes."

I make these references to show that distinguished officials, who have given the subject careful thought, concur in the sentiment that the organization of a Territorial form of government over the Indian Territory is expedient and necessary. Surely they are not possessed with a desire to rob the Indians of their lands.

The fifteenth section of the "act making appropriations to supply deficiencies in the appropriations for fiscal years ending June 30, 1875, and prior years, and for other purposes," approved March 3, 1875, provides that any Indian who abandons his tribal relations shall be entitled to the benefits of the homestead act, and declares that after severing his relations with his tribe, and after having taken a homestead and become a citizen of the United States, he shall still be entitled to share in "all the annuities, tribal funds, lands, and other property the same as though he had maintained his tribal relations."

In a letter written by the Right Reverend Bishop Whipple to the Commissioner of Indian Affairs, dated December 5, 1874, he says: "Every Indian who gives up his wild life and lives by labor ought to receive a patent for one hundred and sixty acres of land, which shall be inalienable."

In a memorial addressed "to the President, Senate, and House of Representatives," in 1866, and signed by William P. Adair, one of the present delegates from the Cherokees, he used this language in reference to a Territorial bill at that time pending in Congress and in answer to a memorial to Congress of another party of Cherokees. This is the language of Colonel Adair at that time:

"The memorial is full of declarations entirely unsupported by facts, and many of them without the shadow of foundation in truth. We invite your attention to some of the most material: Concerning the 'bill to consolidate the Indian tribes and to establish civil government in the Indian Territory,' it is asserted that it is the 'solemn conviction' of the Cherokee people that if 'that bill becomes a law and is carried into execution, it will crush us as a people and destroy us as a nation.' By reference to the official report of the Commissioner of Indian Affairs for 1865, page 312, it will be seen that there are those among the Cherokees who do not entertain this 'solemn conviction,' nor indulge in such fearful forebodings, and that the grand scheme of the Secretary of the Interior, who is the author of the bill, may, by reasonable modifications and amendments, become acceptable to every lover of his people, and serve to accomplish the humane wishes of the government, which we know to be the enlightenment and elevation of our race."

These were Colonel Adair's views in 1866, indorsing the Territorial bill at that time pending; they are mine to-day.

The counsel for the Indian delegates has repeatedly asked witnesses in the course of this investigation if the railroad companies were not interested in having a civil government established over the Indian Territory, and the division of the lands in severalty. I will anticipate such an interrogatory to me, and answer it. The railroads in the Territory, and the three—"Missouri, Fort Scott and Gulf," "Leavenworth, Lawrence and Galveston," and "Little Rock and Fort Smith"—which are built to the border of the Territory, are vastly interested in the establishment of such a government, and a division of the lands in severalty, not because such roads could ever acquire an acre of the lands, but because it would increase a thousand-fold the productions of the Terri-

tory. The freight and passenger traffic would immensely increase, and in that way all the roads contiguous to the Territory would be benefited.

In an able speech of Hon. Henry S. Neal, of Ohio, in the House of Representatives, delivered on the 27th of May last, he alludes in terms of high commendation to the fact that last year—1877—the five civilized tribes of the Indian Territory produced two million bushels of small grain—wheat, corn, oats, &c. This may be relied on as a fair statement of the production of small grain in the whole Territory, for but little comparatively is raised outside of the reservations of the five civilized tribes.

This is a very gratifying exhibit, it is true, but compare it with the production of small grain in the counties adjoining the Territory in the bordering States and it looks insignificant. I find by reference to the agricultural report of the State of Kansas for the year 1866 that Labette County, which borders on the Cherokee Nation, produced in that year more than two million eight hundred thousand bushels of small grain, and that Cherokee County, lying east of Labette, and bordering on the Indian Territory, produced more than two million and a half bushels of small grain.

Either of these counties produced more small grain than the entire Indian Territory.

The area of these two counties is but 800,000 acres.

The area of the Indian Territory is 41,000,000 acres. Yet the two counties produce nearly three times as much small grain as is raised in the whole Indian Territory. The same will be found to be true with respect to other agricultural products. The total population of the "five civilized tribes," and other tribes in the Territory which produce anything worth mentioning, is 60,000; the population of Labett and Cherokee Counties in Kansas is less than 50,000. Yet these two counties, with a less population than the Territory, with not one forty-fifth of its area, and with inferior lands, raise more produce than the entire Territory. How is this to be accounted for unless it be on the theory that there is something radically wrong in the present system of labor in the Indian Territory, and the absence of those safeguards of law and incentives to labor and industry which attend individual ownership of lands?

By the CHAIRMAN:

Q. How many citizens of the United States do you think are lawfully residing in the Indian Territory?—A. I believe all the Indians in the United States were made citizens by the 14th article of the Constitution. Section 1 of that article says: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Some years ago the Senate Judiciary Committee reported that Indians were not made citizens of the United States by this article of the Constitution because in the judgment of the committee they were *not* "subject to the jurisdiction of the United States." This report, however, was made before the decision of the Supreme Court in my tobacco case. The extension of the internal-revenue laws of the United States over the Indian Territory must carry with it ample jurisdiction over the persons and property of Indians. The United States court at Fort Smith, Arkansas, certainly exercises jurisdiction over the Indians of the Territory. But exclusive of Indians who have not by special enactment become citizens, I should think that there cannot be less than 30,000 people who are unquestionably citizens of the United States who are lawfully residing in the Indian Territory.

Q. How do you arrive at that conclusion?—A. In reply, I submit an official statement of the Acting Commissioner of Indian Affairs upon this subject:

“DEPARTMENT OF THE INTERIOR,
“OFFICE OF THE SECRETARY,
“Washington, D. C. January 15, 1878.

“SIR: I have the honor to acknowledge the receipt of your letter of the 31st ultimo, making certain inquiries, with a request for information upon the following points, viz:

“First. ‘How many, or about how many citizens, black and white, of the United States, are members of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw tribes of Indians, by marriage and adoption, and the provisions of the treaties of 1866?’

“Second. ‘How many Indian tribes or bands are at present living on reservations in the Indian Territory, who have been declared by treaty or statute to be citizens of the United States?’

“Third. ‘How many reservations were taken by Choctaws under the provisions of the 4th article of the treaty with the Choctaws of 1830?’

“Fourth. ‘How many reservations were taken by Cherokees under the provisions of their treaties; article 8 of treaty of 1817, and article 12 of treaty of 1835?’

“In reply I have respectfully to invite your attention to the inclosed copy of a report dated the 14th instant, from the Commissioner of Indian Affairs, to whom your letter was referred, which contains, it is believed, all the information, upon the points presented, in the possession of this department.

“Very respectfully,

“C. SCHURZ, *Secretary.*

“Hon. D. W. VOORHEES, *United States Senate.*”

“DEPARTMENT OF THE INTERIOR,
“OFFICE OF INDIAN AFFAIRS,
“Washington, January 14, 1878.

“SIR: I have the honor to submit herewith the following report upon the letter of the 31st ultimo, referred by you to this office, from the Hon. D. W. Voorhees, relative to United States citizens who have become members of Indian tribes in the Indian Territory.

“In reply to the first inquiry in said letter, I have to state that it appears from a report made by Agent S. W. Marston, under date of November 8, 1877, which is the latest and most-reliable information this office has upon the subject, that the following numbers of citizens of the United States have become members of the Indian tribes hereinafter named, to wit:

“White citizens of the United States who have become citizens of the Cherokee Nation by marriage	700
“Freedmen who were made citizens of said nation by article 9 of the Cherokee treaty of July 19, 1866 (vol. 14, p. 799, Stats. at Large)	3,500
“White citizens of the United States who became Creeks by marriage	60
“Freedmen who were made citizens of said nation by the 2d article of the Creek treaty of June 14, 1866 (vol. 14, p. 785)	2,500
“Citizens of the United States who became citizens of the Choctaw and Chickasaw Nation by marriage under the provisions of article 38 of the Choctaw and Chickasaw treaty of April 28, 1866 (vol. 14, p. 769)	1,500

"Citizens of the United States who have been adopted into the Seminole tribe of Indians	1
"Freedmen who became citizens of the Seminole tribe under article 2d of the Seminole treaty of March 21, 1866 (vol. 14, p. 755).....	506
"Total.....	8,767

"In reply to the second inquiry in Senator Voorhees's letter, you are informed that by the 1st article of the Ottawa treaty of June 24, 1862, (vol. 12, p. 1237), it was provided that "The Ottawa Indians of the United bands of Blanchard's Fork and Roche de Bœuf having become sufficiently advanced in civilization, and being desirous of becoming citizens of the United States, it is hereby agreed and stipulated that their organization and their relations with the United States as an Indian tribe shall be dissolved and terminated at the expiration of five years from the ratification of this treaty; and from and after that time the said Ottawas, and each and every one of them, shall be deemed and declared to be citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall in all respects be subject to the laws of the United States, or State thereof in which they may reside."

"Before the time had elapsed for the Ottawas to become citizens under this article, the treaty of February 23, 1867, was concluded between the United States and the Senecas, Shawnees, and other bands of Indians (vol. 15, p. 513), in which a certain tract of land in the Indian Territory was ceded by the Shawnee Indians to the United States, and sold by the United States to the Ottawa Indians.

"It was also stipulated in the 17th article of said treaty that "the provisions of the Ottawa treaty of 1862 under which all the tribe were to become citizens upon the 16th of July, 1867, are hereby extended for two years, or until July 16, 1869," allowing, however, those members of the tribe who desired their proportion of the tribal funds to become naturalized citizens of the United States at any time prior to that date.

"There are now residing on the land thus acquired in the Indian Territory one hundred and forty of these Indians who became citizens of the United States on the 16th of July, 1869. (See decision of the department of March 9, 1872.)

"The third article of the Pottawatomie treaty of November 18, 1861 (vol. 12, p. 1191), authorized the President upon becoming satisfied that the adults, who were heads of families and allottees under the 2d article of said treaty, were sufficiently intelligent and prudent to control their affairs, to cause the lands severally held by such persons to be conveyed to them by patents in fee-simple, and at the same time to cause to be paid to them their *pro rata* share of all moneys, &c., held by said tribe or in trust for them. It also provides that when said patents were issued and said payments ordered to be made, each competent person should cease to be members of said tribe, and should become citizens of the United States.

"The first article of the treaty of March 29, 1866 (vol. 14, p. 763), extended the above provisions to all adult persons of said tribe, without distinction of sex and regardless of their being heads of families.

"Provision was made in the first article of the treaty of February 27, 1867 (vol. 15, p. 531), for the selection of a home for said tribe in the Indian Territory.

"Article 6 of said treaty declared that the provisions of the treaty of 1861, relative to the Pottawatomies becoming citizens of the United

States, should continue in force with the additional provision: "That before patents shall issue, and full payments be made to such persons, a certificate shall be necessary from the agent and business committee that the applicant is competent to manage his own affairs."

"Those of the Pottawatomies who were parties to this treaty became citizens of the United States, and removed to the home selected for them in the Indian Territory; but upon application being made for a patent for said land, the Secretary, on the 16th of March, 1872, declined to order the same, upon the ground that the treaty required the land to be patented to the nation, and as the Pottawatomies had all been naturalized citizens of the United States there was no longer a tribal organization in existence to which the land could be patented.

"The act of Congress, however, approved on the 23d of May, 1872 (vol. 17, p. 159), authorized the Secretary of the Interior to issue certificates of allotment to the members of the band in severalty, with the condition that "said Pottawatomie Indians shall neither acquire nor exercise under the laws of the United States any rights or privileges in said Indian Territory other than those enjoyed by the members of the Indian tribes lawfully residing therein."

"There are now 1,600 Pottawatomies, who have become citizens of the United States, residing on said land in the Indian Territory.

"The first article of the Wyandotte treaty of January 31st, 1855 (vol. 10, p. 1159), after stating that the members of said tribe had become sufficiently civilized and desired to become citizens of the United States, stipulated that their organization as an Indian tribe should be dissolved, and that they should, at the date of the ratification of said treaty, become citizens of the United States to all intents and purposes. "But such of the said Indians as may so desire and make application accordingly to the commissioners hereinafter provided for, shall be exempt from the immediate operation of the preceding provisions, extending citizenship to the Wyandotte Indians, and shall have continued to them the assistance and protection of the United States, and an Indian agent in their vicinity for such a limited period or periods of time, according to the circumstances of the case, as shall be determined by the Commissioner of Indian Affairs; and on the expiration of such period or periods, the said exemption, protection, and assistance shall cease; and said persons shall then also become citizens of the United States, with all the rights and privileges and subject to all the obligations above stated and defined."

"Those Wyandottes who were embraced in the list of those who desired to be exempt from the operation of the provisions of the above treaty in regard to members of the tribe becoming citizens of the United States and their descendants; those families the heads of which were not competent and proper persons to be intrusted with their share of the moneys, &c., of the tribe of their descendants; and those who were orphans at the date of the treaty of 1855 and their descendants, acquired a home in the Indian Territory under article 13 of the treaty of February, 1867 (vol. 15, p. 513), and were reorganized into a tribe in accordance with the provisions of said article on the 30th of May, 1871. At the time of the reorganization there were twenty-four of those who desired to be exempt from the operation of the treaty of 1855 and their descendants, fifteen of incompetents and their descendants, and forty-one of those who were orphans at the date of the treaty of 1855 and their descendants.

"During the year 1872 there were adopted into the tribe one hundred and forty-five Wyandottes who had become citizens of the United

States under the treaty of 1855, and they now reside with their brethren in the Indian Territory.

"I have to state in answer to the third inquiry that there were about thirteen hundred and forty-nine reservations taken under the 14th article of the Choctaw treaty of September, 1830 (vol. 7, p. 335), but the Indians were forced to abandon the large portion of these reservations and take land scrip in lieu thereof, under the provisions of the act of Congress approved August 23, 1842 (vol. 5, p. 513).

"This information is obtained from very old files and records of this office, and their genuineness cannot be ascertained with absolute certainty without a research involving much time and labor. It is believed, however, they are reliable.

"Referring to the fourth inquiry in Senator Voorhees's letter, you are advised that it appears from a copy of the register of Cherokees who desired to remain east of the Mississippi, made by their agent, Return J. Meigs, the original of which is too much worn and torn to be intelligible, that about three hundred and six Cherokees elected to take reservations under the treaty of July 8, 1817 (vol. 7, p. 156), nearly all of whom, however, were deprived of the same by State laws, as was the case in Georgia, or by the general government.

"As to the reservations taken under article 12 of the Cherokee treaty of December 29, 1835 (vol. 7, p. 478), you are respectfully referred to the first article of the supplementary treaty concluded March 1, 1836, (vol. 7, p. 488), in which all rights to the same were relinquished and declared void.

"The letter of Senator Voorhees is herewith returned.

"Very respectfully, your obedient servant,

"C. W. HOLCOMB,

Acting Commissioner.

"The Hon. SECRETARY OF THE INTERIOR."

It appears from this statement that there are 8,767 citizens of the United States who are members of Indian tribes in the Territory. Add to this number 1,885 Ottawa, Pottawatomie, and Wyandotte Indians who have been made citizens by acts of Congress, also 9,000 negroes in the Choctaw and Chickasaw Nations who are lawfully residing there, but not members of the tribes, and 3,000 railroad employés, and you have a total of over 22,000 citizens of the United States who are *permanently* domiciled in the Territory. There is hardly a mixed-blood Indian in the Territory who cultivates anything of a farm but who employs some white man; there must be more than 8,000 of this class. I have not a doubt but there are more than 30,000 citizens of the United States residing in the Territory.

Q. Has the Indian title to any portion of the Indian Territory been extinguished?—A. Yes, sir.

Q. To how many acres?—A. To about sixteen million of acres.

Q. How do you ascertain that?—A. From the treaties of 1866 with the Choctaws and Chickasaws, Creeks and Seminoles.

In article 3 of the Choctaw and Chickasaw treaty of 1866 "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 98th degree of west longitude known as the leased district." This district comprised about ten million acres.

By article 3 of the Seminole treaty of 1866 two million one hundred and sixty-nine thousand and eighty acres are ceded and conveyed to the United States for the consideration of fifteen cents per acre. The

Creeks, by article 3 of their treaty of the same year, ceded and conveyed to the United States three million two hundred and fifty thousand five hundred and sixty acres, for thirty cents per acre. This makes over 15,300,000 acres which have actually been ceded and conveyed to the United States for a valuable consideration, and unquestionably the Indian title is extinguished to that much. Besides this the Cherokees have sold to other Indians about three million acres of their reservation.

Q. Is there any tribunal, either local or otherwise, which has jurisdiction over civil causes in the Indian Territory?—A. There is no tribunal which has civil jurisdiction throughout the length and breadth of this Indian Territory in any case where either one or both of the parties in interest are not citizens. There is absolutely no tribunal which can afford protection from any wrong or injustice that may be practiced either by a citizen on a non-citizen, or by a non-citizen on a citizen, or by one non-citizen on another. If a criminal indictment is avoided, swindling and rascality can go on to any extent, and no law can reach the wrongdoer. With United States courts, with civil as well as criminal jurisdiction, this would be different, and much dishonesty and breach of faith be prevented.

Q. Do you know of any cases where injustice has been done by reason of the absence of proper judicial tribunals to settle civil differences in the Territory?—A. Yes, sir; I know of a great many. I know of instances where property has been seized and sold, under pretended authority of the Cherokee Nation, where the parties claiming it had no redress in the courts of the nation because they were arbitrarily declared not to be members of the tribe; and other cases where the property of citizens of the United States has been taken; unless the taking of such property is larceny at common law the person losing it has no redress in any court existing. Last April two white men, named Daniel Ross and John R. Skinner, set up in my absence at Washington a fictitious claim to an interest in my hotel building at Vinita. The building had cost me \$8,000, and had been bringing me \$100 a month rent. Ross claimed I owed him \$200, and Skinner claimed I owed him \$265. Ross had been paid in full, as I have abundantly proved; the proof is in the office of the Secretary of War, being an acknowledgment to me of his indebtedness to me to the amount of about \$155.

Skinner had accepted this man Ross in place of myself for his claim of \$265. Ross failed to pay the note at the time of maturity (he was my tenant in the hotel at the time), but afterward tendered the money to Skinner. Skinner refused to accept the money. Ross and Skinner then sold their pretended claims to one Henry Eiffert, a Cherokee. Ross put him in possession of my house, which he holds to this day.

I attempted, through my attorney, to bring suit in the courts of the Cherokee Nation against Eiffert, but the clerk refused to issue the necessary papers. I have no recourse whatever against either Ross or Skinner because they are not members of the Cherokee Nation. I only mention this as an illustration of the necessity for some legislation which will afford some kind of a remedy for such outrages. Had Ross or Skinner taken any personal property of mine in this way, I could have had them indicted for larceny; but they have with impunity taken \$10,000 worth of property from me, and I have no redress as against either.

Q. Do you think there are a considerable number of Cherokees who wish to take their lands in severalty?—A. I do; almost every sensible person in the Territory, who is not either directly or indirectly connected

with the vicious rings who are plundering the people, wish their land allotted. The rings in the Cherokee Nation have prejudiced the ignorant class against the allotment of their lands by falsely representing that it is a scheme to rob them of their lands for the benefit of railroads. Hence a great many who really desire allotment are afraid to take a stand against this unreasonable and unreasoning prejudice. The lives of some of the witnesses who testified before this committee have been threatened, while a deliberate scheme, as I am credibly informed, instigated by one L. B. Bell and others, has been organized to steal the property of C. C. Ironsides and others who announced themselves before the committee as in favor of allotment. Unless something is done very soon to protect the honest and law-abiding people of the Indian Territory against the miserable machinations of such thieves, they will be compelled to defend themselves and their property the best way they can. The present condition of affairs in the Indian Territory cannot exist much longer without bringing trouble.

Q. How much of the lands in the Indian Territory have been surveyed and sectionized?—A. I answer that by submitting Senate Ex. Doc. No. 32, 45th Congress, 2d session. It is in these words:

Message from the President of the United States, communicating, in answer to a Senate resolution of January 30, 1878, information in relation to a survey of lands in the Indian Territory.

FEBRUARY 21, 1878.—Read, ordered to lie on the table and be printed.

To the Senate of the United States :

In response to the resolution of the Senate of January 30, 1878, I transmit herewith a copy of a report, dated the 16th instant, from the Commissioner of Indian Affairs.

R. B. HAYES.

EXECUTIVE MANSION,
February 20, 1878.

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1878.

SIR: I have the honor to acknowledge the receipt, by your reference of the 2d instant, of the following resolution of the Senate, dated the 30th ultimo:

"Resolved, That, if not incompatible with the public interests, the President be, and he is hereby, requested to inform the Senate how many acres of land in the Indian Territory have been surveyed into sections and quarter-sections, for what purpose said survey has been made, and how much land remains in said Territory not surveyed.

"Also, what amount of lands were owned by the several tribes of Indians previous to the treaties of 1866, and whether the Indian title to any of such lands has been extinguished since said treaties were made, and, if so, to what extent, and for what consideration."

In reply, I have the honor to transmit herewith copy of a report, dated the 16th instant, from the Commissioner of Indian Affairs, which furnishes the desired information.

The resolution of the Senate is herewith returned.

I have the honor to be, very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 16, 1878.

SIR: I have the honor to acknowledge the receipt, by reference from the department, of a resolution adopted by the Senate of the United States, January 30, 1878, in the following words, to wit:

"Resolved, That, if not incompatible with the public interests, the President be, and he is hereby, requested to inform the Senate how many acres of land in the Indian Territory have been surveyed into sections and quarter-sections, for what purposes said survey has been made, and how much land remains in said Territory not surveyed.

"Also, what amount of lands were owned by the several tribes of Indians previous to the treaties of 1866, and whether the Indian title to any of such lands has been extinguished since said treaties were made, and, if so, to what extent, and for what consideration."

In compliance with the directions contained in your reference, I have the honor to report that the following tracts of country in Indian Territory have been surveyed:

	Acres.
Quapaw Reservation	56, 685
Peoria, &c., Reservation	50, 301
Modoc Reservation	4, 040
Shawnee Reservation	13, 048
Wyandotte Reservation	21, 406
Seneca Reservation	51, 958
Osage Reservation	1, 466, 167
Kansas Reservation	100, 141
Pawnee Reservation	283, 026
Unoccupied Cherokee lands west of 96°, east of Pawnee Reserve	105, 456
Unoccupied Cherokee lands west of 96°, west of Pawnee Reserve	6, 239, 106
Unoccupied Creek lands north of Cimarron River and west of Pawnee Reserve	683, 139
Sac and Fox Reservation	479, 667
Pottawatomie "30-mile square" tract	575, 877
Chickasaw Reservation	4, 650, 935
Kiowa and Comanche Reservation	2, 968, 893
Wichita Reservation	743, 610
Cheyenne and Arapahoe Reservation	4, 297, 771
Unoccupied Creek and Seminole ceded lands	1, 645, 890
Unoccupied Choctaw and Chickasaw leased land	1, 511, 576
Total area surveyed	25, 948, 69

Of these the Sac and Fox Reservation and the Pottawatomie "30-mile-square" tract, the Quapaw, Peoria, Modoc, Shawnee, Seneca, and Wyandotte Reservations have been surveyed and subdivided into 40-acre tracts; the remainder into sections as the public surveys are made.

The object of these surveys was the fulfillment of treaty stipulations, and to enable the department to ascertain the exact location, quality, and quantity of these several tracts, with a view to the settlement of friendly Indians upon the unoccupied lands, and to aid the various tribes of Indians already settled upon reservations in the adoption of habits of civilized life and their permanent settlement upon individual allotments or farms.

The following tracts remained unsurveyed:

	Aeres.
The Cherokee Reservation, estimated.....	5,031,351
The Creek Reservation, estimated.....	3,215,495
The Choctaw Reservation, estimated.....	6,688,000
The Ottawa Reservation, estimated.....	14,860
The Seminole Reservation, estimated.....	200,000

Total estimated area unsurveyed.....	15,149,706
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Previous to the treaties of 1866—

The Quapaws owned.....	75,167
The Mixed Senecas and Shawnees.....	63,767
The Senecas of Sandusky.....	73,364
The Cherokees.....	13,172,235
The Creeks.....	6,998,808
The Seminoles.....	1,682,883
The Choctaw and Chickasaws.....	19,032,174

Total area of Indian Territory.....	41,098,398
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By the fourth article of the Omnibus treaty of February 23, 1867 (15 Stat. at L., p. 514), the Quapaws ceded to the United States 18,482 acres of their lands, at the rate of \$1.15 per acre, and the United States, by the twenty-second article of the same treaty, sold the same to the Peorias, &c., at the same rate, leaving a reservation of 56,685 acres to the Quapaws, which they still hold.

By the second article of said treaty the Mixed Senecas and Shawnees ceded to the United States the north half of their reserve, estimated to contain 30,000 acres, for the sum of \$24,000, which land, by the twenty-second article of the same treaty, was sold by the United States to the Peorias, &c., at the same price. This tract, by survey, contains 31,819 acres, which, with 18,482 acres of Quapaw lands, constitutes the present Peoria, &c., Reservation of 50,301 acres.

By the 3d article the Mixed Senecas and Shawnees ceded to the United States that portion of their remaining lands west of Spring River. supposed to contain 12,000 acres, at \$1 per acre, which land, by the 16th article, was sold to the Ottawa Indians by the United States, at \$1 per acre, and constitutes the present Ottawa reserve, and contains, by survey, 14,860 acres. Of the remainder of their lands, 17,088 acres, the Shawnees, by an agreement with the Modoc Indians, made June 23, 1874, and confirmed by Congress March 3, 1875 (18 Stat. at L., p. 447), sold to the United States 4,040 acres for \$6,000 as a permanent reservation for the Modoc Indians, which is still held by them, leaving 13,048 acres, which the Shawnees hold and occupy as their reserve.

By the 1st article of the same treaty, the Senecas of Sandusky ceded to the United States a strip of land on the north side of their reservation, containing 20,000 acres, for \$20,000; which land, by the 13th article, the United States set apart as a future home for the Wyandottes. By the 14th article provision is made for the reimbursement to the United States of the cost of the land. This tract, the present Wyandotte reserve, contains 21,406 acres. The Senecas hold the remainder, 51,958 acres, as their present reservation.

The Cherokees, by the 16th article of the treaty of July 19, 1866 (14 Stat. at L., p. 799), ceded to the United States the authority to settle friendly Indians on any part of their lands west of 96°. These lands

(8,140,884 acres), when so occupied by friendly Indians, are to be paid for to the Cherokees, at such price as may be agreed upon, as stipulated in said 16th article.

In accordance with this stipulation and an act of Congress approved June 5, 1872 (17 Stat. at L., p. 228), the Kansas and Osage tribes of Indians were settled upon the tract of country lying between the Arkansas River and 96°, the Kaws occupying a tract of 100,141 acres and the Osages a tract of 1,466,167 acres. The price paid for these two tracts was 70 cents per acre.

By the 4th section of an act of Congress approved April 10, 1876 (19 Stat. at L., p. 28), there was set apart, for the use and occupation of the Pawnee Indians, a tract of country comprising 230,014 acres, out of the lands named in the 16th article of said Cherokee treaty, the price not to exceed 70 cents per acre. The Pawnees have been in possession of this reserve for several years, but no payment has been made to the Cherokees. The lands were appraised last year by a commission appointed under the 5th section of an act of Congress approved May 29, 1872 (17 Stat. at L., p. 190), at an average valuation of 59.9 cents per acre. The remainder of the Cherokee lands west of 96° (6,344,562 acres) is unoccupied, the United States not having as yet settled thereon any other tribes.

By the 3d article of the treaty concluded June 14, 1866 (14 Stat. at L., p. 786), the Creek Indians ceded to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, at 30 cents per acre. Of this cession there were sold to the Sac and Fox Indians, at the price paid the Creeks, 479,667 acres, and to the Seminoles, at 50 cents per acre, 200,000 acres.

There are included in the Pottawatomie "30-mile-square" tract, 222,668 acres, from which, by an act of Congress approved May 23, 1872 (17 Stat. at L., p. 159), allotments were authorized to be made to the Pottawatomie citizen band, and the absentee Shawnee Indians, the cost thereof to the United States (viz, 30 cents) to be paid by said Indians. No money, however, has yet been paid, though a number of allotments have been made. Of the remainder, a portion is occupied by the Cheyenne and Arapahoe Indians, by authority from the President, dated August 10, 1869, and the remaining portion is unoccupied.

By the 3d article of the treaty of March 2, 1866 (14 Stat. at L., p. 755), the Seminoles ceded to the United States their entire domain at 15 cents per acre, being the land ceded by the Creeks for the Seminoles in the treaty of August 7, 1856 (11 Stat. at L., p. 699). Of this cession, 353,209 acres are included in the Pottawatomie "30-mile-square" tract for the settlement of the Pottawatomie citizen band of the absentee Shawnee Indians, as recited in the Creek cession. Of the remainder, a portion is occupied by Cheyennes and Arapahoes, by authority from the President, dated August 10, 1869, and the balance is unoccupied by any tribe.

By the 9th article of the treaty of June 22, 1855 (11 Stat. at L., p. 613), the Choctaws and Chickasaws leased to the United States all their lands west of 98°, viz, 7,713,239 acres, for the permanent settlement of the Wichita and other Indians, the United States paying therefor the sum of \$800,000, and by the 1st article of the treaty of April 28, 1866 (14 Stat. at L., p. 769), in consideration of the sum of \$300,000, the Choctaw and Chickasaw Indians ceded all of the lands west of 98° named in the treaty of June 22, 1855, and known as the "leased lands," to the United States.

By the 2d article of the treaty of October 21, 1867 (15 Stat. at L., p. 582), the United States set apart out of these leased lands a tract of country con-

taining 2,968,893 acres as a permanent home for the Kiowa and Comanche Indians, the consideration therefor being a relinquishment of all their right to occupy permanently the territory outside of this tract, including their old reservation, as defined in the treaty of 1865. By an unratified agreement, made October 19, 1872, the Wichitas were assigned another tract of country out of these leased lands, embracing an area of 743,610 acres. The Cheyenne and Arapahoe Indians, by authority from the President, dated August 10, 1869, occupy 2,489,160 acres, and the remainder of these leased lands (1,511,576 acres) are unoccupied by any tribes.

The resolution of the Senate is herewith respectfully returned.
I have the honor to be, sir, very respectfully, your obedient servant,
E. A. HAYT,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

Mr. Adair addressed the committee, asking that certain papers be made a part of the record as touching matters of interest to the Cherokee Nation.

The request was granted, and the Cherokee commissioners withdrew. The papers submitted by the Cherokee commissioners are as follows:

1. The credentials authorizing and empowering Will. P. Ross, W. A. Duncan, W. P. Adair, and Daniel H. Ross, Cherokee commissioners, to represent the Cherokee Nation in the investigation by the committee touching matters of interest to the Cherokees.

2. Protest of the Cherokee commissioners against the sessions of the committee being held in secret, and that the commissioners be allowed to be present, with the right to cross-examine witnesses, &c.

3. Protest of the Cherokee commissioners against the exercise of the right of the committee to issue a subpoena *duces tecum* summoning the treasurer of the Cherokee Nation to appear before the committee with certain books and papers of his office belonging to the nation.

4. Letter from the Cherokee commissioners, transmitting accompanying papers, asking that they be placed on record, dated Muskogee, Indian Territory, November 20, 1878.

5. Protest of the citizens of the Cherokee Nation, adopted at a meeting held at Bluejacket Switch, on the Missouri, Kansas and Texas Railroad, Delaware District, Cherokee Nation, on the 16th day of November, 1878.

6. Message of the principal chief.

VINITA, CHEROKEE NATION,
November 16, 1878.

SIR: The undersigned had the honor to present to your committee yesterday their credentials authorizing and empowering them to represent the Cherokee Nation in the investigation by your committee of certain affairs touching the interests of their people. The privilege of appearing before the committee in open session was accorded to them

in the forenoon of yesterday, but in the afternoon the proceedings were conducted in secret session, when no opportunity was afforded for the cross-examination of witnesses. A sense of duty renders it necessary for us to ask that the order of the committee be reconsidered; that all witnesses be examined in public, and that we be allowed to be present with the right to examine witnesses that may be brought before the committee, so far as an examination may be regarded as necessary for the proper presentation of any point that may be brought forward that affects the interests of the nation.

The application is made in the behalf of what we conceive to be the right of the nation and the full development of truth in the premises. We have no desire to interfere with nor to interrupt a free and unprejudiced inquiry into all questions within the scope of the authority of the committee. But we do consider an open investigation to be the only proper procedure by which the committee can obtain information that will be fair and just to all parties.

We have the honor to be, very respectfully, your obedient servants,
WILL. P. ROSS,
W. A. DUNCAN,
W. P. ADAIR,
DANIEL H. ROSS,
Cherokee Commissioners.

Hon. J. J. PATTERSON,
Chairman Committee on Territories, United States Senate.

MUSCOGEE, CREEK NATION,
November 20, 1878.

SIR: The treasurer of the Cherokee Nation having been summoned to appear and produce the books and papers of his office before your committee, the undersigned deem it to be their duty to protest against the exercise of the right thus claimed by the honorable committee, because—

1st. The books and papers of the office of the treasurer are a part of the official records and belong to the archives of the nation, and cannot be removed beyond the limits of the Cherokee Nation without authority from the national council.

2d. The resolution of the Senate of the United States under which your committee is acting cannot be regarded as intended to modify the provisions of existing treaties between the United States and the Cherokee Nation, nor construed as conferring any power to investigate the official proceedings of the authorities of the nation in the management of their own affairs not authorized by them. A change in those treaties can be made legally only by the mutual consent of the contracting parties—the United States and the Cherokee Nation—certainly not by a simple resolution of the Senate.

3d. The twenty-third article of the treaty of 1866 is clear and explicit in stipulating that all sums arising from their investments held in trust by the United States shall be paid semi-annually, on the order of the Cherokee Nation. There is no qualification to this provision, and it constitutes the Cherokee Nation the exclusive recipient and disbursing of her own funds. But even if it be admitted that such is not the case, and that the provisions of the tenth article of the treaty of 1835 were

not abrogated by those of the treaty of 1866, above referred to, the duty is imposed by it upon the council of the Cherokee Nation, when required by the President of the United States, to make a report of the application of the orphan and school fund, and then, if found necessary, he may correct any misapplication that may have occurred. The question of the application of these funds belongs to the President and the council of the Cherokee Nation, if not exclusively to the latter, and not to a committee constituted by one house of Congress.

In order, however, to meet the ends of truth in the premises, full and correct abstracts from the reports of the treasurer covering the scope of your inquiry were laid before your committee, in Washington, by the Cherokee delegation, and may be found on page 295 of its printed proceedings.

In conclusion, the undersigned desire to assure the honorable committee that their course in the premises is prompted simply by a proper regard for the guaranteed rights and privileges of the Cherokee Nation, and not from any desire to avoid any legitimate inquiry to their affairs.

We have the honor to be, very respectfully,

WILL. P. ROSS,
W. P. ADAIR,
DAN'L H. ROSS,
W. A. DUNCAN,
Cherokee Commission.

Hon. J. J. PATTERSON,
Chairman Committee on Territories, &c.

MUSKOGEE, INDIAN TERRITORY,
November 20, 1878.

SIR: The undersigned desire to lay before your committee, and have placed on record as a part of its proceedings, the accompanying papers, to wit:

1st. Resolutions expressing the sense of the Cherokee, Muscogee (or Creek), Seminole, and Chickasaw delegations, in response to the views of the United States commissioners, expressed by them in a convention held at Muscogee, Creek Nation, December 11, A. D. 1874.

2d. Protest of more than four thousand Cherokees against the establishment by Congress of a Territorial government of the United States over them, dated January 20, 1875.

3d. Proceedings of the convention called by Charles Thompson, principal chief of the Cherokee Nation, under authority from the national council, to take into consideration the allotment of their lands, &c., at Tahlequah, November 18 and 19, 1878.

We have the honor to be, very respectfully,

WILL. P. ROSS,
W. A. DUNCAN,
DAN'L H. ROSS,
W. P. ADAIR,
Cherokee Commissioners.

Hon. J. J. PATTERSON,
Chairman of Committee on Territories, United States Senate.

Resolutions expressing the sense of the Cherokee, Muscogee (or Creek), Seminole, and Chickasaw delegations, in response to the views of the United States commissioners, expressed by them in a convention held at Muscogee, Creek Nation, December 11, A. D. 1874.

Whereas certain questions have been propounded to the above-named nations, through their delegates, by Messrs. C. B. Fisk, John D. Lang, Rush Roberts, and C. G. Hammond, members of the Board of Indian Commissioners, seeking to ascertain the sense of said nation as to the propriety of additional legislation by Congress for the better protection of their rights and the better maintenance of peace within their border; therefore, in answer to said inquiries, be it resolved by the delegates of said nations, in joint convention assembled:

1. That said delegation, for themselves and in behalf of their people, respectively, desire to express their gratification at meeting with the distinguished members of the Board of Indian Commissioners, now present, and their hearty thanks for the words of sympathy and interest in behalf of the Indians that have been so kindly uttered.

2. That they take occasion to express their thanks to President Grant for his benign Indian policy, and their admiration for his views on the Indian question, and their gratitude for his steady adherence to the same.

3. That, as the authorized representatives of their people respectively, they reaffirm their adherence to the stipulations of their treaties with the United States, and only ask that they may be fully carried out in good faith.

4. That they are unwilling to take the initiative or participate in any movement that may lead to a change in their national condition or of their relations with the United States, except such changes as are provided for by treaty stipulations; that they are willing to concede that the nations which they represent labor under grievances which should be remedied, yet without endangering any rights now guaranteed to them either in soil or self-government.

Among these grievances they may be permitted to enumerate the following, to wit:

1. The objectionable manner in which the court of the western district of Arkansas exercises its jurisdiction over the Indian Territory.

2. The delays in paying these nations the moneys which they believe to be due.

3. The grants of lands made in the Indian Territory by acts of Congress to certain railroad companies, without consulting the views or interest of the Indians, the title to said land grants being made contingent upon the extinguishment of the Indian title.

4. The unjust discrimination in railroad tariffs made against the people of this Territory by such railroad corporations as have railroads in operation over Indian lands.

5. The failure of the government adequately to protect the Indians against intrusion and trespass upon their lands by unauthorized persons.

6. The injury done the people of this Territory by the constant agitation of measures in Congress, including bills to organize the Indian country into a Territory of the United States, which threaten the infringement of rights guaranteed to them, and which thus keep them unsettled

as to their future, and which entail upon them large and ruinous expense in the defense of their interests.

B. F. OVERTON,
Governor of Chickasaw Nation.

D. O. FISHER,
B. C. BURNEY,
JOSIA BROWN,
WILLIAM P. BROWN,
CHARLES E. GOODING,
National sec'y, Chickasaw Delegates.
WILL. P. ROSS,
Principal Chief.

JAMES VANN,
Assistant Principal Chief.

S. H. BENGE,
J. T. ADAIR,
JOHN MCINTOSH,
D. W. BUSBYHEAD,
H. DOWNING,
WILSON HAIR,
G. W. WILSON,
JOHN S. VANN,
D. W. C. DUNCAN,
Cherokee Delegates.

JOHN JUMPER,
Chief of Seminoles.

JAMES FACTOR,
NUTH-CUPA-HARJO,
THOMAS CLOUD,
JOHN F. BROWN,
Seminole Delegates.

SAMUEL CHI-CO-TE,
Principal Chief Muscogeese.

LOCHER HARJO,
JAMES A. CLOUD,
JOHN HAYNES,
D. MCHODGE,
THOMAS ADAM,
TOM ROBINSON,
TEMAYE CURNELLS,
S. W. PERRYMAN,
PLEASANT PORTER,
JESSE FRANKLIN,
Muscogee Delegates.

JULY 20, 1875.

Protest of the Cherokees against the establishment by Congress of a Territorial government of the United States over them.

To the Congress of the United States:

The undersigned, citizens of the Cherokee Nation resident in the Indian Territory, respectfully represent: That they have learned with profound astonishment and grief that the honorable Board of Indian Peace Commissioners, represented by Messrs. Clinton B. Fisk, C. S. Hammond, B. R. Roberts, and J. D. Lang (the chairman thereof being, as we understand, treasurer of the Atlantic and Pacific Railroad Company, which claims large contingent land grants in our country), have on their return to the seat of government of the United States reported that there exists an immediate necessity, on account of the frequency of crime, for the organization of a Territorial form of government over the people of this Territory, and that such action by Congress would receive "the hearty indorsement of a great majority of the inhabitants of the Territory."

It is not necessary for your petitioners to inquire into the means by which the honorable commissioners arrived at this astonishing conclusion, but we may be permitted respectfully to enter our solemn protestation against its justness. It is true that crime to some extent exists among us—where does it not exist?—and it is also true sometimes offenders escape the penalty of the law; but we affirm, without fear of successful contradiction, that the one or the other is not of more frequent occurrence in any of the nations or tribes of the Indian Territory than in any State or Territory of the United States that, like our country, has been subjected to the calamities and demoralization attending the late war among your people. We respectfully deny that there is any considerable number of Indians in any tribe, resident in the Territory, who desire the establishment of such a government by Congress

over the people thereof. There are perhaps a few misled or deluded individuals or persons, subsidized and corrupted by the Atlantic and Pacific and other railroad interests, against which we have been compelled from year to year to fight for our property-right in our lands and for our very national existence, who may or do desire such a government, but they form no considerable portion of the intelligence or otherwise of the people of the Territory. You are respectfully referred to the many protests and remonstrances emanating from time to time from the several national councils of the Territory or from their respective duly authorized delegates, and to those of the general council of the Indian Territory, all of which have been heretofore laid before you as the true exponents of the sentiments of the people of this Territory upon this subject, and as the only legitimate source of information upon which you can justly base your action toward us, especially in a question so grave and important; one in which the honor of your government is involved, and upon which the weal of the Indians for all time to come depends.

We therefore respectfully, but earnestly, protest against any legislation by your honorable bodies that will directly or impliedly impair or destroy any right, national or individual, that your government has so often, by solemn treaties, pledged its honor to guarantee unto us. We have not resorted to the usual means by which nations defend their rights, but we have and do rely upon the justness of our case, upon the honor, faith, and integrity of yourselves and other departments of your government, and upon the providence and protection of that God who is your master as well as ours.

Respectfully, your obedient servants,

Isic Walkinstick,
Starr Crittenden,
William Crittenden,
Hury Dick,
Ed. Walkinstick,
Young Wolf,
W. G. Thornton,
Jo. Thornton,
Jackson Wats,
John Perce,
Joh Lorstij,
Filex Duncon,
Jess Redbird,
Tobe Sixkiller,
Senate,
Arch Scoper,
Solider Sixkiller,
Ely Wright,
William Gorles,
Isaac Morris,
Jack Wright,
Nat. Whitman,
John Whitmire,
Charley Whitmire,
Ely Whitmire,
John Clynes,
Edward Clynes,
J. Stansil,
Riley Ragsdale,
John Stansil, jr.,

J. W. Alherty,
Council,
George Fallin,
Dane Wolf,
John Bark,
Charles Bark,
Johnson Spade,
Silal Harton,
Charley Wodall,
William Downey,
Frank Brown,
Tuis Pate,
George Downey,
Tousins Woodall,
Tom Wagner,
A. N. Pote,
James Sixkiller,
Charles Morris,
Sam Ingland,
Aron Cornassle,
Alic Wolf,
Hunter,
Alisolm Baty,
William Pritchett,
Scale Harlan,
George Harlan,
Scrop Grass,
James Grits,
Grits,
Jo. Threekiller,

William Sanders,
 John Bean,
 Dick Crittenton,
 Chicken,
 Three Killer,
 Noah Whesenhiur,
 Robert Williams,
 Jack Phesant,
 Jack Wolf,
 Jesse Shell,
 Sarsut Shell,
 Merry Reese,
 Aron Wilkerson,
 Yellow Hammer,
 Esaw Ingiant,
 Fink Ingiant,
 Isaac Youngbirdys,
 Daniel Blackfox,
 Adam Felin,
 Dick Blackfox,
 Syneguvar Brook,
 Mose Crittenton,
 Berry Crittinton,
 Cornelius Crittenton,
 Ely Blackfox,
 Santefa,
 George Sanders,
 Twist,
 Ned Bullfrog,
 Dick Shorttail,
 Joe Chowe,
 Long John,
 Gordorgesky,
 Codasaner,
 Ahnelayah,
 Walker Ferant,
 Big Drum,
 Walky Towrinner,
 Dave Towrinner,
 Coeweekoowe,
 Dave Coralowrode,
 John Wat,
 Liver,
 Cornsilk, jr.,
 Bill Winton,
 James Crittenton, jr.,
 L. B. Welch,
 George Welch,
 Henry Mitchel,
 Maat Dyle,
 Nat. Dyle,
 Aaron Beck,
 Fox Sixkiller,
 James Blair,
 Arch Alberty,
 John Twist,

Fellow,
 John Walkinstick,
 James Walkinstick,
 Simeon Threekiller,
 Jacob Wabball,
 Jesse Raberss,
 Scales,
 Coming,
 Shon Pete,
 Ezekiel,
 Tom,
 Jim,
 Sarlalllos,
 Wasp,
 Cotowlaner,
 Bird,
 Colarkee,
 John Towin,
 Step,
 Steal Adog,
 Toryahluny,
 Clowseene,
 Arch Dorlowsey,
 Ahnerdarwakehader,
 Cab,
 Cloud,
 Frank Polane,
 Dirt Eater,
 Aaron,
 Lewis Gamgwalf,
 Limber Walkenstick,
 Churtockee,
 George,
 Dick Night,
 Wathern Night,
 Kyunner Fesant,
 John Alexander,
 Arek Walfe,
 Nick Twist,
 And Dick,
 Nick Snip,
 Mose Crittenton,
 Sen,
 Isac Howell,
 Edward Adair,
 Harrison Fletcher,
 Henry Robins,
 Ned Still,
 John Whitmire,
 George Crage,
 Black Still,
 Bill Crowder,
 Moses Philips,
 Charlie Cinnereque,
 Sultuskee Harry,
 Curluskee P. Tarsukeeyahcup,

W. M. Honedge,
Ned Faremon,
Jess. Parris,
J. L. Williams,
Rufus Downing,
Jack Bean,
William Bean,
Rich. Tickernerby,
J. W. Starr,
Clem. Starr,
Flint Walkinstick,
William Leach,
James Punkin,
Sorrow Goose,
Frank Philipe,
Rufus Alison,
Joseph Crittenton,
William Crittenton,
Joseph Wilkenson,
Johnson Wats,
Tom Storr,
Fishinghawk Fakitter,
Wolf Dick.
French Killerbill,
George Scot,
Jess Redbird,
Ellis Hagner,
Ridge Mush,
Corn Silk,
Fillis Hagner, jr.,
Rlbins,
Ritter Hagner,
James Fishinghawk,
Charles Dick,
Henry Dennenbergh,
Louis Dennenbergh,
Richard Dennenbergh,
Larkin Fakiller,
Thomas Fakiller,
Return,
James,
Osage,
Tom Alic,
John Silk,
Tomson,
Jake Oolornootooke,
J. Gritts,
Sahlahsonna,
Alfred Miller,
Bill Miller,
John Morris,
Bill Danenberge,
George Dick,
Bill Henson,
Rusty Tom,
Stoning Deer,

John Arguntoca,
Lacy Chinnueque,
Sasros Charles,
Elijah Blockhaw,
Condensuteyate,
Chucosnut,
Mix Water Mink,
Blackfox,
Ooyahtucker,
Sequiche,
Ned Downing,
Yarlarlar,
Teesquarnee,
Oocawahlate,
Chalaaw,
Dollar Stinging,
Cold Wether,
Bear,
Daniel Leave,
Daniel Foster,
John Scot,
Jackson,
Ely Scot,
McMorris,
Parker Morris,
Wilson Morris,
Sam. Bright,
Josua Sixkiller,
William Morton,
Jack Morton,
Newton Morton,
Joseph Morton,
Lettern Mortorn,
Bob Foresom,
George Ward,
Yell Ward,
Alexander Ward,
James Ward,
Westbell,
Thomas Ward,
Epe Thompson,
Sam Walkinstick,
Little Torpin,
William Pritchett,
Mike Pritchett,
Garlanerkee,
John Rogere,
Peter Dry,
Ookunlar,
Nick,
Garwalarkee,
Tomson Bean,
James Blackfox,
Bale Blackfox,
George Mockinbird,
Eagle,

Daniel Webster,
 Jefferson Yeckernerty,
 Anderson Yeckernerty,
 Ellis Yecernerty,
 Joshua Hummingbird,
 Isaac Hummingbird,
 Bill Tarcheche,
 John Foster,
 Mocingbird Sen.,
 Felix Fourkiller,
 Tarcharlennosh,
 Shunnertekee,
 Ridder Sleepingman,
 Carnanooleeskee,
 Wat Fetin,
 Ned Felin,
 Ben Felin,
 Oolstooah,
 Oonachunsar,
 Groundhog,
 Chesuyah,
 J. D. Buffington,
 T. B. Alberty,
 John Alberty,
 Ellis Alberty,
 George Crittenton,
 J. R. Crittenton,
 Levi Rodgers,
 Jos. Weaver,
 William Paris,
 Joh Kelly,
 John Denton,
 Malch Paris,
 J. C. Corner,
 Six Downing,
 E. B. Alberty,
 Thomas Buffington,
 George Alberty,
 Henry Crittenton,
 Ed. Stone,
 Joh Russell,
 Ed. Connor,
 Canon,
 Charlie Beavere,
 Isriel Crittenton,
 Naked,
 John Fodder,
 Wat Christy,
 Arch Christy,
 Creece,
 Phillips Johnson,
 Ned Christy,
 Cofsuttice Christy,
 Jack Christy,
 George Christy,

Ben,
 Walarkee,
 Liver Scot,
 Isac Sixkiller,
 Black Bird,
 Sam Fallan,
 Archiller Craper,
 Columbus Manus,
 Corntasle,
 Louis Corntassle,
 Collin,
 Jepe Lee,
 White Redbird,
 Jackson Redbird,
 Stephen Whitmire,
 Walter Whitmire,
 Dennis W. Punkin,
 Joel Kelly,
 Tom Kelly,
 Adam Perlone,
 Ben Rolbins,
 Still Jackson,
 Augustus Rider, jr.,
 Andrew Aheing,
 Ellis Eaton,
 Harlin Eaton,
 Jesse Alberty,
 C. Duston,
 William Wilson,
 George Williams,
 David Blackwood,
 Charles Mouse,
 John Proctor, jr.,
 John Hammer,
 John Fickerneskee,
 Toncot Twist,
 Crawfish Davis,
 Calvin Scoper,
 Chesturner,
 Summocooyah,
 Foilontischee,
 Charley Denton,
 Andrew Fields,
 Abiger Akins,
 John Vickey,
 Thompson,
 Kitcher,
 Willsom Still,
 Sam Crittenton,
 Squirrel Walker,
 John Martin,
 David Balbridge,
 John Spoon,
 Rider,
 Wilson Bushehead,

Daniel Pritchett,
Ben Squirl,
Harry,
Bull Frog,
John Harry,
William Manus,
Bendabout,
Wilson,
Bad Grits,
Arrechar Gritts,
Coldweather,
Leech,
Stayathome,
James Harlin,
Jim Hollan,
Isac Jonson,
Ben James,
Law Johnson,
Jarres Johnson,
Wat Sanders,
John Sanders,
David Sanders,
W. A. Wusgranes,
John Chull, sr.,
Henryyoung Bird,
Richard Wolf,
Park Walkerbout,
Thomas Trop,
Bill Burns,
Burns,
Joseph B. Trop,
Levi Henry,
Goose,
Tom Butter,
Ezekiel Hair,
Jack Nugen,
Lewis Butler,
Jackson Crittenton,
James Crittenton,
Clem Crittenton,
Huil Crittenton,
Elias Foreman,
Ben Crittenton,
Skull Downing,
Fleas Crittenton,
William Bright,
Bigmush,
Henry Wats,
John Proctor,
Taylor Sixkiller,
Abraham Sixkiller,
Mixwater,
Gremgolst,
Johnny Walker,
John Blackfox,
Tom Walker,

Bill Perlone,
Ellis Walls,
Nahob Bigtalker,
Bird Poorboy,
Nelson Gloss,
David Cumins,
Ned Oakball,
James Walls,
Louis Draper,
Albert Foss,
James Parnet,
Jesse Parnet,
Ellis Foreman,
Siler Foreman,
Sampson Sixkiller,
Jo Thompson,
Poh Worford,
George Bean,
Thomas Sander,
Balbridge Fadder,
Tom Balbridge,
Job Alexander,
Ben Night,
George Night,
Henry Night,
Joe Smallwood,
Adam Corn tasle,
Charley Fadder,
John Fadder,
Nelso Tarpin,
Johnson Trap,
Joe Trap,
Blue Trap,
George Whitmire,
William Crittenton,
Jesse Wright,
Dack Wright,
Little Dick,
Grass Dick,
John Walker,
Stephen Smith,
John Pathkitter,
Johnson Pathkiller,
Timothy Clynes,
Nelson Foreman,
Wilson Bullfrog,
John Bullfrog,
Dick Foreman,
Oonarchee,
B. F. Goss,
John McPherson,
Thompson Charles,
Young Bird,
George Blackwood,
Jack. Blackwood,
Louis Walkinstick,

Ab Downing,
 James Sixkiller,
 Wash Lee,
 Johnson Jackson,
 Peachester Sixkiller,
 John Thornton,
 Ezkiel Proctor,
 Alex Beamer,
 Jabird Walker,
 John Beamer,
 Tom Still,
 Hawk Adam,
 Thomas Sankee,
 Isaac Vann,
 Charley Oolanowah,
 Arch. Oolanowah,
 Georg Still,
 Ned,
 John,
 Wohlah,
 Screech,
 John,
 Chu he seo ten,
 Chu ker no che,
 Choctaw,
 Pass by,
 A. Quah,
 Young Deer,
 Chu so leveter,
 Tee cah see nu kee,
 Peace Maker,
 Oo wo so tee,
 Ken ne too,
 John Rodgers,
 Junper,
 Soo wa kee,
 Squah tu lee chy,
 Black Foot,
 Aaron,
 Swimmer,
 Ooner chos ty,
 Crab Grass,
 Strait,
 Spellman,
 Johnson Broadfeather,
 Jim ske lo le,
 Squah ler tu kee,
 Samuel Smith,
 Strummer,
 Back Water,
 Jess Day,
 Joe M'Coy,
 Joal Rat,
 John Tower,
 Thomas Tower,
 Sit-w-a-kee Tower,

Louis Blackwood,
 James Bigby,
 David Rowe,
 N. B. Rowe,
 D. C. Rowe,
 J. V. Rowe,
 Jonathan Webber,
 Joseph Wofford,
 Sim. Timberlake,
 Sharp Timberlake,
 Dennis Munell,
 Jeff. Munell,
 Troy Johnson,
 Clarke,
 Ker nale sir,
 Runabout,
 Stand in the water,
 Less,
 Augustus Redder,
 Dry Water,
 Noo nev,
 Se quo yer,
 Joseph Smith,
 Mellen Bug,
 John Hatchet,
 Peter Smith,
 Henry Smith,
 George Smith,
 Nelson Sequo yer,
 Jess Sunday,
 Levi Jug,
 David Ridge,
 Benjamin Ridge,
 William Smith,
 Doctor,
 Mechanick,
 Will Smith,
 Johnson Andrews,
 Evans Johnson,
 Dog,
 Fencer,
 William Fencer,
 Ta lah lah Fencer,
 Chu so ler ter,
 Tee squah nah ler,
 Sott,
 Jack Cumerne,
 Rope Cameron,
 Thomas Smith,
 Ken ne the Neter,
 Barney Hughs,
 Henry Vann,
 Seckle Hughs,
 Levi Adams,
 David Foreman,
 James Smith,

Chu nov len hus see Tower,
 Wilson Tower,
 White Bean Tower,
 Johnson B. Arcorn,
 Jess Scorn,
 Isaac Ross,
 Ahneboryoh,
 Cornorherder,
 Ely,
 Abraham Cameron,
 Too soo no lee ten,
 Coffee B. Bird,
 Stand Rowe,
 Tee la new tees kee,
 George Bird,
 Jackson Humming Bird,
 Washington,
 James Rowe,
 Charles Hughs,
 Frank Consern,
 John Canoe,
 Joe Vann,
 Joe Ridge,
 Jim Josiah,
 Chu wo ye,
 Oo yer lah,
 Joe Backwater,
 Tee ken yen lur tu kee,
 Ten noo sycat cowie,
 Teekteer,
 Too coo tar kee,
 Daniel Cahcowie,
 Will Tenn ne no le,
 Choo tah a kee,
 Sperit,
 David Souy,
 Peter Crier,
 Isaac chu co nuter,
 Bird,
 James Vann,
 Ticker nov lee,
 William Toot,
 Spring Frog,
 Sit oo wa kee,
 Davidson,
 Dick Martin,
 Blossom Horse,
 Old Horse,
 John Ah stoler,
 Joe Hilderbrand,
 Parchcorn,
 Sah mer ner,
 Sah wer ner Kerneter,
 Chu tah kee Hummingbird,
 Che su le ter,
 Ool seh co kee ter,

John Ross,
 Eli Hothouse,
 William Hughs,
 Charley Consern,
 Arch Canoe,
 Grape Soup,
 Ko che che,
 Ken na so,
 Daniel Potatoo,
 John Qur che,
 Ketchers,
 Oo you sutters,
 Whirlwind,
 Wah la nee ter,
 Young Pedgeon,
 Fox Mouse,
 John,
 Bird,
 French,
 Daniel R. Bird,
 Tee yo le he,
 Black Haw,
 Dah ther ter,
 George Sanders,
 George Bendabout,
 Somersett,
 George,
 Tuxy,
 Jacenry,
 Jinn,
 Sker os tee,
 Joseph Vann,
 Long McLane,
 John Nick,
 Runaway,
 Chu sah he,
 All Bones,
 Steve Brick,
 Wat Squirrell,
 Ker ther a gues,
 Squer ta le che,
 Oo ta le ter,
 Hunter,
 Daniel,
 Jack,
 Jack Fixien,
 Rattlesnake,
 Lucy Hakins,
 Coweter tee he,
 Rock,
 Sum Smoke,
 Wah der doo ker,
 Wirt Bark,
 Chu nooler hus kee,
 Enola,
 Little Bird,

Oon er cher sah,
 Jackson,
 De kený Mores,
 Dee ker nees kee Hummingbird,
 John John Tonic,
 Ah ne ter,
 Black Bear,
 Chu tah a kee,
 Lucy,
 Cul stoo ker skee,
 Jess,
 Ker na soo tah,
 Coming,
 Grog,
 Sar see,
 Chu we,
 Te ker ner wa er tees kee,
 Fallen Pott,
 I ye ke,
 Birnchopper,
 Ar che no skee ter,
 David Clog,
 George Mike,
 Ah der wos kee,
 John Towil Harry,
 Utter chu tile,
 Sam,
 We cowl,
 Ker na noo lees kee,
 Lewis sah cher su,
 Joe ker nee ter,
 John tah cher see,
 Doo kee ses,
 Red Bird,
 Dog,
 Ah yer ta kee,
 Rider Grass,
 Chu we,
 David,
 Black,
 Wat Bighead,
 Wa loo kee,
 Edward Crutchfield, jr.,
 Sam Spunk,
 Jack Riley,
 J. R. Riley,
 J. B. Riley,
 J. N. Bryan,
 C. D. Markham,
 Edward Crutchfield,
 Tom Snell,
 Mahlesken,
 Samuel Wolf,
 Jesse,
 Keetlatanasker,
 George,

Saturday Vam,
 Fox,
 Archiller,
 Oo sca we,
 David,
 Ground Hog,
 Grizzard,
 Ketcher,
 I you we,
 Steve Bony,
 Ezekil Miller,
 Horning,
 Charley,
 Archiller ne cowl,
 John Walker,
 Will Daniel,
 Henry Ross,
 Will Bible,
 Chu we,
 Isaac,
 Dic,
 No hoo ler,
 James Timpson,
 Dogs Johnson,
 James W. Adair,
 Lewis Miller,
 Spencer Shelton,
 W. A. Miller,
 Charley Smith,
 R. A. Crowenlay,
 Alex. Campbell,
 Tom Ballard,
 N. A. Wallace,
 David B. Bird,
 Ned Grimes,
 James Shelton,
 James Taylor,
 John Flowers,
 Behep Hicks,
 Charley Pritchett,
 Mose Callendon,
 Andy Woodvill,
 O. P. David,
 Peter McDaniel,
 Tuksie,
 David Seuder,
 Wash Patrick,
 Charley,
 Wm. Green,
 Anthony Campbell,
 Joseph Patrick,
 Johnson Bulong,
 Jesse,
 Kat le tah,
 A. F. Anderson,
 Wm. Pickery,

Martin Hopper,
 Mankiller,
 Joe Rogers,
 Joe Cute,
 Jesse,
 Scowmme,
 Wm. Downey,
 Bass Hanlin,
 Sandy Johnson,
 Sam Keys,
 Silas Clark,
 Harmon Williams,
 Osage,
 Simon Field,
 Mose Downey,
 Wm. Crittendon,
 Levi Keyes,
 Steve Crittendon,
 Hawk,
 Crow,
 Olive Wilson,
 Sam Drinker,
 John,
 W. B. Butler,
 George Bradley,
 Charles Squirrill,
 James King,
 Sam Hawkings,
 Wm. Martin,
 Red Bird,
 John Wildecat,
 Neck,
 John Hendricks,
 Stephen Foreman,
 Colman Robeson,
 John Wilkerson,
 Leonidas Lynch,
 Alx. Starr,
 Richard Griffin,
 J. S. Springston,
 Jeff Storms,
 Jack Goll,
 Sterling Scott,
 Henry Whalie,
 Arch Christee,
 Thomas Hendricks,
 James Ragsdale,
 Joseph Hendricks,
 Thomas Adair,
 John Ragsdale,
 Daniel Oolawhat,
 John Hawkins,
 George Spean,
 Thomas Serril,
 Parch Corn,
 Budd,

George Scott,
 George Lizzard Tos tee tee,
 Young Duck,
 Dirt Eater,
 John Girwaneda,
 Allen Wilson,
 Big Feather,
 George Doublehead,
 Tap yis kie,
 Turnover,
 William,
 Oo wa so da,
 Young Beaver,
 Nick,
 Tahganohelle,
 Keeyounger,
 Swimmer,
 Isaac Pote,
 Andy Lowrey,
 H. G. Parris,
 Green Terrill,
 Joe Hendrick,
 Will Terrill,
 Nelson Leskoe,
 Chu hors tah,
 Rider,
 Ten sal yee,
 D. H. C. Wilson,
 Te squah nee,
 Osey Sanders,
 Walt,
 Swimmer,
 Ground Squirrel,
 Jackson Houston,
 Tom R. Gourd,
 Tar mie,
 Roundabout Ellis Falling,
 Tom Horn,
 Tor tab tay nab,
 Kah lay Ekers,
 Tah Chur Eah,
 John cha loh,
 James Rily,
 Robert Cooley,
 Henry Loury,
 Te soh shey,
 Jack Couva,
 Jim Starr,
 Wash la me tee,
 George Waspe kher,
 William Lillard,
 Colman Dick,
 Leove Keyes, jr.,
 Gen. Kile,
 McCoy Poor Peate,
 William Christie,

Spring Frog,
 William,
 Su ne cor y ah,
 Oo way stah nah,
 Jesse Bradlong,
 Noon ah,
 Ar ne lah cay ah,
 Clark,
 A we,
 Arch Miller,
 Andrew Miller,
 Jieses Sam,
 Arch Big Bullet,
 George cow see nie,
 Kah nie su wah,
 Walt,
 John Tulsey,
 George Kuth,
 Gilbert Ross,
 John Eagle,
 Stephen Kittinger,
 Money Stlaler,
 Mose,
 Joseph Brown,
 Cal. Stoney,
 Wm. Ross,
 John Smith,
 Samuel Ross,
 Thompson,
 Law Lair,
 Eli Spear,
 Caley,
 John,
 Tom Sunday,
 Sundy,
 Levi Fish,
 D. H. Bean,
 Alph McCoy,
 Taylet Morgan,
 John W. Wolf,
 T. B. Wolfe,
 Evarts Thorne,
 John W. Bannon,
 Charles Proctor,
 John Prichett,
 William Taylor,
 Richard Halfbreed,
 Chu wa luke,
 John Parris,
 John Spear,
 Te hu yen,
 Cub on ti skey,
 Stephen Spear,
 Jesse Wolfe,
 J. C. Harris,
 Rabbitt Budaboat,

Setawake,
 Jackson Christy,
 Me Koy,
 William Guets,
 Oo no lay,
 Nedson,
 No name,
 Williams,
 Going Home,
 Joseph Keyes,
 Daniel Cameron,
 David Miller,
 Saul,
 Poor Bear,
 Wm. Flute,
 Redbird,
 Wilacat,
 William,
 Jesse R. Gourd,
 Arch Jimmy,
 Jesse Pedgeon,
 Francis Fitzgerald,
 J. M. Smith,
 Henry Woods,
 John Ferrill,
 Ah to ah,
 George Edmond Ross,
 Green Ross,
 Dick,
 Bendabout,
 Willie Martin,
 Tom Roster,
 Wilson,
 James Badger,
 Ou wa cher,
 James Lee,
 John Williams,
 Chu al wah,
 Nelson Green,
 Sul tees key,
 James Wilson,
 Watt Christy,
 Clem. Crittenden,
 Wm. A. Smith,
 Robert B. Ross,
 Jack Pack,
 William Ball,
 H. C. Lempson,
 James Ragsdale,
 Wash Smith,
 Feeling Evans,
 Rufus Raper,
 Wilson,
 John Poorbear,
 Tosh Rogers,
 Grease,

John Tapson,
Chaley Webber,
Willie,
Tieskey,
Judge,
Alex. Langley,
Jackson Red Biob,
Arch Waterhester,
Andy Jice,
George,
Robert Mitchell,
Jerry Fields,
George Woodward,
Jumper Stealer,
Walkabout,
David,
Ka su yu va,
Too quat tah,
John,
James R. Hendricks,
Dennis Hendricks,
Watt,
William Foreman,
John Ahquta Ker,
Naked Head,
Eta ta hei,
Joe Tucker,
G. W. Miller,
Madison Sandry,
Tom Mose,
Blue Johnson,
Ellis Lawrey,
John Gladney,
George,
Andy,
Thompson,
Samuel Osage,
Rabbit,
Young Pig,
William McKay,
Jas. Chensbe,
Joshua Potts,
Lewis Tar cah ie,
Tah cah na ka,
Johnson,
Moses cah leshay wil,
Liver,
Dick Chicken,
Big Bullet,
George Prickite,
Su wakey,
Wilson Willey,
Nelson Willey,
Amos Wilkerson,
Sames clair su na,
Crawler Hicks,

John Hill,
Toh tur ne gissie,
Walter falling,
Te Ketcher,
Ambross Bench,
Tassel Young,
John L. Adair,
Jackson R. Gourd,
Woman Killer,
Thomas Christy,
N. Bitting,
Peter Humphrey,
Lawrence Ross,
C. Cochran,
Joe Glandey,
John Elk,
Moses Bunger,
Nelson Ross,
Sam Eli,
William Hampton,
Young Bird,
McSenemon,
Charley Dick,
Beaver,
Charles Tucker,
Black Fox,
Wilson Erning,
John Walls,
Lewis Dumton,
James Crillendon,
S. J. Pierce,
Tom te cah te her,
Chu nu luskey,
Young Wolfe,
Woodcock,
Wiley Ned,
Sah sah,
John P. Bean,
Joshua Burge,
Chu ta yeaster,
Tom Oskey Cold,
Bars,
John Larch,
Squ ta ka,
Joe,
Chu too kaskey,
Johnson,
M. Dana,
Clay,
Andy Irons,
Jack Christy,
George Hicks,
Ben Sanders,
Ezekiel Huir,
Oo lay te yah tah,
Simpson Jumper,

Cah nee ka,
 Clawstama Heuston,
 Ke nah William Alexandria,
 Joseph Vauns,
 Wind,
 Daniel Red Bird,
 James Parris,
 Cal Hanks,
 Sam McCoy,
 Riley Keys, jr.,
 Peter Baddridge,
 George Rogers,
 L. B. Williams,
 Frank Woods,
 J. W. Woods,
 Aaron Gentledon,
 D. B. Tipton Nedson,
 Bill Welch,
 Moses Ross,
 Willis Pettet,
 Eli Smith,
 John Shorter,
 Pheasant Silas,
 Hiram Smith,
 Richard King,
 French Blacktrow,
 Walter McDaniel,
 Leach,
 Stop,
 Bark,
 Grapes,
 Dave Saunders,
 Fillas,
 Mose Wool,
 Crawfish,
 J. M. Lynch,
 Young Bird,
 Robbin,
 Dah ne no la,
 Sit te wa ke,
 Peter,
 Te gah no cha lie,
 Dick Humpfries,
 Thomas Hendricks,
 John Bear paw,
 John Jackson,
 Lewis,
 Walter Sanders,
 George Beece,
 Clem Crittendon,
 Skull Downing,
 Grah,
 Wm. Crittenton,
 John Patkiller,

Runabout,
 Nelson Foreman,
 Hugh J. L. Hollar,
 Stephen Peach,
 Wm. Crittenden,
 Jack Crittenden,
 Thomas Sanders,
 Young Bird,
 David Sanders,
 Jack Morgain,
 Benj. Crittenden,
 John McCarter,
 Walker Bark,
 David Bark,
 Thomas Petacan,
 John Sanders,
 Toh yu nu tah,
 Hunter Sundars,
 French McLemore,
 Koo we sko wee,
 Cehikasawkiller,
 Burnt Sanders,
 Robert McLemore,
 Beaver,
 Jim Beaver,
 La wee,
 Da Gur woh sie,
 Blue Stop,
 Wm. Burns,
 Charles Washface,
 Little Deck,
 Cross Deck,
 Nelson Tarpin,
 Bark,
 Rim Wolfe,
 Riley Keys, sr.,
 William Hendricks,
 Wilson Sanders,
 John Briegs,
 J. H. Meigs,
 Roberts Meigs,
 Miles Fleetwood,
 Daniel Sanders,
 Johnson Glass,
 Daniel Williams,
 Looney Glass,
 George Wool,
 French,
 No name,
 French Rowe,
 Levi Rowe,
 Lewis Sconte hee,
 Wm. Chu ga la ter,
 Ga no le da ster,

and 3,016 others, making 4,300 in all.

To the Hon. Mr. Patterson and Grover, subcommittee of the United States Senate :

In view of the questions propounded to citizens of the Cherokee Nation by you on the question now agitated by our citizens, we, the undersigned citizens of the Cherokee Nation, at a meeting held at Blue-jacket Switch, on the Missouri, Kansas and Texas Railway, Delaware district, Cherokee Nation, held this the 16th day of November, A. D. 1878, do most solemnly and earnestly protest any Congressional legislation by the United States Government changing our relations to said government, or impairing any of our guaranteed rights by treaty stipulations.

And further, we most emphatically protest against a Territorial form of government being extended over our country. We have learned by sad experience that is hard for an Indian to get justice in Territorial courts.

And furthermore, we have learned by experience that whites and Indians cannot live agreeably together. For the above reasons we left Kansas and are here.

And further, as for the here, the few of us who have had business in them have had justice. Therefore we find no fault or cause of complaint of the courts.

George Daugherty,
Sion Tiblow,
James Dick,

David Daugherty,
Price Bluejacket,
Charles Bluejacket,
and many others.

Proceedings of the convention called by the principal chief of the Cherokee Nation to take into consideration the allotment of Cherokee lands, &c. Tahlequah, C. N., November 18, A. D. 1878.

TAHLEQUAH, CHEROKEE NATION,
November 18, A. D. 1878.

To the honorable Committee on Territories, United States Senate.

MUSCOGEE, CREEK NATION,
Indian Territory.

GENTLEMEN: Hon. Charles Thompson, principal chief of the Cherokee Nation, acting by authority of the national council, having issued his proclamation for the people to assemble in general convention, at Tahlequah, the seat of government, to take into consideration the questions of the allotment of their lands, and the establishment of a Territorial government of the United States over the Cherokee Nation, by the Congress of the United States, and to give expression of their views in regard to the same:

We, whose names are hereto appended, citizens of the Cherokee Nation, having in general convention assembled, beg leave most respectfully to represent that—

Whereas it appears to us impossible for your honorable committee to arrive at a just knowledge of the sense of the people in regard to the questions of the allotment of their lands and the erection of a Territorial government by making inquiry of only a very limited number of our citizens summoned before you to give testimony in the premises; and whereas we are apprehensive that the honorable committee, being guided by so limited representation of the real wishes of the people,

may possibly arrive at erroneous conclusions in regard to the questions before them; and whereas it is stipulated in the treaties between the United States and the Cherokee Nation that the Cherokees shall have the right of self-government, and that their lands shall be surveyed and allotted *only* when deemed advisable by the national council of the Cherokee Nation; and whereas a large majority of our people are not prepared to cope with a population of whites who would speedily occupy the Territory should it be reduced to a Territory of the United States: Now, therefore, trusting in the justice of the United States and its promptness to deal fairly with the Indian tribes when fully advised of their condition and wants, we would most solemnly protest against the establishment of a Territorial government of the United States over the Cherokee Nation; and wishing the allotment of our lands to remain under the control of the national council, where it has been placed by treaty stipulations, would, through your honorable committee, petition Congress to continue to protect us in the exercise of our present form of government, which has been founded upon the guarantees of treaties between the Cherokee Nation and the United States, and which treaties are declared in the Constitution of the United States to be the "supreme law of the land."

Done at Tahlequah the day and date first above written.

Signed by 1,475 Cherokee citizens, add to which a list of 1,404 citizens, making 2,879.

I do hereby certify that the foregoing list of 1,475 names, taken at Tahlequah, on this 19th day of November, A. D., is correct.

[SEAL.]

ALLEN ROSS,

Clerk Tahlequah District, Cherokee Nation.

EXECUTIVE DEPARTMENT,
Cherokee Nation.

I, Charles Thompson, principal chief of the Cherokee Nation, do hereby certify that Allen Ross, whose name appears signed to the foregoing certificate, is now, and was at the time of signing the same, a district clerk in and for Tahlequah district, Cherokee Nation, and that full faith and credit are due to his official acts as such. Given under my hand and the seal of the Cherokee Nation, at Tahlequah, this 19th day of November, A. D. 1878.

[SEAL.]

CHARLES THOMPSON,
Principal Chief of the Cherokee Nation.

MESSAGE OF THE PRINCIPAL CHIEF.

To the senate and council of the Cherokee Nation, in national council assembled:

FELLOW-CITIZENS: We have assembled, in accordance with the requirements of the constitution of the Cherokee Nation, as the representatives of the people, to legislate for their best interests. Our people, therefore, have a right to demand of us strict fidelity to their wants and necessities, while, on the other hand, the great confidence they have reposed in our intelligence and integrity should inspire us to discharge our full duty to them with promptness, regardless of personal or party considerations. On this occasion, our constitution and laws make it my duty, as the chief magistrate of the nation, to present to you, as far as in my power so to do, the state or situation of our nation and people, with such recommendations as I may deem proper, to assist you in legislating for the promotion of the general interests of all.

In announcing to you the general condition of our country and people

it affords me great pleasure to state that under the most extraordinary and uncalled-for trials, our national autonomy has escaped destruction and stands unimpaired under the protection of our treaty stipulations with the Government of the United States; the general relations between our nation and people and those of the Government of the United States and its citizens, and our sister nations and tribes, are of the most peaceful character, while, as among themselves, the Cherokees are more friendly and peaceful than at any former period within my memory. The laws are well executed, and for the past year I have had no occasion for the suspension of any officer for neglect or refusal of duty. Crime has been less frequent, and I cannot now call to mind more than one case of murder committed in the entire nation within the past year. Our people have materially increased very much in the resources of personal wealth; the area of lands heretofore cultivated has been much extended, and having been blessed with fine seasons our farmers have raised vastly more grain and other products of the soil than heretofore. Our people have, during the past year, made great improvements in their homes or residences; their live stock has also greatly increased, and during the year has been more free from disease than last year. The general health of our people has been unusually good; and while many of the people of the United States have been unfortunately afflicted with yellow fever and other fatal maladies we have been spared such affliction. Our schools are doing exceedingly well, while we have a surplus of school funds on hand, and our people have manifested an increased desire for schools. Our orphan asylum and asylum for the deaf and dumb, blind, &c., are in good condition, and their unfortunate inmates are well cared for. The religious missionary societies and organizations of the various Christian denominations, received in our country under treaty stipulations, and fostered and protected under your legislation, are doing a good work for our people, while their church organizations, membership, and buildings have greatly increased during the past year. For having been thus favored during the past year we should acknowledge the grateful hand of a kind and all-wise Providence, who holds in His hands the destinies of all nations, and in our legislation we should bear in mind that His divine precepts are given for the lawgiver as for every other person.

RECOMMENDATIONS.

In making recommendations, the matter that occurs to me as of the first importance to our nation and people is our outstanding debt. This debt, as you are aware, is in the form of treasury warrants, issued from time to time for the legitimate expenses of our nation, and, as I advised you in my last annual message, aggregates, from statistics of our treasurer, about the sum of (\$189,316.83) one hundred and eighty-nine thousand three hundred and sixteen dollars and eighty-three cents, due alone from our general fund—and having no claims on our school and orphan funds. Provision has been made by your honorable body whereby this debt will be paid out of the proceeds of the unsold balance of our lands in Kansas, known as the "Cherokee strip," by an act entitled "An act providing for the sale of certain lands in Kansas," approved December 1, 1877. This act, I am informed by our late delegation, has been filed in the Indian Office, at Washington, with the act of the Forty-fourth Congress on the subject, with the request that the proceeds of said strip be applied to the payment, through our treasurer, of our debt; and that accordingly the funds due on the strip from the settlers occupying the same are being collected by the Interior Department

at Washington, and will be placed to the credit of the Cherokee Nation in the United States sub-treasury at Saint Louis, Mo., as they are collected.

But, while this source for the payment of the debt is *certain*, its manner of payment will be at slow intervals, that may *possibly* extend, on account of the demand and purchase of said lands, to a period of several years before all of the debt is finally canceled. In the mean time the purchasers of this debt will be compelled to lose the use of the money due them on their warrants, which will be certainly unfair. Furthermore, this debt embarrasses the payment of our current expenses, so that our tickets and warrants issued to our servitors and officers are greatly below par, and our people are forced to serve their country, in many cases, for less than half pay. This is certainly a great hardship upon our people, especially the poor class of people, and it is certainly our duty to relieve our people, if we can, by making provision to pay our outstanding debt at once, or to so arrange it as to prevent its interference with the payment of our current expenses.

It is, therefore, plainly our duty to our creditors, as well as to our people generally, either to pay the holders of these warrants an interest on them until they can be paid out of the proceeds of the "Cherokee strip," or to make provisions for their prompt payment out of our general funds in the custody of the Government of the United States. If we can pay the principal of this debt promptly, without interest, I am convinced that that would be the better course, because experience has proven that the great burden upon the people of the United States, and embarrassment to the payment of their Federal and State debts, is chiefly due to the interest on their debts, which every year adds to their principal, thus embarrassing instead of aiding their financial incomes or resources that should be applied to their current expenses, as well as to the payment of their debts already contracted. But if you find that you cannot thus make arrangements by which our debt can be paid promptly, then I would suggest that you pass an act authorizing our treasurer to register or record the several warrants constituting the same up to a fixed date, and allowing substantially the same percentage of interest on them that our nation receives annually on our bonds in the custody of the government, until the same shall have been paid by our treasurer out of the proceeds of our strip, as provided for, or otherwise. But I am satisfied that provision can be made for the prompt payment of this debt without any serious embarrassment to our financial condition, so that at least the matter of interest on it can be greatly curtailed, if not altogether avoided.

You will remember that at the close of the rebellion our nation had a large outstanding debt, consisting of treasury warrants, and that under our treaty of 1866 with the government provision was made setting apart a fund of \$150,000 of our general funds to pay that debt. This sum was accordingly applied; and subsequently the further sum, I believe, of \$100,000 from the proceeds of the "Cherokee strip" was appropriated by our council and diverted by an act of Congress of the United States to *replenish* the said one hundred and fifty thousand dollars fund of the treaty of 1866, to pay balances due on our outstanding debt. In view of the excess of our current expenses over our income, this last-named sum has proven to be insufficient, leaving our present debt on our own hands. I would, therefore, recommend that you pass an act authorizing your next representatives to the city of Washington to make arrangements with the Government of the United States, by negotiation or by Congressional action, to further replenish the one

hundred and fifty thousand dollars fund of the treaty of 1866, for the payment of our debt, with the sum of two hundred thousand dollars, or so much thereof as may be necessary to be taken from our funds received from the Osages for the lands they purchased from us, and now to the credit of our nation in the Treasury of the United States, and to be refunded out of the proceeds of the "Cherokee strip," already set apart to pay this debt. This plan is practicable, because our Osage funds are not in bonds or stocks, but consist of gold placed to our credit on the books of the United States Treasury, drawing five per centum interest; and the same interest would also accrue on the strip funds, as the same should be substituted for the Osage funds withdrawn. Besides, the suggestion has a precedent established by both the Cherokee Nation and the Government of the United States, supported by our treaty of 1866. But if you should not agree with me in the views just stated, then I would suggest that you make provision for the payment of a reasonable interest on the national warrants, constituting our debt, in the manner already indicated, until the same shall have been paid. I should state, in connection with the suggestions I have made, that in the event either one of them is adopted no fears need to be entertained as to the resources of our nation to keep out of debt and pay its current expenses hereafter. Outside of the proceeds of the remainder of our "Cherokee strip," estimated to embrace about two hundred and seventy thousand (270,000) acres, appropriated to the payment of our debt, we have, west of the Arkansas River, in the Indian country, about 230,014 acres of lands occupied by the Pawnees, and about 6,344,562 acres occupied by the Cheyennes and Arapahoes and Poncas, and set apart for other Indians, aggregating about six million five hundred and seventy-four thousand five hundred and seventy-six (6,574,576) acres, for which the Cherokees are bound to receive pay under the treaty of 1866 in the near future. The present situation of these lands will be explained in detail by our late delegation. If we should be wise in the application of the funds to arise from these lands, the Cherokee Nation will be in a better situation financially than any other people in the world. In making this declaration, I am aware to what criticism I am subjecting myself from our open enemies outside of the country, who are persistent in their efforts in endeavoring to create the impression upon the public mind abroad that we are incapable of self-government and of making a proper use of our finances and financial resources.

But a glance at our history since the war of the rebellion, a period of only twelve (12) years, will show that such criticism is unjust, because during that short time the Cherokees have had, by their effort, before the Government of the United States, an increase in their invested funds in the custody of that Government of two millions two hundred and forty-two thousand one hundred and thirteen (\$2,242,113) dollars and eighty-nine (89) cents, for at the close of the rebellion they had only about six hundred and sixty-seven thousand (\$667,000) dollars invested, with a heavy debt of about one hundred and fifty thousand (\$150,000) dollars hanging over them, while about eighty-three thousand (\$83,000) dollars of their invested stocks had been abstracted from the department in Washington; whereas at the present time we have the round sum of two millions nine hundred and nine thousand one hundred and thirteen (\$2,909,113) dollars and eighty-nine (89) cents, invested as follows: For the general fund, \$1,534,476.77; for the school fund, \$902,408.25; for the orphan fund, \$404,553.60; for the deaf, dumb, and insane asylum fund, \$67,675.27; the interest of which is applied annually under your legislation to the support of our government, our schools, our orphans, and

our unfortunate deaf, dumb, blind, and disabled indigent people. Having suggested as to our resources for the payment of our outstanding debt and current expenses, I will proceed to give my views as to the best course to be pursued to keep our nation out of debt in the future. All will admit that our debt has been caused by the excess of current expenses over our incomes, and that our nation cannot be kept clear of debt while its current expenses *exceed* its income. It should, therefore, be our first duty to ascertain what our incomes are, and then, if possible, make our appropriations each year *within* them. As a sure movement in that direction, we should economize in our legislation, or, in other words, so model and operate our government by our legislation as will reduce its expenses. To do this, we should carefully examine our constitution and laws to discover wherein they need amendments. I have endeavored to do this, and in the light of past experience I am convinced that the great burden of our expenses and debt against our general fund is mainly due to the defects in our judicial system or in our general law, under the head of Chapter III of the Revised Code, entitled "*An act relating to the judiciary.*" I desire to call your attention to those parts of this general act relating to *jurors, grand jurors, and criminal trials*. The jury system is required, under our constitution; but that instrument has no provisions determining the *number* of persons constituting a jury, that being a matter left to the wisdom of our national council, according to circumstances.

The judicial act to which I have alluded provides for five (5) jurymen in civil cases before the circuit and district courts; twelve selected jurymen to try persons charged with crimes involving capital punishment and manslaughter; six selected jurymen to try all persons charged with smaller offenses; and for two grand juries in each of our nine districts, each consisting of five (5) persons, &c. I recommend that you so amend this act as to restrict the number of jurymen in civil cases before the circuit and district courts to three (3) persons instead of five (5), and the number finally selected as a jury to try persons charged with capital offenses and manslaughter to six (6) persons instead of twelve (12), and the number to constitute a selected jury to try persons charged with smaller offenses to three (3) instead of six (6) persons, and that you also so modify the act that there will be but one grand jury consisting of three (3) persons instead of five (5) in each district, for both the circuit and district courts. In making this recommendation, I will merely state that I can see no good reason why three (3) good men cannot decide a civil suit as well as five (5); and six (6) good men are as competent to decide on capital cases and cases of manslaughter, &c., as twelve (12); whereas three good men ought to be sufficient to decide the guilt or innocence of persons charged with smaller offenses, since their verdict must be unanimous. Respecting our grand juries, I would remark that in each of our nine districts we have but one clerk and one solicitor, and certainly one grand jury ought to be sufficient for each district, and three competent men composing it should be able to do all the work that five (5), the former number, has now to perform, since all act together in joint session, and are required only to render presentment verdicts subject to the final investigation of our criminal courts. Also, I recommend that you so amend that part of the judiciary act relating to "*criminal trials*" as to fix a reasonable *limit* to the time at which the sheriffs will be *compelled* to report persons arrested by them under criminal charges to the judges of the courts for trial; and that, in like manner, a limit be fixed to the time at which such cases shall be set for trial by such judges, and that, after such trials are so set, that they

shall be only continued from day to day until finished, with authority to issue compulsory processes for witnesses, instead of from week to week and month to month, as is the case under our present system. In cases in which the testimony of material witnesses cannot be obtained before the courts on account of the sickness of such witnesses, I would suggest that you make provisions for taking the evidence of such witnesses at their locations, in the presence of the solicitor and the accused or his attorney. Also, in cases in which witnesses refuse to answer before the court, I recommend that provision be made to authorize the presiding judges, in addition to the fine already imposed by law in such cases, to sentence such witnesses to confinement in our national prison for at least thirty days, and I think that the court should be *required* to discharge all witnesses as soon as their testimony is taken, so that they may not be required to remain about the court-house, under pay, until after the verdict of the jury and the sentence of the court before they are discharged. Also, I think it would be in the interest of economy, in cases bailable under the constitution, to require bail to be taken in each case by our sheriffs, and judges, when the same can be taken with safety to our nation. As our laws now stand, in reference to "sheriffs" and "criminal trials," these officers may take bail, if they choose, from the accused, and save expense to our nation, or they may not do so, and thus entail unnecessary expense to the nation. I am also of the opinion that it would be in the interest of economy if the act of the revised code, under the head of Article I, entitled "An act relating to the duties of officers," should be so amended as to require the sheriffs to *abolish* the use of riding-horses for guard purposes in criminal cases, after the arrest and location of persons charged with criminal offenses. I can see no economy in a cavalry parade over a prisoner that is chained, as he is required to be under our law. For purposes of transportation in such cases it seems to me that it would be less expensive to authorize the sheriff to hire wagons, when really needed, than to keep a lot of horses on hand continuously at great cost to the nation. Also, this law should be so amended as to prevent the sheriff from registering a single meal as a whole day's board for one of his guards, and also to prevent the sheriff from incurring expenses, not authorized by law, in guarding public assemblies and hunting up horses of persons supposed to be stolen, under pretense of searching for the supposed thief. As a matter of economy, I would further recommend that you so amend the provisions of the revised code that relate to the "introduction and vending of liquors," to "disturbing public assemblies," and to carrying "dangerous weapons," as to make offenders against those laws subject to fine only, to be recovered before the district courts at their regular terms, on suits (as in civil cases) to be instituted by the solicitors against offenders. As our laws now are in regard to these matters, the prosecution of a person for selling a gill of whisky, or for carrying a dirk-knife, worth fifty cents, may, in the expense of guards and board-bills and special criminal courts, cost our nation hundreds of dollars—with the acquittal of the offender; whereas the suggestions I have made will cut off such expenses and retain the punishment of fine and forfeiture already provided for.

In regard to our revised code I would remark, on examining the "appendix" to it embracing the laws of a general nature not inconsistent with it, I am of the opinion that all such laws in force are not embraced. I would, therefore, recommend that you adopt the necessary measures to have the subject examined, and if you find I am correct, that you make provisions to have such of said laws as are omitted included in the appendix.

In this connection I would also state that I exhausted the appropriation (\$50) you made at your last session for the publication of our laws, without completing their publication, and as it had already begun the work of printing them, I have deemed it necessary, in view of the necessity of the laws for the use of our officers and information of our people, to make arrangements to have three hundred (300) copies of all our laws passed since our revised code went into force, and which are not published in the code, published in book-form in the job-office of the Cherokee Advocate, in both the English and Cherokee language, under authority of Chapter XII, Article XI, section 53, of the code. The work thus authorized is about finished, and I will make it the subject of a special communication to you in due time. I would also recommend that you have printed, in both the English and Cherokee languages, additional copies of our treaties for the use of our officers and the information of our people, as those heretofore printed are exhausted; and that for the same purpose you also have a sufficient number of the code of the laws of the United States, relating to trade and intercourse with the Indians, as also the decisions of our supreme court, printed in both the English and Cherokee languages.

PUBLIC DOMAIN.

The protection of our public domain is a matter that should engage our special attention. For the last two years, unauthorized citizens of the United States, from Arkansas, Missouri, and Kansas, have been depredating upon our lands along the border of these States, stealing therefrom our coal and timber, and selling the same for purposes of speculation. And I understand that unauthorized parties are cutting and applying the timber from our cedar brakes on the Arkansas to railroad and other purposes, and are also transporting from our great salt plains, west of the Arkansas River, large quantities of crystallized salt, into the State of Arkansas, and are also grazing live stock on our lands west of the Arkansas River. I have remonstrated against these aggressors before the department of the United States at Washington, and have notified them that our nation would hold the Government of the United States pecuniarily responsible for the damage committed, and for any future damages of like character, and have asked that the depredators be proceeded against and punished as criminals guilty of stealing our property in the Indian country, by the United States court for the western district of Arkansas; and I am advised by letter of the 22d ult., from the Indian Bureau, that the Attorney-General of the United States has accordingly instructed the said court to institute criminal proceedings against those offenders.

OUR RELATIONS WITH THE UNITED STATES.

Our political relations with the United States deserve your special attention. That the Government of the United States, and the great masses of its people, if properly enlightened on the Indian question, will keep good faith with us, I have no doubt.

Also, that there is a class of the people of the United States, embracing a powerful minority, chiefly speculators, that have but little if any respect for our national or individual rights, and who lust for our lands, I have no doubt.

This last named class is led not only by wealthy men, but also by men of very strong ability, who, by their shrewdness, have managed to occupy

generally the chief seats of financial and political power in the United States, and have, through Congressional legislation and otherwise, preyed upon the people of the United States as long as they will submit, and have now turned eyes upon the lands of the Indian nations and tribes of this country. These cunning adventurers in 1866, while the attention of the Congress of the United States was absorbed in healing up wounds of the war of the rebellion, slipped through Congress three railroad bills, the benefits of which are now claimed by the railroad corporations known as the Missouri, Kansas and Texas, and Atlantic and Pacific Companies.

These acts of Congress provide for two series of land grants of the Indian nations of this country; the first are conditioned upon the voluntary consent of the Indians, and are not of themselves dangerous, because our Indian nations will not squander their lands, and it is not, therefore, so material to us to have this class canceled by Congress as the second class or larger grants, because these last named are conditioned substantially upon two contingencies that may be forced upon us by the arbitrary action of Congress: First, that our lands become the public lands of the United States by reversion or extinction of title; second, that they be embraced within a State or Territory of the United States. If we are not disturbed in our present situation these grants cannot take our lands from us, because our lands belong to us, and are not public lands of the United States, and at present are not included in any State or Territory of the United States. But if Congress should pass a Territorial bill, throwing our lands *within* an organized Territory of the United States, and at the same time robbing us of the title of our lands and vesting it in the United States, by special *declaration* or by reversion, through the extinction of our nation, then so much of our lands (being several millions of acres) as would be required to fulfill the last-named land grant would revert, in spite of our objections, to the railroad corporation, for whose benefit they were granted by Congress. That you may more fully understand and appreciate the great danger threatening our people from territorialization, with these railroad land grants hanging over them, I will state that developments made during the last session of Congress before the honorable Committee on Territories of the United States Senate, in its investigation, show that the Missouri, Kansas and Texas, and Atlantic and Pacific Companies, whose lines of road run through our country, have mortgaged the entire lines (real and prospective) of their road, and have filed these mortgages in the Interior Department in Washington, and have already issued and sold, chiefly to foreigners and New Yorkers, about sixteen million three hundred thousand dollars in *bonds* on these mortgages, or on the lands belonging to our people, but claimed by these companies. In other words, these railroad companies have sold the finest portion of our country, and are endeavoring to make these sales valid, by throwing our lands into a Territory of the United States and robbing us of their title, through the passage by Congress of a suitable Territorial bill. I submit for your information official copies of these mortgages, with copies of the evidence relating to them, and the bonds taken by said committee, showing that my statements are correct.

I am satisfied that by examining these official papers you will be convinced that this railroad land-grant bonds affair is one of the most unconscionable "jobs" that was ever "put up" on any innocent people of the United States.

From the account I have given of the heavy siege that these railroad adventurers are prosecuting against our country, you cannot fail to see

that their hopes for the fulfillment of their bogus land-grants depend upon a radical change to be made by Congress in our relations with the Government of the United States, while our only safety depends upon remaining *as we are*, armed with the good faith and honor of the United States, supported by our treaties. As intimately connected with this subject, I invite your attention to the expected visit to our nation of the honorable Committee on Territories of the United States Senate. It is believed that this committee will make investigations relating to the allotment of our lands and the establishment of a Territorial government over us, and to the land-grants and railroad-bonds to which I have alluded.

I recommend that you make arrangements to receive this committee with the respect due them as honest representatives of their government, and that on their arrival you insist on their giving our national council and our people a fair hearing on the matters under their investigation, and that, for this purpose, you at once make provisions to enable our people to be called together in convention at this place on the arrival of the committee. You are fresh from our people and know their wants and necessities, and as you have their confidence, and are intrusted with the protection of their interests, you should not hesitate to be emphatic in making their wants known to this committee. I recommend that you pass resolutions, as expressive of the views and rights of the people, to be filed before this committee, protesting against the establishment by Congress of any form of a Territorial government over us, and asking the *unconditional* repeal and cancellation of the railroad land-grants and bonds to which I have alluded. All experience has proven that Indians (the weaker party) perish when commingled indiscriminately with the whites, under the same local government of the whites. The wisest statesmen of the United States have admitted this fact, as evinced in a most signal manner by act of Congress of May 26, 1830, and the treaties of 1866 between the United States and Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws, under which the present Indian country is cut off from any State or Territorial government of the United States, and is set apart exclusively for the "permanent home" of the Indians where they may not be disturbed in their local government. In my opinion any *departure* from this well-tried and successful policy will, in the future, as it did in the past, prove to be destructive to our people.

INTRUSION AND CITIZENSHIP.

The matter of intrusion in our country, as connected with the question of Cherokee citizenship, has unnecessarily grown to be a subject of considerable annoyance and trouble to our nation. There are now thousands of intruders (citizens of the United States) squatted upon our lands, some under pretense of claiming citizenship, while others are *downright* intruders, evidently waiting for the passage by Congress of some one of the numerous Territorial bills pending, and the majority, at least, of them appear to have fled from the States to avoid taxation, and to acquire by "sharp practice" an interest in our lands and funds. Some, perhaps, are entitled to Cherokee citizenship, and to do full justice to these and rid ourselves of the others your honorable body at its last session passed an act, at the request of the Indian Bureau, providing for a court which for the past year, at great expense to our nation, has been engaged in trying citizenship cases.

During the last three years I have called on the Indian Bureau, directly and through our agent's office, in vain, for the removal of

intruders from our nation, and a discussion, to which I alluded in my last annual message, is still going on between my department and the Indian Bureau, chiefly as to the construction of our treaty stipulations relative to the powers over the question of Cherokee citizenship as connected with intrusion. Admitting that the powers of the Cherokee Nation over its own citizenship may be debatable (which I deny), I cannot see, in view of our treaties, notably the third article of our treaty of 1828, why the Indian Bureau has hesitated to oust intruders who do not claim citizenship. That the Indian Bureau does so hesitate, and is, moreover, *quibbling* over our national rights (never heretofore denied) to determine our citizenship and *who are intruders* under the third section of the treaty of 1828, is a fact that is subject to the suspicion that a very large screw in the Indian Bureau may possibly be so very loose as to require its adjustment by the President or Congress of the United States. Substantially the same issue, involving citizenship, on the question of *jurisdiction* in the "Kenyon" case, has been recently decided by the United States court of the western district of Arkansas in our favor.

On these subjects I will present a special communication on submitting to you the report of our citizenship court, that will soon be made. From the acts I have stated in reference to these "citizenship" and "intrusion" questions and the Territorial and kindred subjects, and our outstanding debt, as also in view of our other unsettled business which will be reported by our late delegation, I deem it necessary that you provide for a delegation to the seat of government of the United States at the next session of Congress to represent the Cherokee Nation in bringing all of these matters to a just settlement under your special instructions.

REPORTS.

I submit the following reports:

1. The report of the treasurer.
2. Report of the board of education, including the orphan asylum.
3. The report of the trustees of the asylum for deaf, dumb, insane, and others.
3. Report of the high sheriff as warden, treasurer, &c., of the national prison, custodian of public property at the seat of government.
5. The report of the commissioners for the sale of town lots.
6. Report of the editor of the Cherokee Advocate newspaper.

By reference to the treasurer's report (embracing, also, that of our auditor of accounts), you will find that our present year's expenses, on account of our general fund, as audited, are *within* our incomes, and you will find that our expenses this year against said fund are *less* than last year, although they include the extra expense of several thousand dollars of our citizenship court. Also, from the report of the board of education, you will see that our present year's educational expenses are *less* than last year, and that we have a surplus of that fund still on hand. Also, are our expenses on account of our orphan fund *less* for this year than for last, and our income this year on said fund *exceeds* our expenditures. Also, that our expenditures on account of the fund for the deaf, dumb, blind, &c., are less this year than for last year. You will also see, by the report of the editor of the Cherokee Advocate, that although the subscriptions to the paper are much larger than last year, its expenses are smaller for this year than for last year, and also that the receipt of earnings of the paper are much larger this year than last year.

In regard to the duties of our treasurer, I would suggest that you

relieve him of the duties of collecting our revenues, as provided in section 39, article 2, chapter 1, of the Revised Code, and impose that duty on our solicitors, so they may collect our revenues, by summary process, after ten days' notice, without the great expense of appealing to the courts, and deliver the same to the treasurer quarterly, after deducting therefrom a sufficient per cent. to pay for collecting the same. As regards the board of education, I will remark that from their report their management of our high and common schools and orphan asylum has been as economical and efficient as it well could be under the restriction of our present school law. But I am of the opinion that, as this law now stands, this board of education, consisting only of three persons, is entirely too small to discharge with general satisfaction all the duties involved in their extensive field of labor. I therefore recommend that you add two more members to this board, to make it consist of five persons instead of three, and that one of the members be assigned as superintendent of our common schools, and one as superintendent of the orphan asylum, and the asylum for the deaf, dumb, blind, &c., and that the present board for the last-named institution be abolished; and that you make provisions for a permanent invested fund, out of the proceeds of our lands west of the Arkansas River, assigned to the Pawnees, the interest on which to be applied annually, with the funds already provided for said deaf, dumb, and blind asylum, in making that institution a school, as well as a home, for its unfortunate inmates. The adoption of these suggestions will save to this asylum the amount of funds now used to pay the expenses of its present board of trustees, while it will add nothing to the expenses of having a *superintendent* to the orphan asylum, and the amount saved to the deaf, dumb, blind, &c., asylum, drawn from the school fund, will more than pay the salary of the superintendent of common schools. I would also recommend that you make provisions for the issuing of warrants to the board of education for prompt payment, to cover our national certificates received for the expense of students at the male and female high schools, and audited by the auditor; and that all sums due to said board be placed by the treasurer, on receiving warrants for the same in the treasury, subject to appropriations from the national council; and that the sum of \$1,000 be appropriated by the board of education out of said funds, \$400 of which to be applied to the purchase of a library of useful historical and other books for each of the male and female high schools, and \$200 for the purchase of a library for the orphan asylum. You will also observe from the report of the treasurer that there is now on hand in the *indigent* fund a surplus of \$4,399.42. This should be applied for the support of the indigents, and thus curtail the present expenses of the school fund, or transferred to the school fund.

CHARLES THOMPSON,
Principal Chief Cherokee Nation.

EXECUTIVE DEPARTMENT CHEROKEE NATION,
Tahlequah, November 5, 1878.

OFFICE BOARD OF EDUCATION,
TAHLEQUAH, CHEROKEE NATION,
December 5, 1878.

SIR: Herewith I have the honor to submit, as testimony, some statistics of the expenses of the high and primary schools of the Cherokee

Nation, beginning with the year 1876-'77 and ending with and including the present year, 1878-'79.

I am, respectfully, yours, &c.,

JOHN L. ADAIR, *Secretary.*

Hon. JOHN J. PATTERSON, U. S. S.,

Chairman Committee on Territories, Washington, D. C.

FEMALE SEMINARY, 1876-'77.

For current expenses	\$14,659 05
For salaries of teachers, superintendent, &c	4,600 00
For building, repairs, house and school furniture, to be drawn from the fund set apart for "A literary institute for indigent Cherokees," by an act of the national council approved November 28, 1873	3,343 80
	22,302 85

MALE SEMINARY, 1876-'77.

For current expenses	\$15,257 80
For salaries of teachers, superintendent, and matrons	4,600 00
For buildings, repairs, house and school furniture, to be drawn from the fund set apart for "A literary institution for indigent Cherokees," by an act of the national council approved November 28, 1873	1,916 00
Total amount	21,773 80

COMMON OR PRIMARY SCHOOLS, 1876-'77.

For salaries of 22 first-class teachers	\$11,000 00
For salaries of 36 second-class teachers	14,400 00
For salaries of 23 third-class teachers	6,900 00
For stationery and text-books	2,500 00
For normal instruction	200 00
	35,000 00

Recapitulation.

Female seminary	\$22,302 85
Male seminary	21,773 80
Primary schools	35,000 00
Total amount	79,076 65

FEMALE SEMINARY, 1877-'78.

For current expenses	\$10,050 00
For salaries of teachers, superintendent, and matrons	4,550 00
For text-books	250 00
For repairs	300 00
For contingent expenses	1,000 00
Total amount	16,250 00

MALE SEMINARY, 1877-'78.

For current expenses	\$12,000 00
For salaries of teachers, superintendent, and matrons....	4,550 00
For text-books	250 00
For repairs of cisterns, &c.	500 00
For contingent expenses	1,000 00
Total amount	18,300 00

PRIMARY SCHOOLS, 1877-'78.

For salaries of 26 first-class teachers	\$13,000 00
For salaries of 41 second-class teachers	16,400 00
For salaries of 11 third-class teachers	3,300 00
For text-books	1,000 00
Total amount	33,700 00

BOARD OF EDUCATION, 1877-'78.

For their salaries	\$2,200 00
For their contingent expenses	100 00
	2,300 00

Recapitulation, 1877-'78.

Female seminary	\$16,250 00
Male seminary	18,300 00
Primary schools	33,700 00
Board of education	2,300 00
Total amount	70,550 00

For the year 1876-'77, prior to the appointment of a board of education, the sum of \$684 (six hundred and eighty-four) was appropriated in the year 1877-'78 for the services of superintendent of public schools, which will make the amount appropriated for the year \$71,234.

FEMALE SEMINARY, 1878-'79.

For current expenses	\$7,000 00
For current expenses, indigent fund	3,000 00
For salary of principal teacher	700 00
For salary of three assistants, at \$600	1,800 00
For salary of two matrons, at \$200	400 00
For text-books	300 00
For apparatus	150 00
For salary of superintendent	600 00
Total amount	13,950 00

MALE SEMINARY, 1878-'79.

For current expenses	\$7,800 00
For current expenses, indigent fund	3,000 00
For salary of principal teacher	700 00
For salary of 3 assistants, at \$600	1,800 00

For salary of superintendent.....	\$600 00
For salary of 2 matrons, at \$200.....	400 00
For text-books.....	300 00
For apparatus.....	150 00

Total amount	14,750 00
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PRIMARY SCHOOLS, 1878-'79.

For salaries of 17 first-grade teachers.....	\$8,500 00
For salaries of 36 second-grade teachers.....	14,400 00
For salaries of 28 third-grade teachers.....	8,400 00
For salaries of 3 extra teachers.....	1,200 00
For text-books.....	2,000 00

Total amount	34,500 00
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BOARD OF EDUCATION.

For their salaries.....	\$2,200 00
For their incidental expenses.....	100 00

Total amount	2,300 00
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Recapitulation, 1878-'79.

Female seminary.....	\$13,950 00
Male seminary.....	14,750 00
Primary schools.....	34,500 00
Board of education.....	2,300 00

Total amount	65,500 00
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STATEMENT OF EXPENSES FOR THE THREE YEARS.

1876-'77.....	\$79,076 65
1877-'78.....	71,234 00
1878-'79.....	65,500 00

215,810 65

The school annuity is about \$50,000.

The excess of appropriation for the three years has been on an average of \$21,936.88½. This has been met by a surplus accumulated prior to the opening of the seminaries.

CREEK NATION.

MUSKOGEE, CHEROKEE NATION, IND. TER.,
November 18, 1878.

Pursuant to adjournment at Vinita, the committee met at half past 10 a. m.

Senators present, the chairman and Mr. Grover.

Delegate present.

Rev. W. S. ROBERTSON, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. W. S. Robertson.

Q. Where were you born?—A. In the State of New York.

Q. How long have you lived here?—A. Since 1849.

Q. Are you an Indian?—A. I am not.

Q. Are you married to an Indian woman?—A. I am not.

Q. What is your occupation or profession?—A. I am a preacher.

Q. Are you a teacher in the school?—A. Yes, sir; I am principal of the national school, except when it was broken up by the war.

Q. With what nation have you been making your home?—A. Creek Nation.

Q. I suppose you have been over the Territory among these people, have you not—the Creeks, Seminoles, Cherokees, &c.?—A. I have been among them a good deal. I know a little of all of them by being among them.

Q. Have you heard much discussion among the people in these nations in regard to the question of dividing the lands in severalty—sectionizing them, as it is called?—A. Among the white men, a good deal; yes, sir.

Q. Have you heard much discussion upon this question of dividing up the land among the Indians?—A. Well, very few wish it done of whom I have any knowledge; that is, as far as my knowledge extends.

Q. Do they discuss this question much?—A. O, yes; talk over it more or less as one of the great subjects that disturbs and troubles them.

Q. They understand it, do they?—A. Yes, sir; I think they do. I believe the men who wish to fill the country with white people are all in favor of sectionizing the country. The men upon whom I look as the true friends of the Indians generally do not.

Q. You consider that to be the case?—A. I consider that to be the case.

Q. What do the Indians say about it themselves?—A. They consider it as the entering-wedge to opening the country to white settlement.

Q. Are any Indians in favor of it?—A. I could not say.

Q. Any half-breeds?—A. I could not say.

Q. Any full-bloods—any Indians in favor of it?—A. I could not say there is one, if the question was to be decided here this morning whether the lands should be divided, who would be in favor of it under present circumstances.

Q. What is your idea about dividing the lands in severalty among the Indians so each should hold his lands in fee-simple?—A. My idea would be here as in other countries where lands are held in fee and not in common—if the lands could be fairly divided among the Indians themselves it would not hurt them. It would be, perhaps, an advantage to them, but the point is they look upon this as a means by which their tribal organizations will be broken up, the land divided among white men, and that they would lose their nationality.

Q. They do not object to dividing the lands, but they are afraid if it were done that that would be a wedge to cheat them out of their land?—A. Yes, sir.

Q. They would be opposed to it any way, because they prefer to hold their land in common?—A. Yes, sir.

Q. For the reason that there is much more protection in that way of holding lands so they cannot be sold, &c.?—A. Yes, sir; so far as I know; there are some Cherokees with whom I have talked, who say yes, if we could divide our lands so each family could have its proportion of it; but as it is we are afraid to do it. I have heard more of that from Cherokees than Creeks.

Q. Suppose Congress in passing such a law should provide that each member of a family should have so much, so it could not be sold for debt or taxes for thirty-three years; what do you say they would think

about that?—A. I think a majority of the nation would vote against it—a very great majority.

Q. Why?—A. I have no doubt about it. I know a majority would vote against it, especially among those with whom I associate.

Q. You think there would not be so much objection to dividing the lands in severalty if it could be done so as to secure the lands to them so that they would not lose them in the end?—A. Well, a very large part or the nation would be opposed to it any way, but there are many men who would not oppose it if there were not something beyond it. They take this ground, if the United States cannot defend us in our land in a body they would not defend it one by one.

Q. Why do they think so?—A. The removal of the Osages shows that very plainly. Then there is another point about dividing the land. This is a great grazing country, and many would feel that these great prairies had better be left as they are than to be divided up.

Q. What is your opinion of the wish of the people about changing the form of government and organizing a civil government over the Indian Territory like that of Arizona, New Mexico, and the other Territories?—A. I do not know any of the Creeks who are in favor of such a change.

Q. Why?—A. They are patriotic, and they have their love of country, race, and nation as strong as any other people I know of. They feel they are not prepared yet to be United States.

Q. They are satisfied with the present form of government?—A. Yes, sir; a change would be too advanced for the ignorant population. We have some citizens who have too little education, who send a few children to school. They feel their present condition and situation, and laws are in advance of their education, and I should not be surprised if they requested that the government set apart a place where they can be governed by their own laws, customs, and privileges, and not by a written constitution.

Q. Are your authorities here in the Creek Nation establishing schools in such places as have scholars to warrant their being started?—A. Yes, sir; where they can get a sufficient number of children to attend school they are.

Q. Are the people sending their children to school so as to have them enlightened by education?—A. Too little. We are making great efforts to get them to do so. I have a son of a native priest in my school whose father is dead, and I think we have more coming in from that part of the country than heretofore. I can hardly say that they take much interest in education—not as much as they should do.

Q. Are they farming?—A. Yes, sir; all own farms.

Q. Are there many of that class of people among the Creeks who do not take an interest in education?—A. Yes, sir; a good many—too many; but I could not say how many.

Q. How many white men are there in the Creek Nation who are members of the tribe by adoption?—A. The number by adoption must be very small. When I first came here thirty years ago there were none or scarcely any white men in the nation whose name I could not tell you. To-day the nation is full of white men.

Q. How many of the Creeks are there here?—A. I do not know positively. There are other people to appear before you who have sources of information that I have not who can give you the exact numbers. My memory is very bad about numbers. There may be ten or twelve thousand.

Q. Does that include white men and all others?—A. Twelve thousand

Creek citizens; two or three thousand negroes. I will say this is only a rough estimate. There are other gentlemen who are to appear before you who can give the number to you exactly.

Q. How many white men are there in the Creek Nation?—A. I cannot say. I do not know.

Q. How are the schools getting along?—A. The schools are doing very well, better than ever before.

Q. How many schools have you in this nation?—A. There is a school of forty boys and forty girls under my care.

Q. Where is that school?—A. At Tallahassee.

Q. That is a boarding-school?—A. Yes, sir.

Q. How is that school supported; by the nation?—A. The nation owns the property and pays all expenses except the teachers, who are paid by the Presbyterian Board of Missions.

Q. The nation pays nothing?—A. Yes, sir; the whole expense of the school is paid from the nation's funds. There is a board of trustees from each town.

Q. Do you teach the higher branches of the English studies, or just the common English branches?—A. Our first class is taught the higher branches. It will recite in the languages, algebra, natural philosophy, physiology, English grammar, arithmetic, &c.

Q. What progress do they make in their studies?—A. They have made great improvement. I have fitted a young man for Yale since I have been here.

Q. Are they as competent to take instruction as white children?—A. Yes, sir.

Q. I suppose they could learn very readily any language?—A. Yes, sir; that is the language to teach them, and we find by experience that children who become fifteen or sixteen years old are almost unable to learn to speak the English language. They will use the mother tongue. For the last year we have taken the younger children and teach them English. As soon as they acquire that, then they are ready to go ahead. The last council authorized me to put a thousand editions of the Creek Reader among the people who cannot read English. Some three years ago I distributed a thousand copies of the Creek Reader among the people in the nation. They all learned to read. Now we are distributing the Second Reader among them. They have a hymn-book and considerable Scripture. This is the education these men should have, for the influence of these boys and girls upon the full-blooded Creeks is becoming more marked every year.

Q. Are these children full-bloods, half-breeds, or what are they?—A. Some would pass for white children; some are full-bloods. They are all Creek citizens, every one of them.

Q. The other schools are doing well?—A. Yes, sir; I consider them as doing well.

Q. Your common schools in the nation are doing well, are they?—A. I should divide them into two classes: 1st, where the children speak English—these I think are doing well; 2d, it is very hard to set strict principles, as there is not a scholar who does not speak Creek. But where a child speaks English at school and Creek at home, and comes back to school and speaks English and goes back home and speaks Creek, the history of fifty years shows they do not learn English.

Q. English is taught in all your schools?—A. Yes, sir.

Q. Do you teach Creek, too?—A. No, sir. The Creek language is written phonetically and can be learned in two or three days so as to

read it. You merely have to learn the names of sixty characters and then you read it right along.

Q. You have no alphabet in the Creek language?—A. We use an alphabet of nineteen letters.

Q. But you have no alphabet in Creek?—A. O, no; this alphabet was established some twenty-five years ago by a company of the most intelligent Creeks who were desirous of printing the gospel. They got together with the interpreters and united on this alphabet. Their laws and constitution are printed in it. The whole people read it.

Q. Go on and state all about your schools.—A. I do not know that I made myself plain about these two classes of schools. I spoke of my own school. Thirty miles below here, at Eufaula, they have a school that was established forty years ago. Mr. Stidham was at one time a trustee over that school. That school has eighty boys. They formerly had forty boys and forty girls. Now they have only boys. I understand they have a one-third boarding-school of twenty girls and twenty boys that commences to-day.

Q. Where?—A. About three miles from here.

By Mr. PORTER:

Q. Tell the committee about our colored schools; how are they doing?—A. The colored people all talk English, and the schools are doing very well indeed.

By the CHAIRMAN:

Q. Do you allow the colored people to go to the boarding-schools?—A. No, sir; but I think they are mixing in the day-schools some.

Q. Do they have separate schools?—A. Yes, sir; they have separate schools, and where the neighborhoods do not object, they mix them. My understanding is that the colored people draw their fair proportion of the school fund and use it in their schools. I know the superintendent has consulted them about where they would have their schools, as well as about their teachers, books, &c.

Q. Have you any native teachers in your schools?—A. Quite a number of these schools; in fact, some of the best are those taught by graduates from these boarding-schools of the nation.

Q. Is there anything else you would like to say to the committee that has not been inquired of?—A. Well, until the breaking out of the war, I considered the progress of the Creeks in civilization as the most rapid I ever saw in any nation. I believe this is about all I wish to say.

Q. Do you think they are capable of self-government?—A. Yes, sir; as capable as any other people I ever saw. I consider them as men of a very high order. All they need is education. During the war I had a school where we had the Indians of some six or eight different tribes, and none of them showed more capability than the Creeks; some not so much. After the war they were left in an impoverished condition. I think their progress has been and is very commendable. The great trouble in the nation has been that designing, unscrupulous white men have kept political trouble among the people. It seems to be dying out more and more every year. My own feeling is that they should be let alone until they can be brought up by education to understand the laws and customs of the white people, then they will be ready and willing to take their places as American citizens. But to give them the laws of the white man, and mix them with the white people, would be the ruination of the people here, I think; that is my feeling about this matter.

By Mr. PORTER:

Q. Do you not think the agitation of these questions of sectionizing

the lands and allotting them, and territorializing the government, has a tendency to disturb them and retard their progress toward civilization?—A. I consider it the greatest evil the Creeks are subjected to. It has a decided influence in retarding their progress toward civilization. This continued agitation makes their whole future uncertain and keeps them in an unsettled condition of life.

NOVEMBER 19, 1878.

HO-LAH-TA, having been duly sworn (Judge Stidham sworn as interpreter). was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Ho-lah-ta.

Q. Are you a full-blood?—A. Yes, sir.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Were you born here?—A. No, sir.

Q. Where?—A. In the State of Georgia.

Q. Are you a farmer?—A. Yes, sir.

Q. How long have you been here?—A. I came here in 1837.

Q. Do you understand this question of the allotment of the lands in severalty, and are you in favor of having them sectionized, so that each member of your tribe should have his own land in fee?—A. I have had some experience in this allotting of our lands back in Georgia. Of course this is something like that. The people had the land surveyed and were located upon reservations allotted to them, and they were robbed of everything they had; cheated out of their land and everything.

Q. Are you in favor of each nation being allowed to retain its tribal customs and property, and would the Territory be benefited by the establishment of a Territorial government, making each and every member of the tribe citizens of the United States?—A. It did not suit me in Georgia, and I do not want to try the experiment again here.

Q. Then you are satisfied with the present form of government and condition of things?—A. That was what we were promised if we would come to this country; that we should be allowed to remain under our own laws and customs as long as we should last as a people. I am satisfied with our customs, and am satisfied to live in that way.

By Mr. PORTER:

Q. Did you receive an allotment in the old country, down in Georgia; and, if so, how did you dispose of it?—A. We were told a great many things in Georgia. When I was a boy I saw how it was done. They pretended to purchase the land from us. They would pay down five dollars and keep back the balance, and the Indians never saw it. In some cases they would get men to personate the Indians, and sell their lands without their knowing it. That was our experience in Georgia.

Q. All the people are allowed to farm and raise all the stock they want?—A. Yes, sir.

Q. They farm also, don't they?—A. Yes, sir; raise corn, wheat, potatoes, &c.

Q. So far as you know they are satisfied with the present condition of theirs?—A. Yes, sir.

Q. You hear no complaints?—A. No, sir; I hear no complaints.

Q. You have schools in your neighborhood?—A. Yes, sir; we have schools.

Q. And churches?—A. Churches, too.

Q. You don't want any change, do you?—A. No, sir; none at all.

By the CHAIRMAN:

Q. Have you anything else you want to say of your own accord?—A. Nothing.

MONDAY MARSHALL, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Monday Marshall.

Q. Where were you born?—A. On the Chattahoochee, in Alabama.

Q. How long have you been here?—A. I have been here 42 years.

Q. Slave, were you?—A. Yes, sir; I was a slave.

Q. What nation?—A. Creek Nation.

Q. You belong to the Creek Nation?—A. Yes, sir.

Q. Where were you during the war?—A. Part of the time in the South.

Q. What were you doing there?—A. I was taken there by my owners.

Q. By your master?—A. Yes, sir.

Q. When did you return here?—A. I came here a year before the war closed; my family and children were here, and everything else. So I got back here as soon as I could.

Q. Do you vote here?—A. Yes, sir.

Q. Are you recognized as a citizen?—A. Yes, sir.

Q. Do you have schools for your children?—A. Yes, sir.

Q. Are you a farmer?—A. Yes, sir.

Q. For yourself do you farm?—A. For myself.

Q. How much land have you inclosed?—A. About fifteen acres.

Q. Do you make a good living?—A. Tolerable.

Q. Do you want the lands allotted?—A. No, sir.

Q. You are opposed to that?—A. Yes, sir; I am opposed to that.

Q. Do you know what I mean by allotting the lands?—A. Yes, sir; I understand you. I would rather hold the lands in common.

Q. Do you want a change in the government?—A. No, sir; we are satisfied as we are, and we are doing very well; we wish to remain as we are and govern ourselves.

Q. What do you mean by wanting to govern it yourselves; do you think if the government was changed you would not have a chance to govern yourselves?—A. I mean we are satisfied as we are. If the government would let us have our own local laws in the Territory I would rather have it as it is.

Q. The government does not intend to take away your laws.—A. Well, we would rather have it as it is.

Q. And hold the lands in common?—A. Yes, sir; as it is now.

Q. The majority are in favor of that?—A. Yes, sir.

Q. Are there any in favor of a change of the government?—A. None that I have seen. None with whom I have talked.

Q. Are all opposed to it?—A. All are opposed to it.

Q. Why do they keep it secret; are they in fear of intimidation?—A. I do not know. I never heard any speak in favor of sectionizing the lands.

Q. Suppose a man should be in favor of it and should undertake to talk about it, would anybody interfere with him?—A. I do not know that they would. Our people have their own opinions.

Q. You allow men to vote their own views and opinions?—A. Of course, in all cases.

Q. Are there any colored people in your nation, who were born in the nation, deprived of the right to vote?—A. Well, there are some in our country who are not recognized as citizens because they did not come in twelve months as prescribed by the treaty. They are not allowed to vote.

Q. And some of these were born in the Territory?—A. Yes, sir; they were born in the Territory, but according to the treaty of 1866 they were shut out.

Q. Do you think that is right?—A. No; I do not think it is right, but I suppose that might makes right.

Q. Don't you think it is hard that a man should be deprived of living in the place where he was born?—A. Oftentimes it is the case where the weaker have to submit to the stronger power.

Q. You were brought here as a slave?—A. I was born in the Creek Nation.

Q. When they were down in Alabama?—A. Yes, sir; many were born here and sold into the States, and those are not allowed here at all.

Q. Not allowed here at all?—A. No, sir; not as citizens with the right to vote.

Q. You mean they were sold in the States as slaves?—A. Yes, sir; and often, if they return, they are not allowed to become citizens.

Q. Do you think that is right?—A. I do not think it is.

Q. Don't you think that law ought to be changed?—A. Well, I do not know.

Q. Suppose you were one of them?—A. The wise men made the government. I am ignorant and do not know much about law.

Q. Suppose you were one of them; don't you think that law ought to be changed?—A. Well, it looks hard.

Q. Do you know any colored men in the nation who were in the Union Army?—A. Plenty of them.

Q. Do you know any of them who are deprived of the right to vote?—A. No, sir.

Q. Did they all get back in time?—A. Yes, sir.

Q. All of them?—A. I do not think any of them are deprived of the right to vote or of the right of citizenship. If it is so, it is more than I can say; I do not recollect any. It may be there are forty who belonged to the Union Army who are citizens in the country.

Q. How are the schools doing?—A. Well, we have seven day-schools, in this district; one across the river.

Q. You mean seven in the whole Creek Nation?—A. Yes, sir.

Q. Are they sufficient to afford all your people a good schooling?—A. No, sir; there is a place on Tas-ke-kee and on the North Fork where they need schools.

Q. The schools you have here are for colored children?—A. Yes, sir.

Q. They do not allow them to mix?—A. No, sir; they do not mix.

Q. What kind of teachers have you?—A. We have white teachers.

Q. You are pretty well satisfied with the school arrangements?—A. They are well conducted, but still it seems our children are not advancing much in education. Some can read and write and are doing well.

By Mr. PORTER :

Q. You have a mission school?—A. We have one mission school on the mountain, the agency building. We are to occupy it for one session. I do not know how it will turn out. I do not know whether it will be turned over to us or not; we cannot tell. A school was started yesterday.

Q. How many scholars were there?—A. It is to be forty.

Q. They are to be boarded?—A. Yes, sir.

Q. Are they to be clothed?—A. No, sir.

Q. What do you mean by mission schools?—A. We make contracts with the different religious denominations to take care of the children for so much. We pay six dollars and a half per scholar per month for boarding.

By the CHAIRMAN:

Q. Where is this school?—A. About three miles up on the mountain; the agency building.

By Mr. PORTER:

Q. Do you think the colored people have their share of the school-fund?—A. Well, I do not know; I do not think they do.

By Mr. STIDHAM:

Q. There are less than two thousand colored people in the nation, are there not?—A. I do not know.

Q. How many Creeks have we?—A. I do not know.

Q. Don't you know how many colored people there are?—A. There might be two thousand.

Q. Do you know how much money the Creeks have in the school-fund?—A. I do not know.

Q. How much money per year do they devote to school purposes?—A. I do not know. In the private schools they have \$400 per year for each scholar.

Q. You cannot tell whether the colored people had their proportion; you do not know how many Creeks there are, and how much was allowed?—A. No, sir.

Q. Don't you know \$2,056 was allowed the nation this year?—A. Seven neighborhood schools at \$400 apiece would make that.

Q. You do not know how many schools the Creeks have?—A. I have never been to examine them, but there are a good many.

Q. You don't know whether the colored people have their share of the school-fund?—A. No, really. If they were treated the same as the Indians I do not see why we are behind; but what they are lacking I do not know. The parents of the children have the bed clothing to find.

Q. You do not think the colored people have their share of the school fund. Now I ask you if you know how many colored people there are, and how many Creeks there are? I want you to say whether you know their proportions or not.—A. No, sir; I do not.

Q. The colored people hold office?—A. Yes, sir; they hold office.

Q. You have members in the council?—A. Yes, sir.

Q. You have one man elected to the supreme court?—A. Yes, sir.

Q. You are not denied anything on account of your color?—A. No, sir.

Q. Has not the Creek council, at its last session, adopted about sixty-eight persons whose cases came before the council, who had been excluded?—A. I understood so; yes, sir.

Q. Were they not assured that if the balance made application in the same way they would be treated in the same manner by being adopted into the nation?—A. I never heard of that; I was not at the council.

Q. You know those others were adopted, do you not?—A. Yes, sir.

Q. Do you know how many there are who have not been recognized as citizens on account of not being here within the six months' limit prescribed by the treaty?—A. I cannot tell you the number.

By Mr. BOUDINOT:

Q. How many do you think?—A. I cannot tell exactly.

Q. Well, how many do you think? Two hundred?—A. Not that many.

Q. Are the children of those who are not allowed to vote allowed any portion of the school fund?—A. I do not know about that; while they are not allowed as citizens, still they send their children to school.

By Mr. PORTER:

Q. They are all allowed to farm and raise stock?—A. Yes, sir.

Q. And live like other people?—A. Yes, sir; if they are not too lazy to work and cultivate the land. The lands are free. So far as that is concerned, I am satisfied with the condition we are in. We have the same right to the land, the same privileges that the Indians have. Outside of that I have nothing more to say.

By the CHAIRMAN:

Q. Are the laws well executed?—A. Sometimes they are a little neglected in some districts. We do not carry out the laws as promptly as we ought to do.

Q. That is the fault of the officers?—A. Yes, sir.

C. M. MURPHY, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. C. M. Murphy.

Q. Where were you born?—A. In the State of Tennessee.

Q. To what nation do you belong?—A. Creek Nation.

Q. Are you a Creek by birth?—A. No, sir.

Q. You are a Creek by adoption.—A. Yes, sir; by adoption.

Q. What is your occupation?—A. I am a farmer.

Q. What do you know about this question of territorializing the country here and making the people citizens of the United States; are you in favor of it, or are you opposed to it?—A. I am opposed to it.

Q. What are your sentiments as to the allotment of the lands; do you think that would be a good thing for the nation?

The WITNESS. Without consulting the nation?

The CHAIRMAN. It is your opinion we want. Are you in favor of it?

The WITNESS. No, sir; I am opposed to it.

By the CHAIRMAN:

Q. What proportion of your friends and neighbors are desirous of such an allotment of lands?—A. In my own immediate neighborhood I do not know of any one who is in favor of allotting the lands.

Q. Are there any in favor of changing the government, territorializing it by extending the laws of the United States over it?—A. I do not know of any who are in favor of having that done.

By Mr. BOUDINOT:

Q. How long have you been a citizen of the Creek Nation?—A. Since May, 1861.

Q. Did you become a citizen by marriage or by adoption?—A. By marriage.

Q. How much of a family have you?—A. Including myself, I have five in family—wife and three children.

Q. You prefer yourself to hold your lands for your wife and children in severalty, or do you prefer to hold them in common as they are?—A

That question is just this: So far as I am individually concerned, it might be for my benefit, but the majority of the Indians are opposed to it; a great majority are opposed to it. I am a citizen by adoption; I have been well treated and I am opposed to anything being done contrary to the wishes of the Indians.

Q. Is it not the common understanding or impression of the Creek Nation that the allotment of the lands in severalty means the giving of their lands to the railroads, and that it would be dangerous to them, inasmuch as it might result in their being deprived of their lands, to have them sectionized?—A. Experience has proven that it would be.

Q. They tried that once and fear they cannot hold them?—A. Yes, sir.

Q. And they do not want to make another experiment for fear it would be the same thing over again?—A. That is what they are afraid of.

By Mr. ADAIR:

Q. Don't you think that holding lands in common, instead of having them divided up in severalty, is the best for them, inasmuch as they are a stock-grazing people?—A. Decidedly.

Q. It suits their mode of life and condition better?—A. It suits them decidedly. There are a great many here who previous to the war had large flocks. I have seen five or six thousand head of cattle range on a little hill. We are now beginning to improve again, and by holding the country as it is, in a few years we can have as many cattle as we had then.

By the CHAIRMAN:

Q. State the advantages or disadvantages to the people of dividing the lands in severalty and in fee-simple so that each should own his land separately.—A. The way we are situated there is no danger of a few men holding and owning all the land. By holding the lands in common every man can get a home where he wants it.

By Mr. ADAIR:

Q. Provided he don't interfere with the improvement of anybody else?—A. Yes, sir; provided it does not interfere with anybody else. I might, probably, be better off. I might hold my lands, but I do not think a majority of the Indians could do it.

Q. Why?—A. They do not understand it; they are getting along very well, making improvements faster in their own way. I believe, Mr. Senator, it is best to let them alone; that is my candid opinion.

By the CHAIRMAN:

Q. This people are capable of managing their own business?—A. Yes, sir; they manage their own business. There are a great many full-bloods who might be imposed upon.

Q. They do not give things away, do they?—A. Not often.

Q. They know the value of things?—A. Yes, sir.

By Mr. ADAIR:

Q. They have had their lands taken away from them once?—A. Yes, sir; by having consented to their being sectionized and surveyed.

By the CHAIRMAN:

Q. Where?—A. In the States of Alabama, Tennessee, Georgia, and Florida.

Q. Do you not think there is a great difference between the people here now than when they were there; are they not more intelligent to-

day?—A. When we look at the way things occurred out in the Black Hills, we are afraid of it.

Q. What are the people afraid of?—A. What the people are mostly afraid of is, if the land should be allotted in severalty there are thousands and tens of thousands of men out in the States of Missouri, Kansas, and Arkansas who would rush into the country so fast that we would soon be overpowered. We could not help ourselves; and, as in the case of the Black Hills, the Government of the United States would be powerless to help or protect us.

By Mr. ADAIR:

Q. The Delawares, Shawnees, and various other Indian tribes tried sectionizing the lands in Kansas?—A. Yes, sir.

Q. And they had to come here to live; they could not stay there, and were crowded out?—A. Yes, sir.

Q. Did not the old Cherokees try it in Arkansas?—A. Yes, sir; that is my information.

Q. Are there not a great many Indians scattered about in tribes who have been in Arkansas and Nebraska, who have come here to find homes; that is your understanding, is it not?—A. Yes, sir; that is my understanding.

Q. Are there not between thirty and forty different tribes in this country who have had to come here and find homes?—A. Well, from my own knowledge I do not know how many there are. That is my information about it.

Q. The Indians have always treated all white men with civility and kindness, have they not?—A. Well, I have been here twenty years, and I have never, except in a very few instances, had anything to complain of.

Q. You have been well treated, have you not?—A. When I first came among the Cherokees I was well treated. I did not come with the intention of staying. I came upon a trading expedition, and I became attached to the country and staid here two or three years, and I am here yet. I have not seen the moment that I have regretted it.

Q. They give the railroads the right of way the same as they have in the States?—A. Yes, sir.

Q. They do not interrupt them, do they?—A. No, sir; no interruption that I have seen. There was a case a short time ago, but a white man did that.

Q. A citizen of the United States?—A. Yes, sir; I believe so.

By Mr. BOUDINOT:

Q. Was he not a citizen of the Cherokee Nation by marriage?—A. No, sir; I never heard of that.

Q. I think you will find that he was an adopted citizen.—A. Well, that makes no difference; he was a white man. I never heard of a Cherokee or a Creek Indian doing any damage to the railroads.

By Mr. ADAIR:

Q. Nor interrupting them in any way?—A. No, sir.

By the CHAIRMAN:

Q. Is there anything else you wish to state of your own accord that has not been inquired of?—A. No, sir; nothing.

At this point the committee notified the Creek delegates that they were ready to proceed with the examination of Creek witnesses.

MUSCOGEE, CREEK NATION,
Indian Territory, November 21, 1878.

The committee met. Senators present, the chairman and Mr. Grover. Present on behalf of the Creeks, Messrs. Porter, Hodge, and Stidham.

NED ROBINS, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Ned Robins.

Q. Are you an Indian?—A. I claim to be.

Q. Were you born here?—A. I am a citizen of the Creek Nation.

Q. Were you born in the nation?—A. I was not born in the nation.

Q. You were a slave?—A. Yes, sir.

Q. Where were you during the war?—A. Part of the time during the war I was down South, and in the latter part of the war, in the breaking up of the war, I was North.

Q. How are you getting on here?—A. Very well.

Q. Do you claim the right to vote?—A. Yes, sir.

Q. And to send your children to school?—A. Yes, sir.

By Mr. STIDHAM:

Q. They allow you to have your vote?—A. Yes, sir.

By the CHAIRMAN:

Q. Do you hold any office in the Creek Nation?—A. Yes, sir; I am a member of the national council.

Q. How long have you been a member of the national council?—A. It has been now eight years.

Q. How many colored men are there who are members of the national council?—A. There are four from our town, seven from the town of Arkansas, and there are five from the Canadian district; that makes 16 in all.

Q. How many members are there in the council, Indians, colored men, white men, and all; do you know?—A. There are 97 in my house—the lower house.

Q. What compensation do you get per day?—A. We get four dollars per day.

Q. How long do you sit generally?—A. Sometimes a month, sometimes less.

Q. How are the people in your nation in regard to allotting the lands; are they opposed to it?—A. Yes, sir.

Q. Do you want any change in the form of government here.—A. No, sir.

Q. Do you know what is meant by a Territorial government?—A. Well, I believe I do; I may not understand it as you do.

Q. How are the schools doing in your district?—A. Very well. They are in good condition.

Q. Have you schools enough in your district?—A. Yes, sir.

By Mr. PORTER:

Q. Do the people in your district get their proportion of the school fund?—A. Yes, sir.

Q. You have seen the estimates made by figures?—A. Yes, sir.

Q. You are a member of the committee on education?—A. Yes, sir.

By Mr. STIDHAM:

Q. The calculation was made so as to proportion them to a fraction?—A. Yes, sir.

By Mr. PORTER:

Q. How much per head is the school fund?—A. I do not recollect.

Q. How much for each person of your nation—you recollect the estimate they made—how much for each person; do you know?—A. I do not recollect.

Q. How many colored people are they?—A. There are considered to 2,000.

Q. How much of a school fund is there for colored people?—A. Thirty-two hundred dollars.

Q. Have you neighborhood schools?—A. Yes, sir.

Q. Do you recollect the allowance for books?—A. About \$130 or \$150; I do not recollect exactly.

Q. You have a colored mission school now, have you not?—A. Yes, sir.

Q. Do you recollect how much per head is allowed for each person in that school?—A. I believe it was two dollars per head, if I am not mistaken.

Q. The school fund is divided equally between the Indians and the colored people in your district, is it not?—A. Yes, sir; that was the calculation in proportioning for the school fund for colored schools.

By the CHAIRMAN:

Q. The colored people in your nation are allowed to vote?—A. Yes, sir.

Q. Are they all considered as citizens?—A. Yes, sir; they are all considered as citizens. There are some here who are not citizens, and they are not allowed to vote.

Q. Do you know how many of them there are?—A. I do not remember, but there are a good many.

Q. Half of them?—A. No, sir.

Q. Well, what do you think of that; do they allow them to live here?—A. They allow them to live anywhere, the same as other citizens.

Q. Have not a good many been born here?—A. Yes, sir; born and bred here, and there are some who are deprived of their rights and debarred from their rights by treaty.

Q. And they are married here and settled?—A. Yes, sir.

Q. Do they deprive them of their rights by treaty stipulation?—A. There are two classes of people here. When a man marries here the law entitles him to certain privileges; the other is a different case.

Q. I am speaking of a man being born here and being deprived of citizenship because he was decided to be of that element. Now, I want to know what becomes of those citizens who were born here and live out of the Territory, and decided to be out of the limit of the Territory, are they not considered as citizens?—A. No, sir.

Q. What becomes of them?—A. The Indians adopt them.

Q. The council adopts them?—A. Yes, sir; the council adopts those who apply for citizenship.

Q. Can you read and write?—A. No, sir.

Q. Can you read and write in the Creek language?—A. No, sir.

Q. How far do you live from here?—A. Three miles.

At this point Mr. H. Hodge was sworn as interpreter.

ITS-HARS-HAR-JO (Mr. Crazy Beaver) having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Its-hars-har-jo or Crazy Beaver.

Q. Are you a Creek by birth?—A. Yes, sir; a Creek by birth.

Q. Does Muskogee mean "Creek nation"?—A. Yes, sir; "Muskogee Nation."

Q. The name of "Creek" was given you by the white people?—Yes, sir.

Q. Do you hold any office in the Creek Nation?—A. Yes, sir; I am an officer of the nation.

Q. What office do you hold?—A. I am a member of the council.

Q. Of the lower house?—A. Yes, sir; of the lower house.

Q. How long have you been a member?—A. Ten years.

Q. When were you first elected a member?—A. I was elected a member just after the close of the late war. Have been elected three times.

Q. How long is the term?—A. Four years.

Q. Can you read and write the English language?—A. No, sir.

Q. In the Muskogee or Creek language?—A. A little, but I write slowly.

Q. Are your people in favor of sectionizing the lands, territorializing the government, &c.?—A. None of my people want a territorial government.

Q. Do you think they want the lands allotted?—A. No, nor the lands sectionized.

By Mr. PORTER:

Q. Do you recollect any Creeks to have held their lands in severalty in Alabama?—A. I know little about that.

Q. How old were you at that time?—A. I was a boy.

Q. Did you get pay for the lands given you and your family then?—A. No, sir.

Q. And a great many have not been paid?—A. A great many have not been paid.

Q. Do you know how many?—A. I do not know how many; I have a list of them at home.

DANIEL ANDERSON, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Daniel Anderson.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you an officer in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am judge of the court.

Q. Judge of what court?—A. Ocmulgee court.

Q. How long have you been judge?—A. Little over a year.

Q. Are you a lawyer?—A. Yes, sir.

Q. Do you practice as a lawyer?—A. Yes, sir.

Q. Have you a license?—A. Yes, sir.

Q. What is your jurisdiction as a judge; have you jurisdiction of civil and criminal cases?—A. My jurisdiction is to execute the Creek law.

Q. Do you claim jurisdiction in both civil and criminal cases?—A. Yes, sir.

Q. Do you try civil cases, and to what amount?—A. Yes, sir; \$100.

Q. Is there an appeal from your decision to the circuit court, or is your decision final?—A. No, sir, we do not have an appeal.

Q. In criminal cases what cases do you hear?—A. All criminal cases.

Q. What punishment do you inflict?—A. If convicted they are punished by the lash.

Q. So much for the first offense, so much for the second, and so on?—
A. We give them so much for the first offense, and so much for the second, and so much for the third. For the first offense we give them fifty lashes, and for the third offense they suffer death. For resisting an officer they get twenty-five lashes.

Q. Then for larceny, first offense, what is it?—A. Fifty lashes.

Q. Second offense?—A. One hundred lashes.

Q. Third offense?—A. Death.

Q. How do you kill them or punish them with death; do you whip them to death?—A. No, sir.

Q. Hang them?—A. No, sir.

Q. Shoot them?—A. For the third offense.

Q. Do you often do it?—A. No, sir.

Q. Have you sentenced anybody to death since you have been judge?—

A. No, sir; not yet. I think I will.

Q. You have some on hand?—A. Yes, sir.

Q. Are they tried by jury?—A. Yes, sir.

Q. And you are judge?—A. Yes, sir.

Q. How many are there on the jury?—A. Twenty-four have to be summoned and twelve are chosen out of that number.

Q. Have you a jail?—A. No, sir.

Q. How do you keep your prisoners?—A. By any way I can do it.

Q. Do you have guards?—A. Yes, sir; and sometimes chains, and sometimes locks, and sometimes any way I can do it.

Q. Do you try capital offenses, murder, &c.?—A. Yes, sir.

Q. Do you try manslaughter there in your court?—A. Yes, sir.

Q. And civil cases?—A. Yes, sir.

Q. That is, where the Creeks' money is concerned?—A. Yes, sir.

Q. How about adopted citizens; do you try them?—A. Yes, sir.

Q. What salary do you get?—A. Two hundred dollars.

Q. A year?—A. Yes, sir.

Q. Then I suppose your court is not in session all the year?—A. No, sir.

Q. How often do you sit?—A. We convene whenever a man is arrested and I can get the jury together.

Q. Have criminals a right to trial as soon as they can be brought forward?—A. Yes, sir; criminals under arrest have a right to a trial as soon as they can be brought forward and the witnesses summoned.

Q. How are your people about sectionizing the land?—A. I do not think there is one in favor of it. I do not know one who is in favor of sectionizing the land.

Q. How about territorializing the government; do any of them want a change in the government?—A. No, sir.

Q. They are not in favor of it?—A. No, sir.

By Mr. PORTER:

Q. How are the schools getting on?—A. Very well.

Q. You have enough schools?—A. Yes, sir.

JESSE FRANKLIN, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Jesse Franklin.

Q. Are you a Creek?—A. Yes, sir.

Q. Were you a slave?—A. Yes, sir.

Q. Were you born here?—A. I was born among the Indians.

Q. Where?—A. In the State of Alabama.

Q. What office do you hold in the nation?—A. I am judge of the supreme court.

Q. Judge of the supreme court, are you?—A. Yes, sir.

Q. How many judges are there?—A. Five.

Q. How many colored men are on the bench besides you; any?—A. No, sir; I am the only one.

Q. What are the other four?—A. Creek Indians.

Q. How long have you been judge?—A. Three years this fall.

Q. What is your salary?—A. Five dollars per day.

Q. While in session?—A. Yes, sir.

Q. How often do you sit?—A. Once a year.

Q. How long do you sit?—A. As long as there is business to attend to.

Q. Where do you sit?—A. At Okmulgee.

Q. What cases do you hear?—A. We hear criminal and civil cases.

Q. Criminal and civil cases?—A. Yes, sir.

Q. Is there any appeal from your decision?—A. No, sir.

Q. What is the punishment in criminal cases?—A. If criminals are convicted we punish them by whipping; we give them so much for the first offense, so much for the second, and so much for the third offense.

Q. What is it for the first offense?—A. Fifty lashes.

Q. What for the second?—A. One hundred lashes.

Q. And for the third?—A. Death.

Q. Then for larceny the punishment is 50 lashes for the first offense?—A. Yes, sir.

Q. For the second, 100 lashes?—A. Yes, sir.

Q. For the next offense, death?—A. Yes, sir.

Q. How do you execute them?—A. We shoot them.

Q. Is there an appeal in civil cases?—A. All cases over \$100 in the circuit court.

Q. How are the people, so far as you know, in regard to sectionizing the land?—A. I do not know one in favor of it.

Q. What is their sentiment in reference to territorializing the government, extending the laws of the United States over them, making them a Territory like New Mexico, &c.?—A. I do not know one in favor of it.

Q. Are they all satisfied to remain as they are?—A. Yes, sir; all satisfied to remain as they are.

Q. How about the schools?—A. They are doing well.

Q. Have the colored people schools enough here in the Creek Nation?—A. So far as they are concerned they get their proportion.

Q. You get your share of the school fund?—A. Yes, sir.

By Mr. HODGE:

Q. Is there any one in the country in favor of the establishment of a Territorial government?—A. No, sir.

Q. Is there any one in the country in favor of sectionizing the land?—A. Not one.

By the CHAIRMAN:

Q. Can you write your name?—A. No, sir.

JAMES R. GREGORY, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. James R. Gregory.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. What office do you hold in the nation?—A. I am judge of the district court.

Q. How long have you been judge of the district court?—A. I served two years, one term.

Q. Is that the length of a term?—A. That is the length of a term. The second term I served two and a half years; I was appointed a few days after the expiration of the term, in place of a suspended judge.

Q. What salary do you get?—A. Two hundred dollars a year.

Q. Are you a lawyer?—A. No, sir; I have never followed it as a profession.

Q. Do you have a cognizance of civil and criminal cases?—A. Yes, sir.

Q. Is there any appeal in criminal cases?—A. No, sir; there is none except to the pardoning power, or executive of the nation.

Q. Have you any other courts to review your decisions?—A. No, sir.

Q. Nobody reviews them but the principal chief or pardoning power?—A. No, sir.

Q. You try murder cases?—A. Yes, sir.

Q. Manslaughter and all criminal cases?—A. Yes, sir.

Q. What is the punishment for murder?—A. Criminals convicted of murder are shot.

Q. In larceny you have whipping, do you?—A. Yes, sir.

Q. How many lashes for the first offense?—A. Fifty.

Q. Do you always impose that penalty?—A. Yes, sir.

Q. Do you always give them 50 lashes?—A. Yes, sir.

Q. Nothing else?—A. No, sir; that penalty is always inflicted.

Q. Have you any discretion if you want to make it less?—A. None.

Q. Can you make it more?—A. No, sir.

Q. For the second offense how many lashes?—A. One hundred.

Q. For the third offense?—A. For the third offense the punishment is death.

Q. Have you ever imposed the death penalty?—A. Not since I have been in office; I don't know of but one case of a criminal where that sentence was imposed upon him. He was not executed; he made his escape.

Q. What was the opinion of your people in regard to sectionizing the land, territorializing the government, extending the laws of the United States over them so as to make their Territory like that of New Mexico; are they in favor of it?—A. They are well satisfied as they are.

Q. They are all satisfied, are they?—A. They are all satisfied with the present government.

By Mr. STIDHAM:

Q. Are they in favor of the allotment of the lands, dividing them up in severalty so that each member shall hold his own lands in severalty?—A. No, sir.

By Mr. PORTER:

Q. Do you think the Creeks are improving and progressing very fast?—A. Yes, sir; they are improving.

Q. Are they improving their crops?—A. Yes, sir.

Q. Their cattle?—A. Yes, sir.

Q. And hogs?—A. Yes, sir.

Q. And they are improving themselves?—A. Yes, sir; they are making good progress. I have been through Kansas, Missouri, and Ar-

kansas, and they are improving and advancing their crops and stock as fast as they are in cities.

By the CHAIRMAN:

Q. Well, judge, you are well acquainted with all your people; are they not pretty intelligent?—A. Yes, sir; they are intelligent.

Q. They manage their own business?—A. Yes, sir.

Q. They are mainly farmers?—A. Yes, sir.

Q. They buy and sell?—A. Yes, sir.

Q. Do they not give things away?—A. No, sir; they know what things are worth.

Q. Do you think they are capable of becoming citizens of the United States?—A. They are competent to be citizens of the Creek Nation.

Q. You do not know whether they would be competent to be citizens of the United States or not?—A. I am not prepared to answer that question.

By Mr. STIDHAM:

Q. You do not think they are far enough advanced in civilization to take so high a degree?—A. I believe they are not; but in time they will become advanced far enough for citizens of the United States.

The WITNESS. If you will allow me, I will explain myself. This is the condition of the Creeks: They are a people that have confidence in one another, and get confidence from that as a consequence. They think they are not capable of dealing with people who are educated, &c. They have confidence in their own people; a great many of them leave their places unlocked and go away from home for miles. They talk one way here and stand to it, and they think they would not be safe among a class of people where they would be compelled to resort to the law as a means to keep themselves safe.

JAMES GRAY, having been duly sworn by the chairman, was examined, Mr. Hodge being sworn as interpreter.

By the CHAIRMAN:

Question. Are you a Creek Indian?—Answer. Yes, sir.

Q. What office do you hold?—A. I am a member of the council.

Q. Are you a full-blooded Creek Indian?—A. Yes, sir; I am a full-blooded Creek Indian.

Q. What do your people think about sectionizing the lands, territorializing the government, &c.?—A. There are none who want their lands divided, and none who want a Territorial government.

Q. Can you read in the Creek language?—A. A little.

Q. Can you read and write in the English language?—A. No, sir.

Q. What is your occupation?—A. I am a farmer.

Q. You are a farmer?—A. Yes, I am a farmer.

Q. How much of a farm have you?—A. I have about 20 acres under cultivation.

Q. How are the schools getting on?—A. The schools are doing well.

Q. There are enough schools in your district, are there?—A. Yes, sir.

By Mr. STIDHAM:

Q. Are there any people there you know of in favor of the allotment of lands?—A. No, sir.

Q. In favor of territorializing the government, extending the laws of the United States over the Territory so as to make the people citizens of the United States?—A. No, sir.

HENRY REED, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Henry Reed.

Q. Are you a Creek?—A. Yes, sir.

Q. Were you a slave?—A. No, sir.

Q. Where were you born?—A. I was born in the Creek Nation.

Q. In this Creek Nation?—A. In this Creek Nation.

Q. In the old Creek Nation, back in Alabama?—A. Yes, sir.

Q. How long have you been in this Territory? Did you come here when a boy?—A. Yes, sir; I came here when a boy.

Q. Were you free?—A. Yes, sir.

Q. Do you hold any office in this nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a representative of the council.

Q. How long have you been a member of the council?—A. Three years.

Q. How are your schools in your neighborhood?—A. They are doing very well.

Q. And do you get your full share of the school fund?—A. Yes, sir. I think they are well satisfied there.

Q. You have no reason to complain?—A. No, sir; I have no reason to complain. The people are satisfied and can have no reason to complain.

Q. The people are satisfied, you think?—A. Yes, sir.

Q. Do your people want any change in the government here?—A. No, sir; they are all satisfied.

Q. Do they want any change in the manner of holding their lands? Do they want them allotted and sectionized, divided up so that each may have his own land?—A. No, sir.

Q. Are you a farmer?—A. Yes, sir.

Q. How much land do you farm?—A. About 80 acres, I guess.

Q. Would you rather have your land remain as it is now, or would you rather own it in fee-simple?—A. I am satisfied to hold my land as it is now.

Q. It suits you, does it?—A. Yes, sir.

By Mr. STIDHAM:

Q. You are a member of the council?—A. Yes, sir.

Q. Have you ever heard anybody in your neighborhood say he was in favor of the allotment of the lands, sectionizing them, &c.?—A. No, sir.

Q. Have you ever heard anybody say that he wanted a change of government?—A. No, sir.

Q. And the people send their children to school, do they?—A. Yes, sir.

By the CHAIRMAN:

Q. Can you write your name?—A. Yes, sir.

WARD COACHMAN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Ward Coachman.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a chief?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir; I think so; I may have a little drop of white blood in my veins.

Q. What is your office?—A. I hold the office of principal chief.

Q. Principal chief of the nation?—A. Yes, sir.

Q. How long have you been principal chief?—A. It has been two years.

Q. When were you elected?—A. I was elected first as second chief, but since that time I have been promoted to principal chief.

Q. What salary do you get as principal chief?—A. One thousand dollars per year.

Q. Do your duties occupy your whole attention all the time?—A. Yes, sir.

Q. You stay at the capital of the nation, do you?—A. My residence is thirty miles from there. I go to the capital once a week and I am there every ten days. My private secretary is always at the capital.

Q. What salary does the private secretary draw?—A. Three hundred dollars per year.

Q. What is the wish of your people, so far as you know, in regard to sectionizing the lands?—A. Well, the wish of the people is to manage their own affairs.

Q. What is the wish of your people, so far as you know, in regard to territorializing the government, forming a Territory of the United States like that of New Mexico, and extending the laws of the United States over them?—A. They want to govern themselves, and they do not want any sectionizing. Time after time the council has instructed me to protest against such a thing, and I have been working under that instruction to continue to sustain the wish of the people, and that is my desire.

Q. You have a council, have you?—A. Yes, sir.

Q. An executive council of the nation?—A. Well, there is no system provided, but I generally make it a rule to call upon the prominent men of the nation to come and consult upon matters that come up affecting the nation. I always bring men to the council and consult them before I make a decision upon any question.

By Mr. STIDHAM:

Q. Do you know of any one person in the Creek Nation who is in favor of sectionizing the lands or territorializing the government?—A. I never heard of any one making such a suggestion.

Q. So far as you know they are unanimously against it?—A. So far as I know they are against it, and they have good reasons to be against it.

Q. Have they had some experience in this business of territorializing the government and sectionizing the lands? What makes them against it?—A. Yes, sir. I understand it. I was born in Coosy, Ala., and I was about fifteen years old at the time that we came to this country, but I know how the people were treated then when they sectionized the country there, and the lands were allotted and bad men would get in there and defraud them. They had an agent there, and the Indians would go before the agent and certify to the making of a treaty with the Indians, when the owners of the land were not aware of it, and they would get some other Indians to personate these parties, cultivate the lands, and would sell them when the land was not sold at all, and the parties owning them would find that the lands were gone, and they would come up expecting to get their lands. After a while they would find that they had been sold. There is a great deal of our land so taken away from us by sectionizing, and we are afraid of it, and we want to live here as we are. We have experienced it, and we don't want any change now.

Q. In coming to this country were not the Indians guaranteed protection by the Government of the United States so long as they should remain a people and to continue to live in this country?—A. Yes, sir.

Q. And they do not want any change from that?—A. No, sir; we want to hold our government as the United States has promised we should, and it has promised to protect us and let our lands be held as we have held them.

Q. Do not you believe that it is the best protection for the lower classes of our people, the ignorant classes, those who are not so far advanced; is it not the best protection for them, and the only way to secure a home for them, to hold the lands in common?—A. Yes, because these ignorant ones will be taken advantage of by the sharpers, and the Indians themselves will turn sharpers and they will take the lands away from the ignorant and dispose of them.

By the CHAIRMAN:

Q. Suppose all the lands owned by your tribe were allotted in sections of 80 acres to each member of the tribe and secured so it could not be sold for taxes or debts and the remainder of the lands sold and the proceeds kept by the United States and the interest on the same annually paid to the tribe, would it not improve the condition of the Indians?—A. It is hard to tell that; they could not fix it so; I am afraid they could not fix it that way.

By Mr. STIDHAM:

Q. Are you not afraid that another Congress would undo that action, and it would be like Joseph of the old time?—A. They might promise us that, but when we got our lands there would be a new set of Congressmen coming in and they would say we cannot oppress these people or take their rights; there would be a new set of men, and we would be at the mercy of the land speculators again.

By the CHAIRMAN:

Q. Do you not think the people are capable of taking care of themselves, that is, the most of them?—A. No, sir; they are not.

Q. How is the order of the nation; is there much crime in it?—A. Well, there has been some crime committed; I don't know that there has been anything done much more than anywhere else. There has been some crime and I have directed the men charged with the execution of the law to execute the law. They never have refused to do it, for that matter.

By Mr. STIDHAM:

Q. As to the people, they are quiet, are they not?—A. Yes, sir; as a people for the last four years of my administration they have been quiet.

Q. Where there has been any little disturbance at all it has been created by outside parties?—A. Yes, sir; it has been caused by white men coming and taking advantage of the Indians and making an impression upon the intelligent people by a certain class to get up opinions against them with people pressing them out, now that the people understand what they mean.

By the CHAIRMAN:

Q. Is there any school fund set apart for the schools?—A. Yes, sir; so far as I know.

Q. Has it been faithfully applied?—A. Yes, sir; I think so, because I never heard any complaints; and another point is made that we have taken money out of the general fund to create a school fund to help

along and get more schools to satisfy the terms of the people. In one instance there has been more money taken, but the money has been placed back in the general fund, when the general fund came on we replaced it.

By Mr. STIDHAM:

Q. Do you know the amount of the school fund?—A. We have \$10,000, I think.

Q. We sometimes use \$30,000, do we not?—A. Yes, sir; we expend more than \$10,000.

Q. What is the condition of your nation financially; that is, the fund which you have; does it pay your expenses?—A. Yes, sir.

N. B. MOORE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. N. B. Moore.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. By birth or adoption?—A. By birth.

Q. Do you hold any office in the nation?—A. No, sir.

Q. What is your occupation?—A. Farmer, stock-raiser, &c.

Q. What is your opinion of the people in your neighborhood in regard to sectionizing the land?—A. They do not want any change.

Q. What is their opinion in regard to territorializing the government, extending the laws of the United States over it, and making it a Territory like New Mexico; are they in favor of that or opposed to it?—A. They do not want any change in the government here; all that we want is to have the government to pay us what it owes us.

Q. You do not want any change at all?—A. No, sir.

By Mr. STIDHAM:

Q. You have had some experience in the allotment of the lands in Alabama, have you not; and were the lands there allotted?—A. Yes, sir.

Q. Your father was a white man?—A. Yes, sir.

Q. Your mother was an Indian?—A. Yes, sir.

Q. I think your father was a white man; I have always understood you could not be allowed to live there; you were driven out of Alabama on account of this allotment of land?—A. No, sir; I staid back about ten years after emigration began.

Q. But, finally, you had to leave?—A. Yes, sir.

By the CHAIRMAN:

Q. Why had you to leave?—A. Well, the people did not want Indians among them; they called us Indians, and we could not get justice in any way whatever.

By Mr. PORTER:

Q. How are the schools getting along in your neighborhood?—A. They are doing well, I believe.

Q. They are satisfied?—A. Yes, sir.

Q. Have enough schools?—A. Yes, sir.

Q. Do you have charge?—A. Yes, sir.

Q. Do the colored people get their full share of the school-fund?—A. Yes, sir; so far as I know.

SIMON BROWN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Simon Brown.

Q. Are you an Indian?—A. Yes, sir.

Q. Were you born in the Creek Nation?—A. Yes, sir.

Q. Were you a slave?—A. Yes, sir.

Q. What office do you hold in the Territory?—A. I am a senator in the senate.

Q. How long have you been a senator?—A. It will be eight years next fall.

Q. Seven years this fall?—A. Yes, sir.

Q. Do colored people get their full share of the school-fund?—A. Yes, sir; so far as allowed by the treaty.

Q. They get a share of the school-fund, then, so far as they are entitled to it under the treaty?—A. Yes, sir.

Q. Are the schools kept open as long for the colored people as for the Indians?—A. Yes, sir; just as long.

Q. How are your people on the subject of sectionizing the lands—dividing them up in severalty, and allotting them so that each individual shall own his own land?—A. My people do not want it at all.

Q. They are satisfied, are they?—A. Yes, sir; they are satisfied.

Q. Are you a farmer?—A. Yes, sir.

Q. How many members of the senate are colored men?—A. Three that belong to the senate.

Q. How many belong to the other house?—A. I cannot tell exactly all there are; but then there are three that belong to the house I belong to besides myself.

Q. How many in both houses together?—A. There are three from my town, and there are four of the others. I cannot tell exactly. They come from different points, and were elected from different towns.

Q. Are you elected from a district?—A. No, sir; from towns.

Q. Are there any colored people out here dissatisfied in any way?—A. Not that I know of.

Q. Any not recognized as citizens?—A. Yes, sir; some.

Q. Are they satisfied?—A. Well, they are satisfied so far as they are living in the country. They had the privileges of the land, wood, &c., and raised as much as the others; but the reason that they are not citizens at the present time is because the council have created that law adopting them as citizens, and since we got up the rules to admit them I know that the Creeks have adopted 69 parties last council, and the reason we have not adopted the others is because we have not had time to adopt the rules. So far as the Creeks are concerned, they do what they can for us. Just as we can get up the paper in right shape they will adopt them.

Q. Can you read and write?—A. A little. I can write my name.

Q. You can read?—A. Yes, sir; some. I was director for twelve years, and have been ever since the war ceased; now I am director of the mission up here, and trustee of the school in my neighborhood; therefore I have nothing to say about the Creeks. If there is anything that has not been accomplished it is actually our fault, so I have nothing to say about them.

Q. Do you get your share of the school-fund?—A. Yes, sir; so far as allowed by the treaty.

Q. Has it been applied in good faith?—A. Yes, sir; we have all the schools we want.

Q. You have no complaints to make?—A. No, sir.

Q. Is there anything that you desire to state to the committee that has not been inquired of?—A. No, sir; I believe not.

Rev. ROBERT A. LESLIE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Robert A. Leslie.

Q. Are you a Creek?—A. Yes, sir.

Q. What is your profession?—A. I am a preacher and a teacher.

Q. What denomination do you represent?—A. The Baptist.

Q. How many Baptists are there in the nation?—A. I cannot exactly tell.

Q. You are a teacher, too, are you?—A. Yes, sir.

Q. Where do you teach?—A. Up on the hill, in the mission school.

Q. Well, Mr. Leslie, what is the sentiment of your people in regard to sectionizing the lands, dividing them up in severalty, &c.?—A. So far as I know, there is an objection to it.

Q. What is their sentiment as to territorializing the government and extending the laws of the United States over it?—A. There is an objection to that, too.

Q. They object to it?—A. Yes, sir; they object to it.

Q. Your people, as a general thing, are able to manage their own business, are they not?—A. I think so; yes, sir.

Q. Your congregation is intelligent?—A. My congregation is very intelligent.

Q. They attend to their own business?—A. Yes, sir; so far as I know.

Q. Are they prosperous?—A. Yes, sir.

Q. Getting along very well?—A. Yes; prosperous and getting along very well as far as I have seen them.

Q. Increase in wealth and intelligence and in the cause of education and are doing well?—A. Doing as well as can be expected with the persons they have had.

Q. You have been a politician, too, have you not?—A. Yes, sir, before I was a preacher.

Q. Generally you think these people are about as able to take care of themselves as those fellows in Louisiana?—A. Yes, sir; I think they are able to take care of themselves, and I know they take care of themselves better than they do in Louisiana.

Q. Do you not think they are better?—A. Yes, sir, so far as life and property are concerned they are better; it is better prosperity here than there.

Q. You were living here then?—A. Yes, sir.

Q. What are your politics?—A. I am a republican.

Q. When were you in Louisiana last?—A. Last August. I left the last of July or first of August. I have been in Louisiana since 1865.

Q. During all this time?—A. Yes, sir.

Q. What is the condition of these people as compared with the State of Louisiana? Do you not think these people are as fit people for self-government as the people in Louisiana, taking them as they are?—A. Taking them as a whole, I think they are just as capable of taking care of themselves as they are there.

Q. As a rule, are they not as intelligent as the people you have met down there?—A. Yes, sir.

Q. Are they not as fit for citizens as the people in the State of Louis-

iana?—A. Yes, sir, I think so, and I think we can get along here without mixing up with the white people or their business, and attend to our own business without a military government over us. We can get along without a bayonet government over us.

Q. Don't you think they need the bayonet there?—A. Yes, sir; they need a standing army there.

Q. Is there anything else you desire to say that has not been inquired of?—A. I do not think of anything.

JOSEPH HOWARD, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Joseph Howard.

Q. Are you an Indian?—A. Yes, sir.

Q. You were born in the Creek Nation?—A. Yes, sir.

Q. Were you a slave?—A. Yes, sir.

Q. What office do you hold in the Territory now?—A. Not any.

Q. Not any office?—A. No, sir.

Q. Have you ever held any office?—A. Yes, sir.

Q. What office did you hold?—A. I have been a light-horseman.

Q. What is a light-horseman?—A. The same as a sheriff.

Q. What did you get paid as a light-horseman?—A. One hundred and twenty-five dollars per year.

Q. How many are there in each district?—A. Five in each district.

Q. How long were you a member of the light-horse?—A. One year.

Q. Do you get that pay all the time?—A. Yes, sir.

Q. Who appoints you?—A. The majority of the people of the district.

Q. You are elected, are you?—A. Yes, sir.

Q. Well, what is the sentiment of your people in regard to the allotment of the lands—sectionizing them and dividing them up in severalty?—A. They are opposed to it.

Q. Do your people want any change in the government here?—A. No, sir; not any that I know of.

Q. They are opposed to sectionizing the land and territorializing the government, are they?—A. Yes, sir.

Q. They do not want any changes and are satisfied?—A. They are opposed to any change, and we do not agree to it at all; not any one of them that I know of.

By Mr. STIDHAM:

Q. You are satisfied to remain as you are?—A. Yes, sir.

Q. You have the same privileges that the Indians enjoy?—A. Yes, sir; we have all the privileges that the Indians have.

Q. You have equal rights to the schools and everything else?—A. Yes, sir; we have schools.

Q. How are the schools getting along?—A. Very well.

By the CHAIRMAN:

Q. You share in the school money here?—A. Yes, sir.

By Mr. PORTER:

Q. Are there any churches in your neighborhood?—A. Yes, sir.

SUGAR GEORGE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Sugar George.

Q. Were you a slave?—A. Yes, sir.

Q. Do you hold any office in the Territory?—A. None at present.

Q. Have you ever held any office?—A. Yes, sir.

Q. What office?—A. I was a member of the lower house of representatives.

Q. How long were you a member of the lower house?—A. Eight years.

Q. Eight years?—A. Yes, sir.

Q. Two terms?—A. Yes, sir.

Q. What is the salary of a member of the lower house?—A. Four dollars per day.

Q. How long did you sit?—A. For about a month.

Q. What do the people of your neighborhood think of the allotting of the lands, sectionizing them, and dividing them up in severalty?—A. I do not believe any of them desire it; I can hardly say. I don't think there are any.

Q. Are you in favor of a change in the government here, territorializing the government, and extending the laws of the United States over it, and making it a Territory proper?—A. No, sir.

Q. How many of your neighbors are in favor of such a change as that?—A. I have heard no one speak of desiring it.

Q. How are the schools getting along in your neighborhood?—A. Very well.

Q. You have all the schools you want?—A. Yes, sir.

Q. Are there any colored people in your neighborhood who are not allowed to vote?—A. I have not heard of any.

Q. The people are satisfied, are they?—A. Yes, sir.

JOHN RANDOLPH MOORE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. John Randolph Moore.

Q. You are a Creek Indian?—A. Yes, sir.

Q. You are the speaker of the lower house?—A. Yes, sir.

Q. How long have you been speaker?—A. I have been speaker for three years. During six terms I was speaker but once during the sessions.

Q. How long have you been a member of the house?—A. I have been a member of the house for twelve years, with the exception of three years. I have served in the senate.

Q. How many members have you in the house?—A. There are 97 members in the house.

Q. How many districts are there in the nation?—A. We have six districts.

Q. You elect from towns?—A. Yes, sir.

Q. Explain what you mean by the towns; is it a section of country?—A. It is a town that has different warriors the same as a nation. They are all separated in towns and all the people of the nation have chiefs and other men.

Q. A little after our form of government?—A. Yes, sir; most of the towns are formed by different tribes.

Q. How many members are there in the senate?—A. Forty-nine in the senate.

Q. You have a population of 12,000?—A. Yes, sir; I suppose twelve or thirteen thousand.

Q. The members of the senate and house get four dollars per day?—A. Yes, sir; but heretofore the law allowed them three.

Q. You have a principal chief?—A. Yes, sir.

Q. And an assistant?—A. Yes, sir.

Q. You have a treasurer, also?

Q. Auditor, also?—A. Yes, sir.

Q. A comptroller?—A. No, sir.

Q. Do you have an attorney-general?—A. No, sir.

Q. Do you have a supreme court?—A. Yes, sir.

Q. And six district courts?—A. Yes, sir.

Q. What are the expenses of your government every year?—A. I guess that might safely be called at about \$20,000.

Q. Does that include the school fund and all?—A. No, sir; not including the schools. Our expenses for schools alone would average twenty or thirty thousand dollars. Some years it is thirty, some years twenty-five thousand. That is separate from our other expenses. Our school expenses are the largest we have.

Q. In regard to sectionizing the lands and allotting them up in severalty, what is the sentiment of your people on that question?—A. They are opposed to it.

Q. What is the sentiment of your people as to territorializing the government, extending the laws of the United States over it, making it a Territory like New Mexico and other Territories of the United States?—A. They are opposed to it. I do not think there is a man in favor of a change of that kind or of any other.

Q. So far as you know is the school fund applied to its legitimate purpose?—A. Yes, sir; it is. We make it up every year from the general fund.

By Mr. STIDHAM:

Q. Our people use nearly twice as much as the allowance that we have for schools, do we not?—A. Yes, sir.

Q. Use nearly twice as much more out of the general fund and use it for schools?—A. Yes, sir.

Q. The school fund is \$10,000?—A. Yes, sir.

Q. This year the school expenses are \$27,000?—A. I suppose it is for the mission schools. And then there are twenty-eight day schools, \$400 each. Two mission schools, \$5,400 each, and a new mission school, \$2,500. And there was a new school established at the last council with an appropriation of \$2,000 to support it. It will not be continued unless the councils appropriate money for it; it is not a regular standing school.

Q. Have you a school standing?—A. Yes, sir.

Q. Have we not some scholars away in the States?—A. Yes, sir; we have in addition to what I have stated 18 youths in the States.

Q. They cost the nation \$250 each?—A. Yes, sir.

By the CHAIRMAN:

Q. Where are they?—A. In the different States.

Q. Educated by the nation?—A. Yes, sir.

Q. How are they selected?—A. They are selected by the superintendent.

Q. How do the superintendents select them?—A. They select so many from each district; they apportion them to the districts.

At this point the committee took a recess of one hour.

EUFLALA, CREEK NATION,
Thursday, November 21, 1878.

The committee met at 10.30 a. m. in the room of the Muscogee Lodge. Present, the chairman; Messrs. Porter, Hodge, and Stidham, delegates of the Creek Nation, present on behalf of the Creeks, Mr. Hodge having been sworn as the interpreter.

TUS-TUG-MAR-HAR-JO, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Tustugmarharjo.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. How far do you live from here?—A. Fifty miles.

Q. Do you hold any office in the Creek Nation?—A. Yes, sir.

Q. What office?—A. Member of the house of kings.

Q. How long have you been a member of the house of kings?—A. Going on twelve years.

Q. What is the house of kings?—A. It is the senate.

Q. What is your occupation?—A. I am a farmer.

Q. How many acres do you farm?—A. I am not able to tell just how many acres I have.

Q. Do you raise wheat, corn, vegetables, &c.?—A. Yes, sir.

Q. Do you raise cattle?—A. Yes, sir; I have cattle and horses also.

Q. Do you raise cotton?—A. I have raised wheat. I quit that and raised corn only. I wouldn't have quit raising wheat, but got old and unhealthy and cannot do so much work as I used to.

Q. Do you manage your own business?—A. Yes; I manage my own business.

Q. Can you read and write in your language?—A. No, sir; I cannot read and write in my own language.

Q. Can you read and write in the English language?—A. No, sir. In the old nation I used to associate with the white people, and had to talk a great deal, and had to take a good many drinks of whisky with them, but I have forgotten all about the English now; that was done in the old settlement.

By Mr. PORTER:

Q. Have our people schools among them?—A. Yes; they have schools. There is one school near my residence.

Q. How many mission schools have we?—A. We have three mission schools.

Q. How many neighborhood schools have we all over the nation?—A. I do not recollect the exact number, probably twenty-two or twenty-three.

Q. Are the Creek people generally a religious people?—A. A great many of them; nearly all of them are members of the church.

Q. What different churches have the Creek people among them?—A. There are three different churches.

Q. What are they?—A. Methodist, Baptist, and Presbyterian.

Q. Have you not a good many native preachers?—A. Yes, sir; we have a good many native preachers.

Q. Are there any native preachers among the Creeks?—A. Yes, sir; they have several native preachers.

Q. Were they educated among the people or out of the nation?—A. They were taught by white teachers.

The CHAIRMAN (to Mr. Porter). Ask him the three main questions as to whether he is in favor of allotting the lands, sectionizing them, and territorializing the government.

By Mr. PORTER:

Q. Do you know of any Creeks in your neighborhood in favor of territorializing the government, extending the laws of the United States over it and making it a Territory like New Mexico?—A. There are none in favor of that.

Q. Are the Creeks satisfied with the present system of government?—A. Yes, sir; they are satisfied with the present form of government.

Q. Do not the Creeks understand that the Creeks shall forever have their own system of government as guaranteed by the treaties with the United States?—A. That is their understanding, and they stand by their treaties that were made in the old country, and we still remember the treaties.

Q. They want the United States to abide by their treaties, and keep good faith with them in this respect?—A. That is their idea exactly; they do not want to violate the treaties themselves, and they want the Government of the United States to keep faith with them.

Q. Do you know of any of the Creeks who would like to have their lands divided up in severalty, sectionized, and allotted, so that each would have his land in severalty?—A. There are none that I know of; none who want their land divided up or sectionized.

Q. Are they not all opposed to, it so far as you know?—A. They are all opposed to it as far as I know.

Q. Have you had any experience in trying the experiment of dividing the lands in severalty?—A. Yes, sir.

Q. State to the committee your experience.—A. The Creek people that are living here now—there was a time when we lived east of the Mississippi River—and their lands were divided up when they lived back there, back in the old country, and the Indians got their lands under the white man's law, and there was a great deal of whisky brought into the country, and in a short time they lost their lands. I was there and saw it myself. You see a great many towns in our country; there were towns back in the old country and I have been through all of them. I have been at a great many places, at Forts Mitchell and Columbus (the committee may know them, they were once in Alabama), and they once occupied the lands there. Now the white people are there. I was once through all those places, at Oocunpa, the place where the survey agent was for the purpose of buying their lands; they introduced as much whisky as they possibly could, and the Indians would drink, and the white people would drink, and when they were drunk they would begin to buy up the lands, and they would get other Indians and personate them and cheat them out of the lands, and I don't want this thing of sectionizing the lands. I don't want to hear it talked about. Some distance from where I live are the towns of Arrpochata and Talaarluga. I would like to state the whole history of the sectionizing of the State. Those towns I also visited, and when I went there the same state of affairs existed among the people there, among the Creeks as well as many of my own people, and the consequence was that we had to leave and come out West. It is not a pleasant thing to talk about.

Captain GEORGE GRAYSON, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. George Grayson.

Q. Are you an Indian?—A. Yes, sir; I am.

Q. Are you a Creek?—A. Yes, I am.

Q. By birth or adoption?—A. By birth.

Q. What office do you hold in the Creek Nation?—A. I now hold the office of treasurer in the Creek Nation.

Q. How long have you been treasurer of the Creek Nation?—A. I really do not remember; something like eight years.

Q. You have been treasurer of the nation?—A. Yes, sir.

Q. Have you held office here?—A. Yes, sir.

Q. Have you your books?—A. Well, yes, sir.

Q. We want to look at the books to see about the school-fund.—A. My statement would answer every purpose; what I tell you on oath will be equally as valid and as good as anything I could show you on paper.

Q. We want to see the books so as to compare them with the statement.

The WITNESS. Well, I will tell you how I used to keep my books. This year I kept account of the funds coming into the treasury of the Creek Nation, and at the end of one year, when our council convened, I made a report of these funds and all funds received in the treasury; and then I showed how these funds had been disposed of. In regard to that thing, I would say that I solely produce vouchers, drafts issued by the Creek Nation, and those are produced as my vouchers showing what has become of these funds, and these funds, these drafts, go into the national council, and they are kept there. I have not got them; my books will not show, because I never enter the copies of the reports. I must show how much I have received, and on what account I received them. Our chief issues a contract; it goes into the country, and then they bring it to me for payment and I hold it until the end of the year, when I report to the council and give it up.

Q. You have a school-fund?—A. Yes, sir; a school-fund and a blacksmith fund that we pay. We pay what is called a public blacksmith.

Q. What are they?—A. We have twelve. We have six districts in the country and two blacksmith-shops located in the districts, and we pay them so much money annually for the time they serve. The people all have a right to go to the blacksmith-shops and have their work done there. We have one fund that we pay to our officers there, our laborers, &c. That is one fund. We have a school-fund also. I get drafts on my vouchers, and those vouchers are turned into the council at the end of each year. It would have been great work for me to keep all these drafts; it involves a great deal of work, and I am not bound to do it, and have never done it.

Q. Who is your auditor?—A. A Mr. Smith.

Q. Does he audit your accounts?—A. Yes, sir; he audits our accounts.

Q. They take your vouchers as a settlement with them?—A. Yes, sir. Now my books will show what I have received and how I received it, and show what funds I have received from the government.

Q. How much from the government?—A. Thirty-nine thousand four hundred and ninety-three dollars for a few years.

Q. For one year how much would it be?—A. It would be just \$34,893.

Q. How much is applied to school purposes?—A. Twenty-three thousand five hundred dollars.

Q. Of that fund?—A. Yes, sir.

Q. Has that school-fund all been applied to school purposes?—A. It has.

Q. Has any part of it been diverted at all?—A. None of it during the time of my administration that I remember of.

Q. Could it have been diverted without your knowing it?—A. No, sir; because the payment came through me in every instance.

Q. You say a draft is drawn upon you and made payable out of the school-fund?—A. Well, the drafts that are paid out of the school-fund are issued for the payment of teachers, and I know that they ought to know all about them, and I know how they issue them. I know we now have 28 schools; I know they get each quarter \$100, provided a regular number of these schools have been taught.

Q. There have been no expenses charged to that fund except for teachers?—A. None to my knowledge. I have none charged upon my books. These funds have been in our hands and have been kept inviolate. We have had other funds to draw upon, but our school-fund remains intact.

Q. Who builds the school-houses?—A. Usually the neighbors in the district located; almost invariably the neighbors build the houses.

Q. What amounts have been paid for the delegates at Washington?—A. I am not fully posted, but it runs over \$3,000 from the time I have held the office of treasurer.

Q. Is it paid by drafts upon the general fund?—A. Yes sir.

Q. Are the people of the Creek Nation increasing in numbers and improving in intelligence?—A. Yes, sir; that is my impression. I know it is so in various departments, especially in agriculture.

Q. Are they producing more and more every year?—A. Yes, sir; they are diversifying their occupations. I have lived here all my life, and I know they are increasing.

Q. Are they managing their own business?—A. Yes, sir.

Q. Are they good citizens as a general thing?—A. Yes, sir. They are good citizens provided they are let alone; very good, indeed; and I would rather live among them than among any other people of the States.

Q. Did you ever live in the States?—A. Not much. I was principally educated in the States.

Q. What State?—A. In the State of Arkansas.

Q. Don't you think the people here compare favorably with the people in the State of Arkansas?—A. Yes, sir; in some parts of the country. In some parts of the country our people compare favorably in point of intelligence.

Q. Do you not think the proportion of your people who read and write in their own language compare favorably with the people of the same grade in the States, and are there not as many who read and write in their own language as there are among the people in Arkansas who read and write their language?—A. I have not been in the worst or best parts of Arkansas; I do not know.

Q. From what you have seen by living with the people in the State of Arkansas, what do you think?—A. I have met some very intelligent people in the State of Arkansas and so have I here. I have met some good people here as well as there, and they compare favorably.

Q. You have seen the census of Arkansas?—A. No, sir; I have not.

By Mr. PORTER:

Q. Do you know how much of the funds are set apart for school purposes by the treaty?—A. I know by the treaties we have a certain amount set apart for school purposes; I don't know what that is, but the council has set apart more than is set apart for school purposes.

Q. Do you know any of the Creek people who are in favor of the estab-

lishment of a Territorial government over this country by extending the laws of the United States over it and making it a Territory like that of New Mexico, Idaho, &c.?—A. No, sir; I do not.

Q. Do you know of any of the Creek people who are in favor of sectionizing their lands and who would like to have them divided up in severalty, so that each could own their own land in fee in his own right?—A. I do not know a single man.

H. F. BUCKNER, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. H. F. Buckner.

Q. Where do you live?—A. In the Creek Nation.

Q. Are you a Creek?—A. I am not.

Q. Are you by adoption?—A. No, sir.

Q. Then you are a white man?—A. Yes, sir; I am.

Q. Where were you born?—A. I was born in the State of Tennessee.

Q. How long have you lived here?—A. I arrived here on the 7th of March, 1849.

Q. Have you lived here ever since?—A. Yes, sir; except when I was a refugee during the war.

Q. Where did you refugee during the war?—A. In Texas; down in the Red River country.

Q. What were you doing there?—A. They abandoned their country during the war from overwhelming necessity. I left here with them; and in August, after the surrender, I spent the time in Texas, unable to get back here.

Q. What is your profession?—A. I am a preacher and a missionary.

Q. To what denomination do you belong?—A. The Baptist.

Q. How many Baptists are there in the Creek Nation?—A. I cannot state certainly; the best estimate that I can make is 2,500.

Q. How many churches have you?—A. I do not know certainly. When we include the Baptists we include the freedmen, the whole amount, so that there were two Baptist churches with 29 native preachers.

Q. Creeks, are they?—A. No, sir; that includes the freedmen in that number.

Q. Have any new churches been built?—A. Yes, sir; there are some new schools that have been organized.

Q. Are these people improving in intelligence and advancing in civilization?—A. Very rapidly, and as fast as any people. I never knew churches to have better attendance anywhere, and I have lived in the States, and never saw people improve more rapidly than these have.

Q. They are getting along very well?—A. Yes, sir.

Q. Prospering very well?—A. Yes, sir; I am satisfied about that.

Q. Do they manage their own business?—A. Yes, sir; we have some who manage their own business.

Q. Are they capable of managing their own business, buying, selling, &c.?—A. Yes, sir.

Q. All vote, do they not?—A. Yes, sir.

Q. All understand the questions before the people?—A. Yes, sir; all that go before the people that vote.

Q. All vote that want to, don't they?—A. Yes, sir.

Q. The people who listen to you in your preaching, do they understand you?—A. Yes, sir; but I preach through an interpreter.

Q. Do you think they are as intelligent as the people in Arkansas and the other States?—A. Yes, sir; I was a missionary in the State of Ken-

tucky, and they are more intelligent than the people there. I came through Arkansas in 1847, and when I got here I felt that we had got to civilization; I say that under oath. We came here over the White River.

Q. You mean after you got out of Arkansas you felt as if you were in civilization?—A. Yes, sir; I have stated it frequently in conventions where we have had delegates. My wife went to inquire for soap and could not get any, and we never had any soap until we got to Van Buren here on the White River. It was in the best part of Arkansas too.

Q. Have you been in Missouri?—A. Yes, sir.

Q. Don't you think the people here compare favorably with the people of Missouri?—A. Yes, sir.

Q. You know pretty well the sentiment of the people here, and know what is the form of government they prefer to live under?—A. I have not taken any interest in politics, but their sentiments have been mainly forced upon me in conversations with them.

Q. What is that sentiment?—A. They are opposed to any political change.

Q. About the tenure of their lands, please state what your impression is as to their sentiments on the subject of sectionalizing them, dividing them up in severalty, and so on.—A. They consider they have a right to this country by solemn treaty and by their own form of government, and they are opposed to any Territorial government being established over them.

Q. Do they not prefer to hold their lands in common?—A. Yes, sir; that is almost the universal sentiment. I have never heard but one individual among the Creek Indians that intimated to me that it would be better to have the country sectionized, and who wanted it done by the Creeks, and was not in favor of the United States doing it, who was under the impression that we had but to meet the United States half way, and so far as we went he thought it would be better for the Creeks to divide the lands in severalty themselves.

Q. What is your opinion about this question of allotting the lands in severalty, sectionizing them, &c.?—A. Well, I believe that if the Creeks were in favor of dividing the lands in severalty it would be better for them to do it.

Q. Don't you think it would be better for any people to do it?—A. Yes, sir; I would be opposed to anything being done against the public wish of the people, and I would be opposed to any government doing it for them. I think it would be better for them if they would see that it would be better for them to do it.

Q. Do you think it would be better for the United States to do it if the Indians do not want it done?—A. Yes, sir. I would be opposed to its being done, or its being forced upon them, if they could not see; but as I see it I think it would be better for them. I would be opposed to the United States doing it against their wish and against the convictions of the people in this country. I wish they could see it.

Q. Do you think the schools are doing well in this country?—A. Yes, sir; I think the mission schools are doing well, and the other schools have done a great deal of good, but I think there is room for a great deal more.

ROLLING MACINTOSH, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Rolling MacIntosh.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir; I am a full-blood.

Q. What is your occupation?—A. I am a farmer.

Q. Are you a stock-raiser?—A. Yes, sir.

Q. Are you a lawyer?—A. Yes, sir.

Q. Have you ever read law, or are you a lawyer by license?—A. I am a lawyer in my own language and have read the laws in the Creek language.

Q. Can any person be admitted to the bar to practice law by taking out a license here whether he knows anything about law or not?—A. No man is privileged to become a lawyer in the country unless he can get a license.

Q. What law-books did you study?—A. We had no law-books in our language.

Q. Have you a code of laws?—A. We have no books; no Blackstone and Kent.

Q. You have only studied your laws?—A. Yes, sir.

Q. How long have you been practicing law?—A. Seven years.

Q. Then you are a stock-raiser, farmer, &c.?—A. Yes, sir; a stock-raiser and a farmer also.

Q. Do you think the people are intelligent enough to manage their own business?—A. They are capable of attending to their own business.

Q. Able to make their own bargains?—A. Yes, sir; able to make drafts, &c.

Q. Do the common people understand the political questions that are brought up to be voted upon, and do you think they are competent to exercise their citizenship in the Creek Nation?—A. They understand the political questions well.

By Mr. HODGE:

Q. Do you know of anybody in the Creek Nation in favor of territorializing the government by extending the laws of the United States over this country?—A. No, sir; not one.

Q. Was there any in favor of dividing the lands, sectionizing them, allotting them in severalty, so that each one should own his property in severalty?—A. There has been none.

By the CHAIRMAN:

Q. Do you understand what is meant by the organization of a Territorial government?—A. Yes, sir; I understand what it means, and that is the reason I do not want it myself.

Q. Are you a member of the council?—A. Yes, sir; I am a member of the council.

Q. Are you a member of the upper house?—A. Yes, sir; I am.

Q. How long have you been a member of the senate?—A. I have been a member of the senate or upper house for four years, and a member of the lower house six years.

Q. Is the business transacted in the Creek language or in the English language?—A. In the English language, through an interpreter; each body has an interpreter.

Q. Then, everything is written in English?—A. Yes, sir; all speeches are translated.

Q. By the interpreter?—A. Yes, sir.

Q. Are the speeches translated?—A. No, sir; not arguments, but bills are translated.

Q. All the speeches in the two houses are in the Creek language?—
A. Yes, sir; everything reduced to writing is put in the English language.

Q. Do you publish your laws in the English language or in the Creek language?—A. In the Creek and English both.

By Mr. STIDHAM:

Q. Do you think the Creeks are advanced far enough to compete with the whites?—A. No, sir; they are not advanced far enough to compete with the white man.

By Mr. PORTER:

Q. Have our people schools among them?—A. Yes, sir; they have schools.

Q. How many mission schools are there?—A. There are three mission schools.

Q. How many primary schools have we?—A. Thirty, I think.

Q. Are the Creek people religious generally?—A. Yes, sir.

Q. What are the different denominations among them?—A. Methodist, Baptist, and Presbyterian.

By the CHAIRMAN:

Q. Are your people improving in intelligence and education?—A. Yes, sir.

JOSEPH F. PERRYMAN, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Joseph F. Perryman.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you an Indian?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. No, sir.

Q. What is your occupation?—A. I am a minister.

Q. What denomination?—A. Baptist.

Q. Have you a church with a Baptist congregation?—A. Well, I have no particular church; I am a missionary preacher in the different churches.

Q. Are the people improving in intelligence and education?—A. Yes, sir; so far as I know, and they are increasing in prosperity.

Q. Doing well?—A. Yes, sir; they are doing well.

Q. What is your opinion about sectionizing the lands, dividing them up in severalty, and so on?—A. I am opposed to it.

Q. What is the sentiment of the people in your neighborhood upon that question?—A. They are opposed to it.

Q. You do not want any change?—A. No, sir.

Q. The people are satisfied to remain as they are?—A. Yes, sir.

Q. Were you superintendent of the school once?—A. I was.

Q. When were you superintendent of the school?—A. Five or six years ago.

Q. Can you understand the system of schools; how they are conducted? Is there a national school board?—A. Yes, sir.

Q. Is there a superintendent for schools for the whole nation?—A. Yes, sir.

By Mr. STIDHAM:

Q. You were superintendent at one time, were you not?—A. Yes, sir.

Q. How many schools do you have under your charge?—A. I had 32 schools under my charge.

Q. How many have you now?—A. Twenty-eight, I believe.

Q. You have no examination schools as you used to have?—A. No, sir.

Q. What is the reason of that?—A. We have not as much money as we used to have, and we have some mission schools now, and have more scholars in the States.

Q. How many scholars have you in the States?—A. The nation has eighteen in the States.

Q. Do you know about how many scholars are taught in the schools?—A. About twenty in each school.

Q. How many in a school, taking the entire nation?—A. Well, 20 to each school would make 640 in 32 schools.

By the CHAIRMAN:

Q. Do you know how many children you have here of school age?—A. I do not know.

By Mr. PORTER:

Q. Do you know what the amount of funds the treaty sets apart for school purposes; how many have these?—A. I do not remember that. I believe I did know, but I have forgotten.

Q. Are the Creek people generally religious?—A. Yes, sir.

Q. How many different denominations are there among them?—A. There are three.

Q. What are they?—A. Methodist, Baptist, and Presbyterian.

Q. Have we not native preachers in our schools?—A. Yes, sir; a good many.

By the CHAIRMAN:

Q. Do you know anybody in the Creek Nation in favor of a change of the government, establishing a Territorial government over this country?—A. No, sir.

Q. Is there anything else that you desire to state to the committee, of your own knowledge, that has not been inquired of?—A. No, sir; I do not think of anything else.

GEORGE W. GRAYSON, having been recalled, was further examined.

By the CHAIRMAN:

Question. Have you any sources of income except what you get from the government?—Answer. We have a tax upon licensed traders of \$100 for each trader in the nation. We have a few in the nation who come into the country and want to rent land and work and hire, and they levy a small tax on every individual who employs such at a dollar a month. And we levy a tax upon cross-ties for railroads.

Q. How much for each tie?—A. Five cents a head; the council changed it somewhat, and I think it is ten cents now, and fifteen cents for a telegraph pole. They were taking all the timber out of our country, and we taxed them to put a stop to it.

Q. There is no tax upon real estate in this nation?—A. O, no, sir; nothing of that kind.

Q. They pay no taxes upon real estate?—A. No, sir.

Q. They pay no taxes upon stock?—A. No, sir; taxes would be levied to carry on the government. We have no fund upon which we draw to run our government.

Q. What is the amount of revenue outside of the government funds?—

A. I could not tell you; I do not know of any.

Q. How many scholars have you in the States?—A. Eighteen.

Q. Where are they?—A. Well, a number are at Tuskegee, Ala., and three in Tennessee, and one at the Horticultural Seminary in Louisville. I do not remember the number.

Q. Does the nation support these scholars?—A. Yes, sir.

Q. What do they allow each one?—A. The council appropriates \$4,500 for their benefit.

Q. For eighteen?—A. Yes, sir.

Q. How long do you keep them away?—A. They have been away three years.

Q. How long do you intend to keep them away?—A. Just as long as the council appropriates money for their maintenance.

Q. Are they going through a regular course?—A. Yes; excepting two of the scholars, who are preparatory scholars.

Q. Is it with the intention of preparing them for a profession?—A. Not exactly; the idea is to give them a good education, so as to fit them for business.

Q. How are they selected?—A. From the public schools here.

Q. By whom?—A. By the superintendent of public schools.

Q. How long have you been doing this?—A. About three years.

Q. Are there any others?—A. No, sir. We had twenty-eight scholars, but they reduced the number because we wanted to send these boys to the States.

By Mr. STIDHAM:

Q. There are in addition two mission schools, are there not?—A. Yes, sir.

Q. Who supports these mission schools?—A. We support them. The board furnishes the teachers.

Q. The mission board furnishes the teachers?—A. Yes, sir.

Q. Are they male or female teachers?—A. We have one that is a male institution where we have 80 scholars. There is one in Muscogee of equal number, both male and female—that is, 48 each.

Q. Are these the only two mission schools?—A. There is one in Muscogee, also a colored institution; I don't know much about that. That has only recently been established.

By Mr. PORTER:

Q. Have they not some students who have been sent to Ohio, to the Western Central College?—A. Yes, sir.

Q. Have they not some in Virginia?—A. I believe so.

SAMUEL GRAYSON, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Samuel Grayson.

Q. Are you an Indian?—A. Yes, sir; I am.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. Well, I have been acting as secretary of our council, in both houses, since 1871.

Q. Have you ever been in the States any?—A. Well, yes, sir; some.

Q. Have you lived in the States any?—A. Yes, sir; I went to school in the State of Arkansas from 1860 to 1871.

Q. Have you ever seen a convention of the people in Arkansas?—A. Well, in some localities I have.

Q. How do your people, in your judgment, compare with those people?—A. In some localities they would compare very favorably; in others they would not.

Q. Does the council transact business as the people in Arkansas do?—A. Yes, sir; to some extent.

Q. Do they transact their business with intelligence?—A. Yes, sir.

Q. From your knowledge and acquaintance with the people, do you think they are capable of managing their own affairs, making their own laws, and governing themselves?—A. Yes, sir; I think they are.

Q. What is your opinion as to sectionizing lands and allotting them, and dividing them up in severalty so that each shall have his own land?—A. I think that the people are better in their present condition.

Q. That is your opinion?—A. Yes, sir; that is my opinion.

Q. In regard to a different form of government—establishing a territorial form of government—extending the laws of the United States over this Territory, and making the Territory proper like that of New Mexico and the other Territories; what is your opinion of that?—A. I am opposed to that also.

By Mr. PORTER:

Q. Do you know what the school fund is that is set apart by the treaty?—A. No, sir; I don't know the exact amount. I think it is about \$10,000, and we appropriate about \$25,000 for school purposes.

By the CHAIRMAN:

Q. Have you any taxes in your nation?—A. No, sir.

Q. None of any account?—A. No, sir.

By Mr. PORTER:

Q. Are you a merchant?—A. Yes, sir.

Q. What are the principal things that people trade with you?—A. Stock, cattle, hogs, &c.

Q. Do they raise any cotton?—A. Cotton is becoming a staple article in this locality.

Q. How many bales have been brought into this town?—A. I suppose four hundred ship from here.

Q. How many do you think this season?—A. Possibly 800 or 1,000.

By the CHAIRMAN:

Q. That is a new industry?—A. Yes, sir.

Q. How long has it been?—A. For about three years it has been doubling annually.

Q. How many pounds do you put in the press?—A. 550 pounds to a bale.

Q. How much to the acre?—A. Eleven acres produces thirteen bales of 550 pounds each.

Q. Who raises this cotton, Indians?—A. Yes, sir.

Q. Are there any colored laborers here?—A. Very few.

Q. The colored laborers do their own work; everybody does their own work; everybody occupies his own land?—A. Yes, sir; their own farms, and do their own work.

Q. What is the cotton worth?—A. We are paying for seed-cotton two cents and two and one-eighth cents.

Q. For lint-cotton?—A. Seven and eight cents per pound.

Q. Short, is it?—A. Yes, sir.

By Mr. PORTER :

Q. Is cattle-raising increasing?—A. Yes, sir; and it is the main industry of the country.

Q. How many men are there in the Creek Nation owning upwards of two thousand head of cattle?—A. I could not tell exactly what it would be; there are many.

Q. Do you know of any who own a thousand head?—A. Yes, sir; I know six or eight people.

Q. Most every family has some cattle, I suppose?—A. Yes, sir.

Q. They are improving their stock, too?—A. Yes, sir; they are getting a better class of stock of all grades.

Q. How many fine bulls have been introduced into the country during the last year?—A. Over three hundred.

Q. From what States?—A. From Missouri, Illinois, and some from Kentucky.

Q. What breed of bulls?—A. Durham.

Q. As to hogs; are they improving in their grade of hogs?—A. Hogs are improving; we raise a better class of hogs every year.

Q. You ship a considerable number of hogs from this point, do you not?—A. Yes, sir.

Q. And at Muscogee?—A. Yes, sir.

By the CHAIRMAN :

Q. Are new farms being opened up?—A. Yes, sir; increasing them and improving the farms annually. They make additions to their farms, and put new fields in corn, and the old fields in cotton.

Q. I suppose it is done in order to make a change?—A. Yes, sir; it has been done annually.

HÓTUL KE MAR THLA, having been duly sworn by the chairman, was examined, Mr. Hodge having been duly sworn as interpreter.

By the CHAIRMAN :

Question. What is your name?—Answer. Ho tul ke mar thla.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir; a full-blood.

Q. What is your occupation, farming?—A. Yes, sir; I am a farmer.

Q. What do you raise?—A. Corn, wheat, and so on.

Q. Do you hold any office in the Creek Nation?—A. Yes, sir; I hold an office.

Q. What office do you hold?—A. I am a member of the upper house, or senate.

Q. How long have you been a member of the senate?—A. I don't remember exactly the time; several years.

Q. Were you ever a member of the council, or lower house?—A. Yes, sir; I have been a member of the council; but it was a great many years before the war. When a young man I was a member of the council.

Q. How old are you?—A. I am about 60 or 65 years of age.

Q. Can you read and write in the Creek language?—A. No, sir; I do not write in my own language.

Q. What is your opinion about sectionalizing the lands—dividing them up in severalty; are you in favor of that?—A. I am opposed to that.

Q. What is your opinion about territorializing the government—extending the laws of the United States over it—making it a Territory like New Mexico and the other Territories of the United States?—A. I never heard of one Creek who was in favor of territorializing the government,

nor did I ever hear of any one being in favor of having the land sectionized.

By Mr. PORTER:

Q. Do you know the amount of the funds that are set apart for school purposes?—A. No, sir.

Q. You are pretty well acquainted with the sentiment of the people, and under what form of government they prefer to live?—A. Yes, sir.

Q. Are they satisfied with their present form of government?—A. Yes, sir.

Q. They do not want a change?—A. No, sir.

Q. Are the people advancing in civilization, &c.?—A. Yes, sir.

Q. Improving their stock?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there anything else that you desire to tell the committee which has not been inquired of?—A. No, sir.

TUL-WA-MEK-HO, having been duly sworn, was examined, Mr. Hodge being interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Tul-wa-mek-ho.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Are you a full-blood Creek Indian?—A. Yes, sir.

Q. What is your occupation; are you a farmer?—A. Yes, sir; I am a farmer.

Q. Do you hold any office in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the senate.

Q. How long have you been a member of the senate?—A. I have been a member of the senate 12 years.

Q. Can you read and write in the Creek language?—A. Yes, sir.

Q. How many senators can read and write in the Creek language?—A. I am the only one that I know of.

Q. How many senators are there in senate?—A. There are nearly fifty senators.

Q. How many members are there in the lower house?—A. Ninety-seven, I think.

Q. What is your opinion about sectionizing the lands and allotting them?—A. I am opposed to it.

Q. What is the opinion of your people in regard to territorializing the government, extending the laws of the United States over it, so as to make it a Territory proper of the United States?—A. There are no Creeks in favor of territorializing the government, nor are there any in favor of the allotment of the lands.

By Mr. PORTER:

Q. Do you think the Creeks are advancing in intelligence?—A. They are improving in intelligence and everything.

Q. Do you think they are increasing their herds of cattle, and enlarging their farms?—A. Yes, sir; they are improving their stock and enlarging their farms.

Q. Do you think that they are taking more and more interest in schools every year, or not?—A. Yes, sir; they are rapidly improving in schools, and I think they are doing their utmost to arrive at a higher state of intelligence.

Q. Are they religiously disposed, and are there considerable numbers

of them who belong to church?—A. Yes, sir; they are religiously disposed, and there are a great many of them members of the Methodist church.

Q. Do any of them belong to the Baptist church?—A. Yes; a great many of them are members of the Baptist church.

Q. Any members of the Presbyterian church?—A. Yes, sir; there are some members of the Presbyterian church in the Creek Nation.

Q. Where were you during the late war?—A. I was a refugee in the State of Kansas during the late war.

Q. Did you belong to the Army?—A. No, sir.

Q. Were you not one of the leaders of the Creek Nation?—A. I was one of the leaders.

Q. When you came back did you understand that it was upon the same promise that you should live here as you did before the war?—A. Yes, sir; that was my understanding.

Q. You understood that the same pledges were to be enforced that were made with your forefathers?—A. That was my understanding.

Q. How long did the Indians believe those promises were to last?—A. The pledges were as long as grass grows and water runs; as long as they should see the sun rise in the east and set in the west. It was upon that pledge that I came back, and I have been relying upon it ever since.

YAR-TEH-KA-HAR-JO, having been duly sworn, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Yar-teh-ka-har-jo.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir; I am a Creek.

Q. Are you a full-blood?—A. Yes, sir.

Q. How old are you?—A. I don't know just how many years old I am; but when the treaty was made with us in Alabama I was there, and I was old enough to kill deer. It was a long while ago, and I am now an old man.

Q. Do you hold any office in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the lower house, or house of representatives.

Q. How long have you been a member of the house of representatives?—A. Three sessions.

Q. What is your opinion as to sectionizing the lands, dividing them up in severalty, allotting them among the people so that people shall hold their own land?—A. I am opposed to it.

Q. How are the people in your neighborhood in reference to the subject of territorializing the government, extending the laws of the United States over it, making it a Territory like New Mexico?—A. There are no Creeks in favor of territorializing the government, nor none in favor of sectionizing the lands, or dividing them up.

By Mr. STIDHAM:

Q. Where were you during the war?—A. I went to the State of Kansas and enlisted in the Federal Army as a soldier, and served in the Army for three years, or during the war.

By the CHAIRMAN:

Q. In what regiment did you enlist?—A. The first Creek regiment.

Q. In what company?—A. In Company H.

Q. Who commanded the regiment?—A. I was under Colonel William A. Phillips, and was stationed at Fort Gibson.

By Mr. HODGE:

Q. Have you ever been a delegate to Washington?—A. Yes, sir.

Q. For what purpose did you go?—A. I went to Washington for the purpose of asking the United States Government to pay the Creeks for the property lost in the late war.

By Mr. PORTER:

Q. How far do you live from here?—A. I live twenty miles from Eufaula.

Q. Do you think the Creeks are advancing in intelligence?—A. Yes, sir.

Q. Do you think that they are increasing their herds of cattle?—A. I do.

Q. And are they enlarging their farms?—A. Yes, sir.

Q. Do you know anything about the schools?—A. The schools are in good condition.

Q. Are the people satisfied to have the government remain as it is?—A. Yes, sir; they are satisfied.

By the CHAIRMAN:

Q. Is there anything else that you would like to state to the committee that has not been inquired of? If so, please state it.—A. I think of nothing.

GEORGE SULLIVAN, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. George Sullivan.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. By birth?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir; I am.

Q. What is your occupation?—A. I am a farmer.

Q. Do you hold any office in the nation?—A. I am a member of the house of representatives.

Q. How long have you been a member of the house of representatives?—A. I have been a member of the lower house for three years.

By Mr. PORTER:

Q. Do you know anybody in the Creek Nation who is in favor of changing the government, having the laws of the United States extended over it, and using the Territorial form of government of the United States?—A. Not one that I know of.

Q. Do you know any Creek who wants his country divided up in severalty—the lands sectionized and allotted?—A. None that I know of wants their land divided up or sectionized.

Q. Do you know how many members the Presbyterian church has in this country?—A. I don't exactly know the number.

Q. Are there a great many?—A. Yes, sir; a great many.

Q. How far do you live from here?—A. Twenty-five miles.

Q. Are the people living quietly in your section of the country?—A. Yes, sir.

Q. Are all the laws well administered?—A. The laws are well administered.

Q. Do you think the Creeks are advancing in intelligence?—A. Yes, sir.

Q. Do you think they are increasing their herds of cattle and enlarging their farms?—A. Yes, sir; I do.

Q. Are the schools improving?—A. The schools are improving.

Q. Do they raise many cattle in your section of the country?—A. They all have more or less cattle.

Q. Do they have hogs and cattle?—A. Yes, sir; they have hogs too.

Q. What do they raise on their farms?—A. They raise different kinds of vegetables, &c.

By the CHAIRMAN:

Q. Is there anything else that you would like to state to the committee that has not been inquired of?—A. No, sir.

YARTAR-WA-HAR-JO, having been duly sworn by the chairman, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Yartar-wa-har-jo.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. Do you hold any office in the Territory?—A. I do.

Q. What office do you hold?—A. I am a member of the senate.

Q. How long have you been a member of the senate?—A. I have been a member of the senate ten years.

Q. Can you read and write in your own language?—A. No, sir.

Q. Are you a farmer?—A. Yes, sir; I am a farmer.

Q. How far do you live from here?—A. Nearly 80 miles; in the extreme corner of the nation.

By Mr. PORTER:

Q. Do the people in your section of the country want a Territorial government or not?—A. None that I know of want a Territorial government established.

Q. Do you want your lands divided up in severalty and sectionized?—A. None that I know want their land divided up.

Q. Are they generally satisfied with their present form of government, and with the tenure of holding their lands?—A. They are all satisfied with the present form of government, and they want to hold their lands in common as they hold them now.

Q. Do you think the Creeks are advancing in intelligence?—A. They are advancing in that direction.

Q. Do you think we use the school-fund to the best advantage for the education of the children and the success of the schools?—A. They use them for educational purposes only.

Q. Are the people in your neighborhood good, moral, well-disposed, and peaceable citizens?—A. Yes, sir; they are good, moral, well-disposed, and peaceable citizens; they are living in peace.

Q. Are they farmers, stock-raisers, and so on?—A. Yes, sir; they are.

Q. Are there churches in your neighborhood?—A. Yes, sir; there are churches.

Q. Do the people attend church pretty regularly?—A. They go to church regularly.

By the CHAIRMAN:

Q. Have you Creek preachers?—A. Yes, sir; there are Creeks who are preachers—natives.

By Mr. PORTER :

Q. Are there many cattle in your neighborhood ?—A. They all have more or less cattle in that neighborhood.

Q. Hogs, too ?—A. Yes, sir.

Q. Horses also ?—A. Yes, sir ; horses and cattle for each family.

Q. What do the people think about the agitation of the question of dividing up the lands ; are there any in favor of it, or are they opposed to it ?—A. They are all of the opinion that it would be to their destruction and to the destruction of the country to have it opened up, and they are opposed to any change that is being talked about so much.

Q. Are the schools improving in your neighborhood ?—A. Yes, sir.

By the CHAIRMAN :

Q. Is there anything that you desire to say to the committee that has not been inquired of ?—A. No, sir.

TOBY BRUNNER, having been duly sworn by the chairman, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN :

Question. What is your name ?—Answer. Toby Brunner.

Q. Are you an Indian ?—A. Yes, sir ; I am.

Q. Are you a full blood ?—A. Yes, sir.

Q. Are you a farmer ?—A. Yes, sir ; I am a farmer.

Q. Do you hold any office in this nation ?—A. Yes, sir ; I am a member of the senate.

Q. How long have you been a member of the senate ?—A. A little over ten years.

Q. Do you think the people are improving in education, &c. ?—A. Yes, sir ; I think the people are improving and advancing in education.

Q. What is your opinion about the change of government, dividing up the lands, &c. ?—A. I am opposed to it.

Q. How do the people in your neighborhood stand upon this question ?—A. There is not one Creek in my neighborhood who is in favor of the Territorial government, and there are none who wish to have the lands allotted or divided up. They believe it would be to their destruction if they were to have it divided up and have to take it in severalty, and I believe it would be to our destruction if we were made citizens of the United States.

By Mr. PORTER :

Q. How far do you live from here ?—A. About sixty miles from Eufaula.

Q. Are the people living quietly in your section of the country ?—A. Yes, sir ; they are living quietly.

Q. Do you know how many members of the Baptist Church there are in this country ?—A. I don't know how many.

Q. Do you think the Creeks are advancing in intelligence ?—A. I do.

Q. Do you think they are increasing their herds of cattle and enlarging their farms ?—A. Yes, sir.

Q. Are the laws well administered ?—A. Yes, sir ; the laws are well administered.

Q. Are the schools improving or not ?—A. Yes, sir ; they are improving.

Q. Do you raise many cattle in your section of the country ?—A. Yes, sir ; we raise some cattle.

Q. Do they have hogs ?—A. Yes, sir.

Q. What do they raise on their farms?—A. Corn, wheat, potatoes, &c.

Q. Are the people satisfied with their present form of government?—A. Yes, sir; they are perfectly satisfied.

Q. Do you think they use the school-fund for the best advantage of the children and the success of the schools?—A. I do; yes, sir.

Q. Are the people in your neighborhood a moral and well-disposed people?—A. Yes, sir; they are.

SIMPSON REED, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Simpson Reed.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek Indian?—A. Yes, sir; I am.

Q. Are you a full-blood?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. Yes, sir; I am a member of the house of representatives.

Q. How long have you been a member of the house of representatives?—A. I don't know exactly.

Q. What do you think about territorializing the nation, extending the laws of the United States over it, &c.?—A. I am opposed to it.

Q. What do the people of your neighborhood think about it?—A. All are opposed to that Territorial government.

Q. What is your opinion about dividing the lands in severalty, and allotting them among each member of the tribe, so that each shall own land?—A. They are all opposed to a division of the lands in severalty; they don't want them sectionized.

Q. Are the people advancing in civilization?—A. Yes, sir; so far as I know.

Q. In education also?—A. Yes, sir; they are improving in education.

Q. Do you think they are capable of being citizens of the United States?—A. It would be to the destruction of the Indians to make them citizens of the United States.

By Mr. PORTER:

Q. Do you think the people are improving in civilization?—A. I do.

Q. Do you think they are becoming more intelligent every year?—A. Yes, sir; they are advancing in civilization.

Q. Do you think we use the school-fund properly or not?—A. They are using the school-fund properly.

Q. Have they churches in your neighborhood?—A. We have churches in our neighborhood.

Q. Do the people attend church pretty well?—A. They do; yes, sir.

Q. Do they have native preachers or not?—A. They have native preachers.

Q. Do the white missionaries visit them?—A. They are visited by the missionaries also.

Q. The people have cattle, horses, &c.?—A. Yes, sir; cattle, horses, and hogs.

Q. Is not that their principal means of support?—A. That is their principal means of support—stock-raising, &c.

Q. Do they plant corn?—A. They plant and raise corn and vegetables.

Q. Have they raised enough this year to support themselves?—A. Yes, sir.

Q. So you think the Creeks are doing well in your portion of the country?—A. Yes, sir; they are doing well, and have raised enough this year to support themselves.

Q. Are you satisfied with the present system of government?—A. Yes, sir; we are satisfied with our present system of government.

Q. Are you satisfied with the present administration of the laws?—A. Yes, sir; we are satisfied with the present manner in which the laws are executed.

By the CHAIRMAN:

Q. Is there anything else you desire to say that has not been inquired of?—A. No, sir; I do not think of anything.

THOMAS CUNARD, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Thomas Cunard.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. What is your occupation?—A. I am a farmer.

Q. What office do you hold?—A. I am district judge.

Q. What are your duties as district judge?—A. Our court has jurisdiction over all cases, criminal and civil.

Q. Civil cases to the amount of how much?—A. All civil cases where the issue is for less than \$100 and not exceeding \$100.

Q. All criminal cases?—A. Yes, sir; all cases of murder, larceny, &c.

Q. Is there appeal in criminal cases in your court?—A. No, sir; there is no appeal.

Q. Did you ever study law?—A. Yes, sir; I have studied the Creek law.

Q. You never studied the law before you were elected judge?—A. I never paid much attention to it prior to that time. I was elected and then I began to study law.

Q. Can you read and write your own language?—A. Yes, sir; I read and write my own language.

Q. What is the punishment for the first offense of larceny?—A. Being whipped fifty lashes.

Q. What is the punishment for the second offense?—A. One hundred lashes.

Q. What is the punishment for the third offense?—A. They suffer death.

Q. How do they suffer death; by shooting?—A. Yes, sir; by shooting.

Q. Who does the whipping?—A. The light-horse company.

Q. Who inflicts the death penalty?—A. This same company of light-horsemen.

Q. Did you ever sentence any one to death?—A. There have been no cases of murder in my district since I have been judge, and I have not had to do that.

Q. How long have you been judge?—A. This is my sixth year.

Q. Have you sentenced any one to be whipped?—A. Yes, sir; I have sentenced the lashes to be administered several times.

Q. You have a jury to assist in trying these cases?—A. Yes, sir; it is tried by jury.

Q. How many are on that jury?—A. In the first place, I summon twenty-four jurors, and then choose twelve and try the case.

Q. Does it require the unanimous verdict of the jury to convict?—A. Yes, sir; it requires the unanimous consent of the jury; that is requisite.

Q. Do you think the people are improving in education?—A. Yes, sir; they are advancing in education.

Q. Are they fit to manage their own business and attend to their own affairs?—A. They manage their own business.

Q. Are they prospering and getting along well?—A. They are getting along well, and live harmoniously together, and are advancing.

By Mr. PORTER:

Q. Of what district are you the judge?—A. I am judge of the Wewokaka district.

Q. How far is that from here?—A. It is sixty-four miles from here.

Q. Have you churches in your neighborhood?—A. Yes, sir; there are churches in the neighborhood.

Q. Are there a considerable number of people who are church members?—A. Yes, sir; a great many are church members.

Q. What churches?—A. Baptist, Methodist, Presbyterian, and so on.

Q. Do you know how many members there are of the Baptist Church?—A. Not exactly.

Q. Do you know how many members there are in the Methodist and Presbyterian Churches?—A. No, sir; I do not remember.

Q. Do they send their children to school?—A. They send their children to school.

Q. They are improving, are they?—A. Yes, sir; I think so.

Q. Are they in favor of a change of government?—A. None that I know of are in favor of a change of government.

Q. None are in favor of dividing their lands in severalty and sectionizing it?—A. No, sir.

Q. They are satisfied with their present system of government?—A. Yes, sir.

Q. Is there anything that you desire to state to the committee that has not been inquired of?—A. No, sir; I think not.

ELAH HAR JO, having been duly sworn by the chairman, was examined (Mr. Hodge being the interpreter).

By the CHAIRMAN:

Question. What is your name?—Answer. Elah har jo.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek Indian?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir; overflowing.

Q. How old are you?—A. Inasmuch as I am a full blood, I do not know my age.

Q. Are you a farmer?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the house of representatives.

Q. How much land do you cultivate?—A. I don't know the exact number of acres; I have over ten acres.

Q. Do you have stock?—A. Yes, sir; I have stock.

Q. How much?—A. I have about 50 head of hogs, 30 cows, some calves, and several horses.

Q. What is the opinion of your people, in your neighborhood, upon the question of changing the government, territorializing it, and extending the laws of the United States over it?—A. There is not one that I know who is in favor of it.

Q. What is the opinion of your people about dividing the lands in severalty and sectionizing them?—A. There are none in favor of dividing the lands.

Q. They are satisfied to remain as they are?—A. Yes, sir; they are satisfied to live under the present form of government.

By Mr. PORTER:

Q. Are there any churches in your neighborhood?—A. There are several churches in my neighborhood.

Q. Do the people in your neighborhood go to church pretty well?—A. Yes, sir; they are a church-going people, and they are opposed to dividing the lands, or to any change whatever in the government.

By the CHAIRMAN:

Q. How far do you live from here?—A. Forty-seven miles.

Q. How long were you in coming here?—A. I started early yesterday morning, and arrived here this morning.

By Mr. PORTER:

Q. Are the people living quietly in your section of the country?—A. Yes, sir.

Q. Do you think the Creeks are advancing in intelligence?—A. Yes, sir; they are advancing in civilization.

Q. Do you think they are increasing their horses, their herds of cattle, and enlarging their farms?—A. Yes, sir; they all have more or less cattle.

Q. Are the laws well administered?—A. Yes, sir; the laws are well administered.

Q. Are the schools improving?—A. All the schools are doing well.

Q. What do you raise on your farm?—A. Corn, wheat, &c.

Q. Do you think that they use their school fund to the best advantage of their children and the success of the schools?—A. Yes, sir.

Q. Are the people peaceable?—A. Yes, sir.

Q. Do you have churches in your neighborhood?—A. Yes, sir.

Q. Have you any native preachers?—A. Yes, sir.

Q. Do they raise enough to support themselves?—A. Yes, sir.

Q. Do you think the Creeks are doing well in your part of the country?—A. Yes, sir; they are doing well.

AR TUS HAR PAR-YE, having been duly sworn by the chairman, was examined, Mr. Hodges being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Ar tus har par-ye.

Q. Are you an Indian?—A. Yes, sir.

Q. How old are you?—A. I was a middle-aged man when the lands were sectionized in the old country, when we lived in Alabama.

Q. Are you a full-blood?—A. I am a full-blood; yes, sir.

By Mr. PORTER:

Q. Are you in favor of a Territorial form of government, dividing the lands in severalty, and sectionizing them?—A. I am opposed to any change.

Q. How are the people in your neighborhood in regard to the question of allotting the lands in severalty, sectionizing them, and dividing them up?—A. They are opposed to that; they tried that thing; they know what that is from experience away back in the old country.

Q. What is the opinion of the people in your neighborhood in regard

to the question of territorializing the nation, and extending the laws of the United States over it?—A. I don't know of any Creeks who want that done.

Q. As you were a middle-aged man when the lands in the old country were sectionized, do you know the result of sectionizing the lands in Alabama?—A. Yes, sir; I know the result of that experiment. The people lost their lands—cheated out of them, and defrauded out of them; and I was there when the lands were divided up, and I saw with my own eyes. We were treated very badly by the government there, and we had to come out here.

Q. What were the terms you understood you made when you left Alabama to come out here?—A. The treaty was made, and we were promised in that treaty that we would find good lands west of the Arkansas River, and lands that we could live on, and it should be our home, and we should not be molested any more; it should be ours as long as we continued as a people and live upon it in consequence of this treaty, and we came out West here.

By the CHAIRMAN:

Q. Are you a full-blood?—A. Yes, sir.

By Mr. PORTER:

Q. You were promised, if you came out here, that you should live here without any interference in any way, and should live under your own government, laws, privileges, and customs?—A. We were told that in the State of Alabama; that was the understanding. They said that we could not live there, and that we would have to go west of the Arkansas River, and that we should have our own lands, and our own laws, and our own government in this country.

Q. Would you like to have the land sectionized again or not?—A. No, sir; I don't want the lands divided up at all.

Q. What do you think would be the result of dividing up the lands in severalty, sectionizing them, &c.?—A. From my experience in living upon lands that were divided up, I think it would be a bad thing, and I think it would be so again. I don't want the lands divided up; I don't want to see that done again; it would be the ruination of the Indians.

Q. How would you like to have the laws of the United States extended over this country?—A. I don't want to see the United States laws extended over this country at all.

Q. Do you think the Creeks are getting along pretty well now; living harmoniously, &c.?—A. They are getting along very well now, and harmoniously.

Q. Are they satisfied with the present system of government which they have?—A. They are well satisfied with their own government.

Q. And they are satisfied with their present relations with the Government of the United States?—A. We are satisfied with our present relations with the Government of the United States, and the treaty that we have; we wish them to be complied with, and don't wish to change our relations at all.

Q. Do you think the Creeks are improving in intelligence?—A. Yes, sir; I think they improve in intelligence.

Q. Do you think they are advancing in civilization?—A. Yes, sir.

Q. Do you think they have improved very much in their condition since they were in Alabama?—A. Yes, I think so; I think they have very much since we came from Alabama.

Q. Have the people in your section of the country got stock, cattle, &c.?—A. They have some, more or less stock in my neighborhood.

- Q. Do they farm?—A. Yes, sir.
- Q. Are they living quietly in your section of the country?—A. Yes, sir.
- Q. Are the laws well administered?—A. The laws are well administered; yes, sir.
- Q. Are the schools improving?—A. They are.
- Q. Do they farm?—A. Yes, sir.
- Q. What kind of products do they raise?—A. They plant all kinds of vegetables that they raise for using at home.
- Q. Are the people a law-abiding people in your section of the country?—A. They are all a law-abiding people, and the condition of affairs is such that they are living in harmony together.
- Q. Do you think they use the school fund to the best advantage for the education of the children and the success of the schools?—A. Yes, sir.
- Q. Have you churches in your neighborhood?—A. Yes, sir.
- Q. Do the missionaries visit them?—A. Yes, sir.
- Q. Do the people in your neighborhood raise enough to support themselves?—A. Yes, sir.
- Q. You think the Creeks are doing well, and are satisfied with their present system of government?—A. I do, sir.

GEORGE DANN, having been duly sworn by the chairman, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN:

- Question. What is your name?—Answer. George Dann.
- Q. Are you an Indian?—A. No, sir.
- Q. Are you a Creek?—A. Yes, sir.
- Q. Are you a farmer?—A. Yes, sir.
- Q. How much land do you cultivate?—A. Twenty-five acres.
- Q. What do you raise?—A. Corn, cotton, &c.
- Q. How much cotton did you raise last year?—A. About two thousand pounds.
- Q. How many acres did you cultivate?—A. About eight acres.
- Q. Do you mean lint cotton?—A. Yes, sir.
- Q. How many acres?—A. Eight acres.
- Q. How far do you live from here?—A. Twelve miles.
- Q. Did you raise any cotton last year?—A. Yes, sir.
- Q. How much did you raise last year?—A. I raised about two thousand pounds.
- Q. And you have raised about that much this year?—A. Yes, sir.
- Q. You have not got it all picked yet?—A. No, sir; not all picked.
- Q. How many acres have you this year?—A. About the same number of acres!
- Q. Were you a slave?—A. Yes, sir.

By Mr. STIDHAM:

- Q. You are free now, are you not?—A. Yes, sir.
- Q. You have all the privileges that I have?—A. Yes, sir.

By the CHAIRMAN:

- Q. Do you vote?—A. Yes, sir; the same as the Indians.
- Q. Do you hold office?—A. Yes; sometimes.
- Q. What office?—A. I am a juror sometimes.

Q. Do they allow you colored people to sit upon the jury here?—A. Yes, sir; the same as the Indians.

Q. Do they treat you as an Indian?—A. Yes, sir.

Q. Do you pay taxes?—A. No, sir.

Q. Then you are happy here, are you not?—A. Yes, sir.

Q. Would you like to own your own land, and have it surveyed?—A. No, sir.

Q. Why?—A. Because I would rather have it as I do now.

By Mr. STIDHAM:

Q. You can cultivate as much land as you please now?—A. Yes, sir; I get just as much land as I want.

Q. You can get whatever anybody else gets?—A. Yes; I can get about what anybody else gets; so I would rather be as I am now. If it was different and I took another man's land they would put me in jail.

Q. Are the colored people pretty well satisfied with the condition of affairs here?—A. Yes, sir; all satisfied.

Q. All doing well?—A. Yes, sir; they are all doing well.

Q. How are the schools?—A. The same as the Indians'; the children are going to school.

Q. Do they go to the same school?—A. We have our own schools.

Q. What kind of teachers do you have?—A. White teachers, and sometimes colored ones.

Q. Are your children improving in education?—A. Yes, sir; all doing pretty well.

By the CHAIRMAN:

Q. Are there any colored people in your neighborhood who are not recognized as citizens?—A. No, sir; not that I know of.

Q. Are there any who did not come back under the treaty?—A. I don't know of any.

Q. There are none on the doubtful list, then?—A. No, sir; none that I know of.

Q. Were any of them soldiers?—A. Some were soldiers.

Q. Do they vote and sit upon the juries?—A. Yes, sir.

SAR LAR HO, having been duly sworn by the chairman, was examined, Mr. Hodge being interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Sar lar ho.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the council.

Q. You are a member of the house of representatives?—A. Yes, sir.

By Mr. HODGE:

Q. What is your opinion of a change of government, territorializing it, &c.?—A. I don't want any change at all.

Q. What is your opinion as to the allotment of lands, dividing them up in severalty, sectionizing them, &c.?—A. I don't want the lands divided up at all.

Q. How much land do you farm?—A. I don't know the number of acres; I am an Indian. I don't know what you mean by acres.

Q. Are there any churches in your neighborhood?—A. Yes, sir; there are churches.

Q. Are you a minister?—A. Yes, sir; I am a preacher.

Q. Of what denomination are you a preacher?—A. Baptist denomination.

Q. Do you know how many Baptists there are in the Creek Nation?—A. Not exactly.

Q. Are your people a church-going people?—A. Yes, sir; they attend church regularly.

Q. Are they advancing in intelligence and civilization?—A. Yes, sir; they are.

Q. How do you baptize the members of the church?—A. We put them under the water. We baptize by immersion.

Q. Are you satisfied with the present form of government?—A. Yes, sir; I am satisfied as we are; I want it to remain as we are and hold our lands in common. I am satisfied it is best for the Indians; all my constituents are satisfied of that, and are of the same opinion that I am in regard to this question.

Q. How long have you been a member of the church?—A. I have been a member of the church for 24 years.

Q. Are your people advancing in education?—A. Yes, sir; they are advancing in education.

Q. Are they advancing in other things?—A. Yes, sir; they are advancing in other things.

Q. Do you think they use their school fund for the best advantage of the schools and the education of the children?—A. Yes, sir; I do.

Q. Are the people in your neighborhood stock-raising and farming?—A. Yes, sir; they are stock-raising.

Q. Are they doing well?—A. Yes, sir.

Q. Are they increasing their herds of cattle and enlarging their farms?—A. Yes, sir; they are very well at home.

Q. How many Baptist churches are there in the nation?—A. There are a great many in the nation; I don't know exactly the number; I think there are thirty-two churches in the Creek Nation.

By Mr. PORTER:

Q. Do the people in your neighborhood raise enough to support themselves?—A. Yes, sir.

Q. Do they have hogs and cattle?—A. Yes, sir; they have hogs and cattle.

Q. What do they raise on their farms?—A. Corn, wheat, &c.

Q. Are the people of your neighborhood a moral and well-disposed people?—A. They are.

Q. Is not agriculture their principal means of support?—A. Yes, sir.

Q. Do they plant corn?—A. Yes, sir.

Q. Do you think the Creeks are doing well in your portion of the country, and are they satisfied with the present administration of the laws?—A. Yes, sir.

CONIPE MAR THLA, having been duly sworn by the chairman, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Conipe mar thla.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood?—A. Yes, sir.

Q. Do you hold any office?—A. Yes, sir.

Q. What office do you hold?—A. I am a member of the house of representatives.

By Mr. HODGE:

Q. What is the opinion of the people in your neighborhood as to the question of sectionizing the lands, dividing them up among the people so that each will hold his own land?—A. There are none in favor of it.

Q. What is the sentiment of the people in your neighborhood in regard to the question of territorializing the country, extending the laws of the United States over it, &c.; are they in favor of it?—A. No, sir; they are not in favor of it.

Q. Are they satisfied with the present system of government, and with the present system of holding the lands?—A. Yes, sir; they are satisfied with the present system of government, and with the present system of holding the lands. They don't want our relations with the United States changed at all.

By Mr. PORTER:

Q. Have you schools?—A. Yes, sir; there is a school-house near my home—within a few steps of it.

Q. Do the people send their children to school?—A. Yes, sir; in that neighborhood they send their children to school.

Q. Are they advancing?—A. Yes, sir.

Q. Do you think the Creeks are advancing in intelligence?—A. Yes, sir; I do.

Q. Do you think they are increasing their herds of cattle, and enlarging their farms?—A. Yes, sir; they are increasing their cattle.

Q. Are the laws well administered?—A. The laws are well administered.

Q. Are the schools improving?—A. Yes, sir.

Q. Do they raise many cattle in your section of the country?—A. They all have more or less stock.

Q. Do they have hogs?—A. Yes; they have hogs too.

Q. What do they raise on their farms?—A. Corn and vegetables of all kinds.

Q. Do you think they use the school-fund for the best advantage of the children and the success of the school?—A. Yes, sir; all the money is used for the schools.

Q. Are the people well disposed in your neighborhood?—A. Yes, sir.

Q. Do you have churches in your neighborhood?—A. Yes, sir.

Q. Do the missionaries visit them?—A. Yes, sir.

Q. Is not agriculture their principal means of support?—A. Yes, sir.

Q. Do they plant corn?—A. Yes, sir.

Q. Have they raised enough this year to support themselves?—A. Yes, sir.

Q. Do you think the Creeks are doing well in your portion of the country under the present system of administration of the laws?—A. Yes, sir; they are.

CHO-WE-COL-BERT, having been duly sworn by the chairman, was examined, Mr. Hodge being the interpreter.

By the CHAIRMAN:

Question. What is your name?—Answer. Cho-wo-col-bert.

Q. Are you an Indian?—A. Yes, sir.

Q. Are you a Creek?—A. Yes, sir.

Q. Are you a full-blood Indian?—A. Yes, sir.

Q. Do you hold any office in the nation?—A. I do.

Q. What office do you hold?—A. I am judge for Eufaula district.

Q. How long have you been a judge?—A. I was elected about one year ago this last council; it is nearly two years now.

Q. Are you a farmer?—A. Yes, sir.

Q. Do you read and write your own language?—A. No, sir.

Q. Have you sentenced anybody to be whipped?—A. Yes, sir.

Q. How many have you sentenced?—A. I don't know the exact number; probably ten.

Q. Have you sentenced anybody to be shot?—A. None.

By Mr. HODGE:

Q. What is the opinion of your people upon the question of sectionizing the lands, dividing them up in severalty among them?—A. There is not one in my nation who is in favor of that.

Q. What is the opinion of your people in regard to the question of territorializing the country, extending the lands of the United States over it, and making a Territory like New Mexico and the other Territories of the United States?—A. There is not one in my district who is in favor of territorializing the country or changing it at all.

By Mr. PORTER:

Q. Do the people in your district have churches?—A. Yes; they have churches.

Q. Do they attend them well?—A. They are well attended.

Q. Do you think the Creeks are advancing in intelligence, &c.?—A. I think they are advancing and gaining in intelligence.

Q. Do you think the Creeks are becoming educated?—A. Yes, sir.

Q. Are they in favor of sectionizing the land?—A. No, sir.

Q. They don't want them divided up?—A. No, sir.

Q. You are pretty well acquainted with the sentiment of the people of your district upon these questions?—A. I am well acquainted with the sentiment of the people in my district, and there are none in favor of these measures of dividing the land in severalty or sectionizing it.

Q. Are the laws well administered in your district?—A. Yes; the laws are well administered.

Q. Are the people well satisfied with the present form of government?—A. Yes, sir.

Q. Do you think they use the school fund for the best advantage of the schools and the education of the children?—A. Yes, sir.

Q. Do the people in your district raise enough to support themselves?—A. Yes, sir; they do.

Q. Do you think the Creeks are doing well in your portion of the country?—A. Yes, sir; they are.

Q. Are they a moral, well-disposed people?—A. Yes, sir.

By the CHAIRMAN:

Q. Is there anything else, that has not been inquired of, that you desire to say to the committee of your own accord?—A. I don't think of anything.

EXECUTIVE OFFICE OF THE MUSKOGEE NATION,
Okmulgee, C. N., October 31, 1878.

To all whom these presents may concern:

Be it known that Hon. David M. Hodge is an authorized delegate of the Muskogee Nation, to act in conjunction with Hon. Pleasant Porter and Hon. George W. Stidham, for and in behalf of the Muskogee Gov-

ernment and people in all matters specified in the "instructions to Creek delegates," and to represent at Washington City the interests of the Muskokee Nation.

Given under my hand and the seal of the Muskokee Nation on the date above mentioned.

[SEAL.]

WARD COACHMAN,
Principal Chief Muskokee Nation.

WM. HARVISON,
Private Sec.

WASHINGTON CITY, D. C.,
December 7, 1878.

SIR: We respectfully submit protests from Creek citizens of the Eufaula and Conetah districts of the Creek Nation against any infraction of their rights of soil and government by any department of the United States not fully authorized by our treaties. These protests will be followed by others from the remaining four districts of the Creek Nation, which will exhibit the perfect unanimity of our people against any change whatever of their present status with the United States Government. We also herewith submit for your information a certified statement of receipts by our government of moneys set apart for educational purposes under all treaties with the United States for the years 1873 to 1878, inclusive; also the amount expended for school purposes, under acts of appropriation, by the Creek council, covering the same period, exhibiting that our nation has expended the large sum of \$105,165.03 in excess of the amount specially set apart by the treaties for educational purposes.

G. W. STIDHAM,
PLEASANT PORTER,
D. M. HODGE,
Creek Delegates.

Hon. J. J. PATTERSON,
Chairman Senate Committee on Territories.

EUFULA, IND. TER.,
November 29, 1878.

Hon. J. J. PATTERSON and others, subcommittee of the United States Senate Committee on Territories:

GENTLEMEN: The undersigned, citizens of the Muskogee Nation, most respectfully desire hereby to express our high regard for the government you represent, and toward which we sustain peculiar relations, unmistakably defined by treaty stipulations and mutual pledges of amity and loyalty. We are informed your committee is instructed to ascertain the sentiment of the Indian people of this Territory as to a Territorial organization with the view of speedy admission as a State of the American Union. We hereby most emphatically declare against any change of our present status toward the United States Government. We admire the capacity of your people to organize and carry on a system of government peculiarly adapted to your own wants, and truly believe your system and laws are well conceived for the requirements of your particular form of society, and we will readily receive and accept of our own volition every element of a good and useful character you may by example set before us. But for ourselves, having a different original

history and being of a different race of people, we may be permitted to say, we know our own wants and interests better than aliens can suggest them to us. And with all respect to your government, we hereby declare that we conscientiously believe the extension of your political and social system over our people at this time, or for many years to come, would entail the degradation and destruction of the masses of our people, results of which must be repugnant to true Christian civilization. We earnestly desire your Christian civilization shall perform its mission without violence, and by faithful patient work assist us to reach the high standard you claim for yourselves and desire us to attain, and at the same time preserve from extinction. We do not believe the people of the United States desire the abrogation of our rights, and we respectfully ask your honorable committee to publish to the people of the United States that the remnant of the American Indians in this Territory earnestly desire to retain lands and franchises as guaranteed by the United States Government. That we are hastening to fill every high aim of civilization, and in the future, if unmolested, will exhibit the fruits of the true Christian civilizing influence and protecting care of the United States Government. We will be found living in the midst of your vast domain with our institutions, but in harmony and full sympathy with your government. Entertaining these views, we do hereby, for ourselves and our children, solemnly protest against any infraction of our rights of soil and government by any department of the United States not fully authorized by our treaties.

1. John McIntosh.
2. Geo. W. Fisher.
3. Geo. Hill.
4. Hotulke nouthla.
5. Wm. Fisher.

6. Chok charte thlacco.
7. Tulroar Micco.
8. Waxce yar hola.
9. John Morrison.
10. Per he lustey.

and many others.

L. P. Jobe, citizen Creek Nation, age 66, has been an adopted citizen of the Broken Arrow Town since 1842, John S. Jobe, Louis N. B. Jobe. We are opposed to any Territorial government or any change from our present state, let it be in any shape whatever.

Hon. J. J. PATTERSON AND OTHERS,

The Subcommittee of the United States Senate

Committee on Territories:

The undersigned, citizens of the Muskokee Nation, most respectfully desire hereby to express our high regard for the great government you represent, and toward which we sustain peculiar relations, unmistakably defined by treaty stipulations and mutual pledges of amity and loyalty.

We are informed your committee is instructed to ascertain the sentiment of the Indian people of this Territory as to a Territorial organization, with the view of speedy admission as a State of the American Union. We hereby most emphatically declare against any change of our present status toward the United States Government.

We admire the capacity of your people to organize and carry on a system of government peculiarly adapted to your own wants, and truly believe your system and laws are well conceived for the requirements of your particular form of society, and we will readily receive and accept, of our own volition, every element of a good and useful character you

may by example set before us; but for ourselves, having a different original history and being of a different race of people, we may be permitted to say we know our own wants and interests better than aliens can suggest them to us; and, with all respect for your government, we hereby declare that we conscientiously believe the extension of your political and social system over our people at this time, or for many years to come, would entail the degradation and destruction of the masses of our people, results which must be repugnant to true Christian civilization.

We earnestly desire your Christian civilization shall perform its mission without violence, and by faithful patient work assist us to reach the high standard you claim for yourselves and desire us to attain, and at the same time preserve us from extinction.

We do not believe that the people of the United States desire the abrogation of our rights, and we respectfully ask your honorable committee to publish to the people of the United States that the remnant of the American Indians in this Territory earnestly desire to retain their lands and franchises as guaranteed by the United States Government; that we are hastening to fill every high aim of civilization, and in the future, if unmolested, will exhibit the fruit of the true Christian civilizing influence and protecting care of the United States Government. We will be found living in the midst of your vast domain, with our own institutions, but in harmony and full sympathy with your government.

Entertaining these views, we do hereby, for ourselves and children, solemnly protest against any infraction of our rights of soil and government by any department of the United States not fully authorized by our treaties.

Daniel Childers, his x mark,
Cowetin Micco,
L. C. Perryman,

Noah, his x mark,
George Lovett, his x mark,
Peter, his x mark,
and many others.

Statement of annuities received each year by the Creeks from the United States, from 1873 to 1878, inclusive, according to treaty stipulations, for the sale of lands, &c., with a true copy of all acts appropriating money for school purposes, showing the amount of educational funds proper and the amounts actually expended for educational purposes.

Annuities.

Permanent annuities in money, amounting to \$24,500, secured to them by the fourth article of the treaty of 7th August, 1790, the second article of the treaty of June 16, 1802, the fourth article of the treaty of January 24, 1826, affirmed by the fifth article of the treaty of August 28, 1856, and reaffirmed by article twelfth of the treaty of August 11, 1866.

Permanent provision for a wheelwright, for a blacksmith and assistant, blacksmith-shop and tools, and for iron and steel, under the eighth article of the treaty of January 24, 1826, and affirmed and reaffirmed as above, amounting annually to \$1,710.

Two thousand dollars per annum, during the pleasure of the President of the United States, under the eighth article of the treaty of January 24, 1826, and affirmed and reaffirmed as above, for assistance in agricultural operations.

One thousand dollars per annum for educational purposes, during the

will of the President, under the fifth article of the treaty of February 14, 1833, affirmed and reaffirmed as above.

Services of a wagon-maker, blacksmith and assistant, shop and tools, iron and steel, during the pleasure of the President, under the fifth article of the treaty of February 14, 1833, affirmed and reaffirmed as above, costing \$1,710.

The interest, at five per cent., on \$200,000, held in trust for the Creeks by the United States, amounting to \$10,000, to be applied to purposes of education, under article six of the treaty of August 28, 1856, and confirmed and reassumed by article twelve of the treaty of August 11, 1866.

The interest at five per cent. on \$400,000 held in trust for the Creeks by the United States, derived from the sale of land to the United States, amounting to \$20,000 under article third of the treaty of August 11, 1866.

The interest at five per cent. on \$275,168 held in trust for the Creeks by the United States, derived from the sale of land to the United States, amounting to \$13,758.90, under article third of the treaty of August 11, 1866, and which the Creeks have agreed among themselves to set apart for school purposes.

Synopsis.

During the will of the President, \$4,710; of which \$1,000 is for educational purposes; of which 1,710 is for blacksmiths, &c.; of which \$2,000 is for agricultural purposes.

For educational purposes, \$24,758.90; of which \$1,000 is at will of President; of which \$10,000 is used for that purpose, according to treaty; \$13,758.90, the Creeks have agreed among themselves to use for that purpose.

Whole amount of annuity, \$74,678.90.

For this year the Creeks have not received the amounts which depend upon the will of the President, so that their annuity is reduced to \$69,978.90.

ACTS OF APPROPRIATION FOR EDUCATIONAL PURPOSES.

1873.

Be it enacted by the National Council of the Muskokee Nation, That the sum of eleven thousand dollars (\$11,000) is hereby appropriated, out of funds set apart for school purposes, for the support of the neighborhood or public school, pay of teachers, &c., for the ensuing scholastic year ending June 30th, 1874.

Be it further enacted, That the sum of seven thousand dollars (\$7,000.00) is hereby appropriated, out of any funds set apart for school or mission purposes, for the support of Asbury Manual Labor School, located at North Fork in the Muskokee Nation, for the scholastic year of 1873 and 1874 and first quarter of the scholastic year of 1874 and 1875.

Be it further enacted, That the sum of seven thousand dollars (\$7,000.00) is hereby appropriated, out of any funds set apart for school or mission purposes, for the support of the Tullahassee Mission school, located near old Creek Agency, Muskokee Nation, for the scholastic year of 1873 and 1874 and the first quarter of the scholastic year of 1874 and 1875, and the further amount of fifty-eight dollars and seventy-one cents (\$58.71) to cover indebtedness of said institution for the year ending June 30th, 1873.

*Be it enacted by the National Council of the Muskokee Nation, * * * * **
from and after the fifth day of December, 1873, the Superintendent of
Schools shall receive for his services the sum of six hundred dollars per
annum. * * * *

N. B. The Superintendent's salary for this year was five hundred dol-
lars (\$500.00).

Whole amount expended.....	\$25,558 71
Amount of annuity to be used for this purpose according to treaty	11,000 00
Making a difference of	14,558 71

1874.

Resolved by the National Council of the Muskokee Nation, That there be
printed, for distribution, one thousand copies of "Our Monthly," a paper
to be issued monthly for the year commencing November 1st, 1874, and
ending October 30th, 1875.

The sum of one hundred dollars (\$100.00) is hereby appropriated to
pay for the printing of the thousand copies before mentioned.

Be it further resolved, That there be printed, for distribution, one
thousand Creek first readers, and the sum of one hundred dollars
(\$100.00) is hereby appropriated to pay for the printing of the same.

Be it enacted by the National Council of the Muskokee Nation, That there
be, and is hereby, appropriated the sum of five thousand six hundred
dollars (\$5,600.00), out of the funds set apart for school purposes, for
the support of the A. M. L. School, during the last three quarters of the
present term, and the first quarter of the next term; a period of time
commencing November 15th, 1874, and ending November 15th, 1875, in-
clusive.

Be it further enacted, That there be, and is hereby appropriated, the
sum of five thousand six hundred dollars (\$5,600.00), out of the funds set
apart for school purposes, for the support of Tullehassee F. M. L. School,
during the last three quarters of the present term, and first quarter of
the next term, a period of time commencing December 15th, 1874, and
ending December 15th, 1875, inclusive.

Be it enacted by the Muskokee National Council, That the sum of twelve
thousand three hundred dollars (\$12,300.00) be, and the same is hereby
appropriated out of the school funds, for the support of the public school
department * * * and for the purchase of books and stationery.

Salary of Superintendent schools	\$600 00
Whole amount expended	24,300 00
Amount to be expended according to treaty	11,000 00
Making a difference of	13,300 00

1875.

Be it enacted by the National Council of the Muskokee Nation, That the
sum of fifty-six hundred dollars (\$5,600.00) be, and the same is hereby
appropriated out of the school funds to carry on the Asbury M. L. School,
for the year commencing November 15th, 1875, and ending November
15th, 1876, inclusive. * * *

Be it further enacted, That the sum of fifty-six hundred dollars (\$5,600.00)

be, and the same is hereby appropriated out of the school funds, to carry on the Tullehassee M. L. School, for the year commencing December 16th, 1875, and ending December 16th, 1876. * * *

Be it further enacted, That the sum of four thousand dollars (\$4,000.00) be, and the same is hereby appropriated out of the public school funds of the Creek Nation, to carry on the Muskokee Institute for the year commencing November 16th, 1875, and ending November 16th, 1876. * * *

Be it enacted by the National Council of the Muskokee Nation, That there be and is hereby appropriated the sum of thirteen thousand two hundred dollars (\$13,200.00) out of the school funds for the payment of teachers of the public schools, for the scholastic year commencing September 1st, 1879, and ending June 30th, 1876.

Be it further enacted, That the sum of three hundred dollars (\$300.00) be- and the same is hereby appropriated, out of the school funds for the purchase of books and stationery, for the use of the public schools, and the superintendent is hereby authorized to draw the warrants for this amount and make the purchase.

Salary of Superintendent of education	\$600 00
Whole amount expended	\$29, 300
Amount to be expended according to the treaty	11, 000
Making a difference	18, 300

1876.

*Be it * * * enacted*, That the sum of two thousand five hundred dollars (\$2,500.00) of the surplus common school fund now in the treasury, and the sum accruing from the discontinuance of * * five schools, two thousand dollars (\$2,000), be, and the same is hereby, appropriated, to send eighteen Indian male youths to school in the States.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of three thousand dollars (\$3,000.00) out of any funds not otherwise appropriated for the purpose of aiding the colored people in building a mission school.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby appropriated out of the school fund the sum of twelve thousand two hundred dollars (\$12,200.00) for payment of teachers of neighborhood schools of the Creek Nation, and five hundred dollars (\$500.00) for the purpose of purchasing books and stationery for the use of said school. * * *

Be it enacted by the National Council of the Muskokee Nation, That the sum of five thousand four hundred and fifty dollars (\$5,450.00) be, and the same is hereby, appropriated out the school funds for the support of the Tullahassee Manual Labor School for the year ending November 16th, 1876, and ending November 16th, 1877. * * *

Be it further enacted, That the sum of five thousand six hundred dollars (\$5,600.00) be, and is hereby, appropriated out of the school funds for the support of Asbury Manual-Labor School for the year commencing November 16th, 1876, and ending November 15th, 1877. * * *

Be it further enacted, That the sum of four thousand dollars (\$4,000.00) be, and the same is hereby, appropriated out of the general funds for the support of the Muskokee Institute for the year commencing November 16th, 1876, and ending November 15th, 1877. * * *

Salary of superintendent of schools six hundred dollars (\$600.00).

Whole amount expended	\$35,850 00
Amount to be expended according to treaty	11,000 00

Making a difference of	24,850 00
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1877.

Be it enacted by the National Council of the Muskokee Nation, That the sum of eleven thousand two hundred dollars (\$11,200.00) be, and is hereby, appropriated out of the school funds for the pay of teachers of neighborhood schools, and the further sum of three hundred dollars (\$300.00) for the purpose of purchasing books for said schools.

Be it enacted by the National Council of the Muskokee Nation, That the sum of five thousand six hundred dollars (\$5,600) be, and is, appropriated for the support of Asbury Manual-Labor School for the year commencing November 15th, 1877, and ending November 15th, 1878.

Be it further enacted, That the sum of five thousand six hundred dollars (\$5,600.00) be appropriated for the support of the Tullahassee Manual-Labor School for the year commencing November 15th, 1877, and ending November 15th, 1878.

Be it enacted by the National Council of the Muskokee Nation, That the sum of three thousand five hundred dollars (\$3,500.00) be, and is hereby, appropriated for the support of the eighteen youths attending school in the States.

Salary of superintendent of schools six hundred dollars (\$600.00).

Whole amount expended	\$26,800 00
Amount to be expended according to treaty	11,000 00

Making a difference of	15,800 00
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1878.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of eleven thousand two hundred dollars (\$11,200.00) to be used in payment of teachers of neighborhood schools, from the sixteenth day of November, 1878, to the fifteenth day of November, 1879, inclusive.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of four thousand dollars (\$4,000.00), the same to be paid as annual installment to Tullahassee Mission.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of five thousand six hundred dollars (\$5,600.00) for payment of annual installment to Asbury Manual-Labor School.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of four hundred dollars (\$400.00), the same to be used by the superintendent of public schools in purchasing books and stationery for the use of neighborhood schools.

Be it enacted by the National Council of the Muskokee Nation, That there be, and is hereby, appropriated the sum of four thousand five hundred dollars (\$4,500.00), the same to be used for payment of expenses in educating Creek youths at institutes of learning in the States.

Be it enacted by the National Council of the Muskokee Nation, That

there be, and is hereby, appropriated the sum of two thousand and fifty-six dollars and thirty-two cents (\$2,056.32) out of national funds for the purpose of aiding in the operation of the Colored Manual-Labor School.
Salary of superintendent of education \$600.00.

Total amount expended	\$28,356 32
Amount to be expended according to treaty, the one thousand retained by president being deducted	10,000 00
Making a difference of	18,356 32

Synopsis.

Total amount devoted to the purpose of education from 1873 to 1878, inclusive	\$170,165 03
Amount to be devoted to the same purpose, during the same period, according to treaty stipulation	65,000 00
Making a difference of	105,165 03

EXECUTIVE OFFICE, MUSKOGEE NATION,

December 31, 1878.

I hereby certify that the above statement is correct, and that the above-written resolutions are true copies of the originals now on file in my office.

WARD COACHMAN,
Principal Chief, Muskogee Nation.

WM. HARRISON,
Private Secretary.

CHOCTAW NATION.

MCALISTER STATION, CHOCTAW NATION, IND. TER.,

November 21, 1878.

Pursuant to adjournment at Eufaula, the committee met at 3.30 o'clock p. m. Present, the chairman.

Judge E. W. FOLSOME, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. E. W. Folsome.

Q. Are you a Choctaw?—A. Yes, sir; a Choctaw.

Q. By birth?—A. Yes, sir; by birth.

Q. Are you a full-blood?—A. No, sir; half-breed.

Q. What is your occupation?—A. I am editing a newspaper now; it is my principal business; the Choctaw department of the paper.

Q. Where is it published?—A. In McAlister.

Q. What is it called?—A. The Star Vindicator.

Q. What is the circulation?—A. Six hundred.

Q. Is it a weekly?—A. Yes, sir.

Q. How long have you been publishing it?—A. Two years since we have been publishing it.

Q. Who established it?—A. McPherson, Hailey, and myself.

Q. You have six hundred circulation?—A. Yes, sir; mostly in the Choctaw Nation.

Q. What position have you held in the Territory heretofore?—A. Firstly, circuit judge; secondly, supreme judge.

Q. How long were you a circuit judge?—A. Four years.

Q. How long supreme judge?—A. Twelve years.

Q. What are your views in regard to sectionizing the lands and allotting them in severalty, &c.?—A. Before the treaty of 1866 this question was agitated here in the country of holding our lands in severalty, and I was of the opinion that it was best to hold our lands in severalty by fee-simple title within ourselves.

Q. What is your opinion now?—A. Still the same now; I have never changed my opinion at all; I could not see that otherwise it would be any benefit to the Choctaws to hold.

Q. To hold the lands in common?—A. No, sir; in severalty.

Q. Is it your opinion it would be for the best interest of your people that the lands should be held that way?—A. Yes, sir; I think that is best.

Q. Do you think it would stimulate enterprise and make the people take more interest in putting improvements upon their farms?—A. Yes, sir; that is my idea about it. It would be the best to hold them in severalty. Holding lands in common, they live in one place probably a year, and then go to another place, as by holding lands in common they go or stay anywhere they please. It never did us any good to be moving about from place to place.

Q. What is your opinion about territorializing the government and extending the laws of the United States over the country, making it a Territory proper?—A. I do not think our people are fully prepared for a Territorial government proper. We are willing to have a Territorial government under the treaty stipulations of 1866.

Q. Do you think a United States court ought to be established in the Territory here?—A. Yes, sir; I think it would be the best for us.

Q. To have cognizance of all offenses?—A. Yes, sir.

Q. Have charge of all causes, civil and criminal?—A. Yes, sir.

Q. And do away with the courts you have in the nation?—A. No, sir; my opinion is it would be best to have a United States court to try all criminal offenses that may be committed in the Territory here by United States citizens. As to our local matters, we have a court and I think it would be best for us to hold on to the court we have.

Q. Well, judge, do many of the people entertain the same views you do?—A. Yes, sir; a great many entertain the same views I do.

Q. Do you advocate these views in the newspaper—the Star Vindicator?—A. Yes, sir.

Q. Do your people support your paper?—A. Yes, sir; they subscribe and pay for it.

Q. That is the way the paper is maintained?—A. Yes, sir.

Q. It is an entirely private enterprise?—A. Yes, sir.

Q. What is the population of the Choctaw Nation?—A. Between 1,500 and 1,600.

Q. Is there any other paper in the nation but yours?—A. Yes, sir; one in Caddo, called the Free Press.

Q. By whom is it published?—A. Stone & Thompson.

Q. Is there general satisfaction here among the people, or would they not like to have the laws better administered?—A. Yes, sir; the laws are not sufficiently enforced to protect us here, and we want a law enforced so as to make our homes, life, and property safe.

Q. The object of the resolution under which the committee is instructed to come here is to inquire whether it is necessary to establish a differ-

ent form of government for the protection of life and property. We want to know whether life and property are protected here.—A. Not sufficiently.

Q. Is the circulation of your paper increasing much?—A. Yes, sir.

Q. Since the establishment of your paper has there been any considerable change in the views of your people as to the allotment in severalty of their lands and the better administration of the laws?—A. There has been considerable change since we commenced publishing the paper. We had some very bitter enemies about the time we started.

Q. Is it your opinion that if the Choctaw people understood it better they would be in favor of it?—A. Yes, sir; if they understood it better they would be in favor of it, but the ignorant classes of Indians have been misled by designing men.

Q. Men in office?—A. Yes, sir.

Q. You reside here?—A. Yes, sir.

Q. How long has the paper been circulating?—A. Three years.

Q. I want to know whether the half-breeds, white people, and negroes, and that class of people among the Choctaws who do the labor, who do the business, who make the enterprise, are not, nine-tenths of them, of the views you express to this committee to-day?—A. Yes, sir; they express the same views and entertain the same opinions.

WILLIAM GRAHAM, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. William Graham.

Q. Where were you born?—A. In North Carolina.

Q. How long have you been here?—A. Three years.

Q. Are you married in the nation?—A. Yes, sir.

Q. Married to an Indian woman?—A. No, sir; she is a native raised here.

Q. A colored woman?—A. Yes, sir.

Q. Was she a slave?—A. Yes, sir.

Q. She has been raised here and lived here for many years?—A. Yes, sir; born and raised here.

Q. What is the sentiment of the colored people in regard to allotting the lands, sectionizing the lands, and dividing them up?—A. I believe, so far as I understand and see into it, some of them want it sectionized; but there are a great many against it.

Q. Provided they get an equal share, how then?—A. We want an equal show. They have no privileges no more than a hog; a little place to live upon, that is about all; just a little—they can make out to stick; they can raise nothing. If you raise any cattle amounting to anything there is a big kick about it.

Q. You think it would be better to own your own land?—A. I do; yes, sir.

Q. Do the colored people think so as a general thing?—A. Yes, sir; the majority do that I have talked with. The majority of them most all want it. If they could, they would rather the country should stand as it is, but if we cannot get an equal show we would rather have a change. They want their property in here; that is the way the majority works.

Q. How do you get a living, William?—A. I am working in the Osage Mining Company.

Q. You work in the mines?—A. Yes, sir.

Q. You don't know whether you can hold land?—A. Yes, sir.

Q. You hold everything uncertain?—A. Yes, sir.

- Q. You hold everything under the will of the chief and head men ?—
 A. Yes, sir.
 Q. If they tell you to go, you must go ?—A. Yes, sir.
 Q. You have no encouragement to improve your land, &c. ?—A. No, sir.

HENRY SHOTE, having been duly sworn, was examined.

By the CHAIRMAN :

- Question. What is your name ?—Answer. Henry Shote.
 Q. Are you a Choctaw ?—A. Yes, sir ; I am.
 Q. Were you raised here ?—A. Raised here.
 Q. You were a slave ?—A. Yes, sir.
 Q. Where were you during the war ?—A. I was during the war part of the time on a place up here called Boggy.
 Q. You were in the Territory ?—A. Yes, sir.
 Q. What is your business ?—A. My business is farming a little ; that is what I generally follow for a living ; help to attend stock—such things as that ; and work for Mr. McAlester a good deal.
 Q. Can you read and write ?—A. No, sir ; I can read a little print, but cannot write.
 Q. Do they allow colored people to go to school here ?—A. No, sir.
 Q. Do they have schools for the Indians ?—A. Yes, sir.
 Q. Do not have any for the colored people ?—A. No, sir.
 Q. Do they allow you to vote ?—A. No, sir.
 Q. Do not allow you to vote at all ?—A. No, sir.
 Q. They do not ?—A. No, sir.
 Q. The Choctaws do not allow you to sit upon the jury ?—A. No, sir.
 Q. Did you not say you were born in this Territory ?—A. No, sir.
 Q. Where were you born ?—A. In Mississippi. I was brought here by the Indians ; Jim Shoa brought me here.
 Q. What is your opinion about this question of allotting the lands ; you have heard it talked about ?—A. Yes, sir ; I have a good deal. In my opinion, I think it would be a great favor to the country myself ; to the citizens of the country ; and my mind leads me that way.
 Q. You would rather own your own lands ?—A. Yes, sir ; I would, indeed.
 Q. You would take some interest in improving them ?—A. Yes, sir.
 Q. You have now no motive to acquire property ?—A. No, sir ; I would know better what I was doing.
 Q. How do the colored people feel upon that question, generally ?—A. Generally they seem to talk that they would like to have it. They do not know anything about it. They do not know anything about it, and the children are being raised up here in ignorance. They think if they had their own lands they could have schools for themselves.
 Q. Have you ever heard the question of a Territory being established over this nation talked about among the people ?—A. Well, a little ; not a great deal ; in fact I do not stay where a large portion of the colored people live, but I have been among them, and as I have been down among them, I have heard the head men or leaders (old uncle Dick Sheves, Lewis James, such men as they) say they think it would be a great advantage to the country, as well as to the citizens of the country.
 Q. Do you know any Indians who are in favor of it ?—A. Yes, sir ; some I know to be in favor of it.
 Q. Are any of them in favor of allotting the lands ?—A. Well, yes,

sir; some who I have heard talk that way are; I have not talked much to the Indians about it.

Q. Suppose you go on and cultivate a little place and improve it; what assurances have you that you can keep it; any?—A. No, sir; we have no assurances at all.

Q. Are you not subject to be dispossessed at any time by the order of the chief or headmen of the tribe?—A. No, sir; they have not passed any orders exactly depriving us of any improvements. There was one, a sheriff, come around to make us pay for permits; we went to the government agent, and he made it so that we did not pay those permits. He said we were allowed to live here because we had been slaves.

Q. They wanted to make your colored people pay permits?—A. Yes, sir. I was raised in Mississippi.

Q. So you have no assurance or confidence in improving or cultivating a little place for yourself?—A. No, sir.

Q. So your people do not do it at all?—A. No, sir.

Q. They just get a place where they can stay?—A. That is all; yes, sir.

Q. You cannot own anything?—A. No, sir; nothing more than a little property; hogs and cows.

Q. Cannot own any place you can call your own? You do not like to take a place?—A. They allow us to take a place and improve it, but they won't allow us to claim it as our own.

Q. So that all your people care about is to get a living from day to day?—A. Yes, sir; that is all they work for here.

WILLIAM M. YEATES, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. William M. Yeates.

Q. Where were you born?—A. North Carolina.

Q. Came here?—A. Yes, sir.

Q. When?—A. I have been six years in this place.

Q. How long in this Territory?—A. About six years. I have been doing business here over five years.

Q. Are you married here to an Indian?—A. Yes, sir; a woman born and raised here as a slave.

Q. What are you engaged in here?—A. I am keeping a restaurant, an eating-house and bakery.

Q. Have you been around among the people a good deal?—A. Yes, sir.

Q. Do the Choctaws allow the colored people any privileges here?—A. We are not allowed to vote in this nation.

Q. Do they allow you to send your children to school?—A. No, sir; not among their children.

Q. Allow you to sit upon the jury?—A. No, sir.

Q. Not allowed to vote?—A. No, sir.

Q. You do not have many privileges?—A. No, sir.

Q. Do they allow you to take up land and work it?—A. Well, they do at present. We do not know how long we will be; we cannot tell. I just work a little garden; I am no farmer; I have been in public business all my life. I suppose if I wanted to farm I could not get it. If I wanted one I should not ask for it, I should go and take it up.

Q. Have you talked with the colored people about the condition of affairs here?—A. Yes, sir.

Q. What do they want; what is their sentiments in regard to the

allotment of the lands?—A. I cannot tell you; some want it and some do not; some think they would like to have their lands allotted.

Q. Do they want the lands divided up?—A. Yes, sir.

Q. Are the Indians in favor of it, too?—A. Yes, sir; the Choctaws are, I think.

Q. A majority of them?—A. Yes, sir; I think so.

Q. Are the Choctaws in favor of it?—A. Yes, sir; I do not know how all the Indians stand. I believe a majority are in favor of this country being sectionized and know what belongs to them.

Q. In favor of it being established into a Territory of the United States and gradually made citizens?—A. That is what I believe. You know more about that than I do, because you read, and I do not.

Q. You do not get the papers?—A. No, sir; it is not printed free here. There is a paper printed here every week that advocates these ideas.

Q. Do the people take it and support it?—A. Yes, sir.

Q. And believe it?—A. Yes, sir.

By the CHAIRMAN:

Q. You hear people discuss these things here?—A. Yes, sir.

Q. You have heard a good deal of talk about it lately?—A. Yes, sir; it does not make much difference about the committee coming. They discuss it among themselves; they do not discuss it in public. The way things stand it is very inconvenient. You do something, you have to go to Fort Smith; you must go to Fort Smith for every little offense. It is expensive to the government—a big expense for nothing.

Q. How many colored people are there in this nation?—A. I cannot tell you to save my life; I could not tell you, but I suppose there must be in the Choctaw Nation not much less than one thousand. I guess over a thousand. It is very difficult to state that; a great many have gone out since the war.

Q. Do you think the Indians are getting more in favor of allotting the lands?—A. I am satisfied they are. They see where it would be for their better.

Q. Is there an effort being made to keep them from doing it?—A. Nothing that I know of; no, sir.

Q. Is the ruling class—people holding office—in favor of it or opposed to it?—A. No, sir; they are in favor of its being sectionized and in favor of coming into the Union the same as Kansas or any other State. There is no man who has a thimbleful of sense who does not want it. There are some few who are opposed to it, but they cannot do anything. It would be better for all that all knew that.

At 3.45 p. m. committee adjourned.

INDIAN TERRITORY,
STRINGTOWN, CHICKASAW NATION,
November 21, 1878.

Captain DISMUCKS, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. D. Dismucks.

Q. How long have you lived in this Territory?—A. About ten years.

Q. What is your occupation?—A. I am a licensed trader and also a shipper.

Q. You are engaged mainly in the lumber trade?—A. Yes, sir.

Q. How much lumber do you keep on hand?—A. Five hundred thousand feet on hand now. I ship about a million and a half annually.

Q. What class or classes of people perform the labor, and do the business, and are engaged in the various enterprises here?—A. Ninety-nine out of every hundred are citizens of the United States.

Q. I understand from that answer that the Indians do not work?—A. Yes, sir.

Q. Now, in regard to these classes of persons of whom I have spoken who do this trading, and perform these various branches of business, and engage in these enterprises; what proportion of them do you think are in favor of the allotment of the lands in the nation in severalty among the different members of the tribe and the establishment of a Territorial form of government over them?—A. I do not know the opinion of a majority of them. But about all I have heard express themselves at all have declared themselves in favor of a Territorial form of government and the sectionizing of the lands.

Q. You think the Indians would be benefited as a race?—A. If I were to view this question from a selfish standpoint, I would say the lands should remain as they are now. I would make no more out of a change than I am making now. I was here during the war, and have received my impression from staying in the country so long, and I know that with the Indians a change would be much better. As they are now, they do not make enough. If they were in some other condition than they are now I might not advocate any change. If I must speak honestly, not more than one-third are living beyond want and the other two-thirds are living in want, and great want.

Q. Because they are too lazy to work?—A. Yes, sir; that is the reason.

Q. Is not one of the reasons that they depend on the government for a living and will not work?—A. Yes, sir.

Q. What are your views of the effect of the Indians holding their lands in common, as they do now?—A. It is very bad for them.

Q. What would be the effect of dividing their lands?—A. It would, I think, stimulate them to active industry in the cultivation of their lands. As it is now, there is not much development by or among the Indians. Their condition is about the same now as it was eight years ago. There is not much raised in the country. I have to bring all my flour, for instance, from the North, as none is raised here. I do not buy 25 bushels of corn here in a year. It is not produced.

Q. The Indians are consumers instead of producers?—A. Yes, sir.

Q. They are very rare instances where they raise corn?—A. Yes, sir.

Q. What do the Indians themselves generally think of the question of dividing the lands?—A. If they were allowed to express themselves freely, there might be even more in favor of it than now say they are. The Indians are controlled by a few leaders. Twelve or 15 men control the people of this entire country.

Q. Are they the men who have the control of the government, and the counting of their funds, and the disposition of them generally?—A. That is my opinion.

Q. Do you know that as a matter of fact?—A. Yes, sir; I have been much among the full-bloods. It is very difficult to get at their opinions. They express their opinions with hesitation.

Q. What is the condition of this Territory as to the security of life and the protection of property?—A. So far as that is concerned, our property is about as safe as in the average of countries. The worst

men come here, as you know. It is a place of refuge for men who have committed crimes in the States, and who come here to live, but make fair men after they get here, because they have no other place to go to. Some of them, of course, you do not know until you are bitten. They are like a rattlesnake.

Q. In regard to the administration of your local law, do you esteem the persons who administer it, your judges, legislators, &c., as competent?—A. No, sir.

Q. Are the laws as they exist upon the statute-books properly executed?—A. No, sir.

Q. How is that?—A. So far as their own people are concerned they enforce them pretty well, but the exceptions are in the cases of people from the United States.

Q. Why?—A. They do not pretend to enforce anything against a white man. They are timid about that. They never interfere with the white man's property, because they go immediately to the United States court. The Indian rarely steals anything.

Q. Are the officers of the court here men of education and intelligence?—A. I think they are men of fair education and average good sense. They would fill any judicial office with honor to themselves and credit to the nation.

Q. Do you think the people here are able to manage their own business like any other people?—A. I do not know. They have a vast country that makes them poorer and poorer every year.

Q. In their own private business, are they able to buy and sell like other people?—A. Yes, sir; but they do not know much about the value of things. They never set a price. However, they have learned the value of stock pretty well. If you go to buy stock of them they know what to ask.

Q. Does not the existing state of things in this Territory tend to retard its development in the way of improvement?—A. I think it does. The condition of the Indians is about the same now as it was ten years ago.

Q. You do not see any improvements at all?—A. No, sir; on the contrary, they have got rid of all their stock. They come here to town barefooted and in great need.

Q. Do you think it would prove a benefit to the Indians to extend the laws of the United States over this Territory and bring them in contact with the whites?—A. Yes, sir; I speak for myself altogether. I think it would bring about a better state of affairs for the nation. They would be enabled to make and keep improvements which are now out of the question. The Indians now derive no benefit from the commonalty interest.

HENRY T. JACKMAN, being duly sworn by the chairman, was examined.

By the CHAIRMAN :

Question. Do you reside in this Territory?—Answer. Yes, sir.

Q. How long have you lived here?—A. Over six years.

Q. What is your business?—A. Merchandising.

Q. In this place?—A. Yes, sir.

Q. Are you pretty well acquainted with the condition of affairs in the Territory?—A. Tolerably.

Q. What class of persons perform the labor and do the business and are engaged in the different enterprises of industry here in the Territory?—A. Most of them are white persons.

Q. Are there any half-breeds?—A. Some.

Q. Are there any negroes?—A. The negroes do a great amount of labor.

Q. But the business is carried on by the half-breeds and whites?—A. Yes, sir.

Q. Do the Indians do much work or business?—A. No, sir.

Q. State if you are acquainted with the sentiment of these different classes of persons who you say do the business in the Territory, as to the allotment of lands in severalty, and the establishment of a Territorial government.—A. Generally, the people do not want a Territorial government.

Q. Would it be for the benefit of the Indians?—A. I think it would.

Q. What is the condition of your schools here?—A. The schools are very good in some places, but in places thinly settled the schools are not of any account. They have a pretty good academy, also.

Q. What is your view as to the establishment of a Territorial government and the allotment of the lands in severalty here?—A. I think it would be of immense advantage to the Indians.

Q. Have the Indians made any improvements of late years?—A. I think the full-blooded Indians are going back instead of improving. They do not work, and will not work.

Q. Are you prepared to state what proportions are full-bloods, whites, half-breeds, and negroes?—A. No, sir; I am not.

Q. Do you know the views of any of the Indians themselves upon the question of the allotment of the lands?—A. I have talked with some of the Choctaws. There are some who are in favor of it and some who are not. They claim that they do not want to say much about it. The way things are working, there is some little danger in expressing real opinions upon this question publicly all the time. That is the reason it is difficult to get at the true state of feeling among the Indians. They are reluctant to express themselves honestly.

Q. Do you mean that they are apprehensive of personal danger from the full-bloods?—A. Yes, sir.

Q. Is there anything else that you want to say?—A. No, sir.

Q. Suppose the lands were allotted to the Indians, and they were invested with full citizenship, would they, in your judgment, be able to take care of themselves as citizens of the United States?—A. I think they would be.

L. C. WARLICK, being duly sworn, was examined by the chairman.

By the CHAIRMAN:

Question. What is your name?—Answer. L. C. Warlick.

Q. Do you reside here?—A. I do.

Q. What is your occupation?—A. I am station-keeper here.

Q. How long have you lived here?—A. I have lived in the nation a little over four years.

By the CHAIRMAN:

Q. You have become pretty well acquainted with the people of the Territory in this vicinity?—A. Yes, sir; I have lived three years at Colvert's Station, and lived here five months.

Q. Are you acquainted at all with the sentiment of the people in regard to the allotment of lands in the Territory?—A. Yes, sir. I think the majority of them are in favor of a different government. The whites and half-breed Indians are.

Q. How is it with the negroes?—A. I do not believe I have heard many of them express their opinion.

Q. How is it with the half-breeds?—A. I think that they, too, are generally in favor of a change equally with the whites.

Q. Is there a division of sentiment among them?—A. Yes, sir.

Q. How is it with the full-bloods?—A. They are against it. There are not many Indians in our town right here.

Q. Do you know what proportion the full-bloods would bear to the remainder of the citizens of the Territory? By that I include whites, negroes, and half-breeds.—A. I could not say, as I have been on the road most of the time. I cannot talk Choctaw, and consequently am not very familiar with their opinions on this point.

C. H. HANKS, being duly sworn, was examined.

By the CHAIRMAN:

Question. Are you living here?—Answer. Yes, sir.

Q. How long have you been living in the Territory?—A. Since 1870; I came from Fort Sill then.

Q. Are you pretty well acquainted with the people?—A. Yes, sir.

Q. You have had more or less dealings with them?—A. Yes, sir; I am employed on Mr. Thompson's farm.

Q. You are clerk to the licensed trader here?—A. Yes, sir.

Q. What class or classes do most of the business here?—A. The whites.

Q. Those who are married into Indian families, and who are themselves traders?—A. There are some of that class.

Q. Who perform the greatest amount of manual labor?—A. I think it is the white people.

Q. Do the negroes do any work?—A. Some negroes do.

Q. Do the Indians do any work?—A. Not that I have ever seen; as a class they do not work.

Q. Do you wish to have the committee understand that the improvements to be seen upon the line of the railroad in various portions of the Territory are made by white men and negroes?—A. They were made mostly by white men, I think.

Q. Who are the agriculturists throughout the Territory?—A. Generally white men, with some few negroes.

Q. There are no Indian mechanics?—A. I do not know of any at all.

Q. The Indian, then, is a consumer, depending upon the government for his sustenance?—A. Yes, sir.

Q. Do they improve the lands to any extent?—A. No, sir; I have seen none who do. I have been here for the last eight years, and I have never seen any improvements made by them at all.

Q. Are there more improvements here now than there were eight years ago?—A. There are more made by white people.

Q. In regard to the question of opening up the Territory for settlement, and dividing the lands, what is the general drift of public sentiment?—A. The white people are about all in favor of it.

Q. You have the means of knowing whether there is any considerable sentiment in favor of it?—A. Yes, sir.

Q. Is there a free expression of opinion upon these points?—A. I have an idea that there are some who are not free to express themselves upon this subject here. There are some people who are married with the Indians who will express themselves to a white man fully and freely, but who will not do it to a full-blood. They fear personal danger.

Q. Do the general mass of the community ever express an honest opinion upon these questions?—A. Many do. I have heard white men married to Indians say they were in favor of the proposed changes.

Q. Suppose the Territory was opened for settlement, and the lands divided in severalty, and the Indians invested with full citizenship, what would be the effect upon them?—A. I suppose it would be beneficial. You could not well make it any worse.

Q. Would it not be better protection to life and property?—A. Yes, sir. There is a pretty wild set in here now. They do not seem to care much about the security of life, or property either.

Q. How are the laws administered here?—A. Tolerably.

Q. Does everybody protect himself?—A. Yes, sir.

Q. Are the men who administer the laws competent men?—A. No, sir.

JAMES YOUNG BRYCE, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. James Young Brice.

Q. Do you live in this Territory?—A. Yes, sir.

Q. How long have you been here?—A. About nine years.

Q. What is your occupation?—A. I am a minister.

Q. Of what denomination?—A. Methodist Episcopal.

Q. In the following of your profession, you have traveled much over the Territory, have you not?—A. I have traveled pretty generally over the Territory.

Q. You are what we call a circuit preacher?—A. Yes, sir.

Q. Now, Mr. Price, you are an intelligent witness, and have views of your own upon this subject. I desire to have you inform the committee, in your own way, upon this question of opening up the Territory for settlement, dividing the lands in severalty, and establishing a Territorial government. What effect would all this have upon the Indians, as well as the other residents of the Territory?—A. I have my own views upon these different questions; but I should prefer to have the questions propounded to me categorically.

Q. What, in your judgment, would be the effect of allotting the lands in severalty among the Indians, so that each should secure his proper proportion?—A. It is my conviction that it would be a blessing to the Indian.

Q. Has there been any improvement among the Indians since you came among them?—A. I have noticed where I preach that where the Indians have been mixed with the whites they are advancing in the arts of civilization very rapidly; on the other hand, where they are scattered, and away from the influence of the white man, they are making no improvement. This is the case in the interior.

Q. In your judgment, then, the allotting of the lands would prove a decided benefit to the Indian in a physical and moral point of view?—A. Yes, sir; in both.

Q. Suppose the lands were opened up to white settlement, and the Indians became citizens of the United States, would they be able to take care of themselves?—A. Yes, sir; a large portion of them. I think the change would inure to the great benefit of the Indians by throwing them upon their own resources.

Q. You think throwing the Indians upon their own resources would be a blessing to them?—A. I do. They would develop faster when they found they would have to cultivate the soil for their own self-preservation.

Q. Do you think it would be a good thing for the Indian if the

government should provide each one with a certain amount of the land, secure from debt or other liability, and made inalienable, and set apart the remainder for 15 or 20 years, the proceeds to be held by the United States for the benefit of the tribe?—A. I most certainly think it would.

Q. In that case a white man could not take advantage of them. Would not that teach them quicker than in any other way?—A. I think so.

Q. Where you have observed advancement, it has been in the vicinity of the railroads, generally?—A. Yes, sir; and none or very little back from it.

Q. You think the railroads can civilize the Indians as well as any other means?—A. Yes, sir.

Q. What is the condition of the negroes here?—A. It is peculiar. The council has been trying to settle that matter for some time.

Q. Do you recognize them as citizens, or have they no definitive status or rights at all?—A. They have simply the right to stay here, and there is no law to protect them at all.

Q. Do the negroes perform a great deal of the manual labor of the Territory?—A. Yes, sir; they perform most of it.

Q. Do the Indians work much?—A. As a general thing they are very lazy. Of course, there are some exceptions.

Q. In regard to the local government of the Choctaw Nation, is it administered by the people, or generally by a comparative few?—A. By a very few, so far as I understand it. I pay very little attention to politics.

Q. So upon this question or any other you think public sentiment is controlled by a few individuals?—A. I have no hesitancy in saying that.

Q. These few individuals exercise a terrorism.—A. I do not know so much about the terrorism, but there is a prejudice against white men which is very easily aroused in the ordinary Indian. These passions are excited by the full-bloods.

Q. Do you know what sort of arguments these leading full-bloods used upon the ordinary Indian to induce him to oppose the establishment of a Territorial government?—A. I do not know that I do exactly. The most prominent are constantly endeavoring to make the mass of the Indians believe that the United States has cheated them out of their land from the first settlement of the country to the present time.

Q. Do not you think the impression is sought to be conveyed that there is a scheme to cheat the Indians out of their lands and convey them to the railroads?—A. I do.

By the CHAIRMAN:

Q. Do you think that in case of the opening up of the Territory, the allotment of the lands, and the establishment of a Territorial Government, there would be greater security for life and property?—A. I do.

J. D. GARNER, being duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. J. D. Garner.

Q. Do you live in this country?—A. I do.

Q. How long have you been here?—A. Twelve years.

Q. What is your occupation?—A. I am in the lumber business.

Q. Do you keep a store?—A. I also keep a store.

Q. Are you a licensed trader?—A. I am.

Q. Your opportunities, then, for ascertaining the wants of these people are very great.—A. I understand some things that interest them.

Q. What classes of persons do the business and perform the labor here?—A. White men, generally.

Q. Do the negroes do anything?—A. They do.

Q. Do the Indians do anything?—A. A very little.

Q. Is the condition of the Indian as poor now as when you came here?—A. It is a great deal worse than it was 12 years ago. The Indians used to have large herds of cattle, and now they are perfectly destitute.

Q. They will not work?—A. They work only a very little in case of extreme necessity.

Q. What are your views in regard to the opening of the Territory?—A. Some of the people here are opposed to it, and some are in favor of it. I am myself in favor of the change.

Q. What effect would it have upon the Indians in the Territory?—A. It would not be worse than it is now.

Q. Do you not think it would be a great improvement to them?—A. I think it would be very beneficial to them as a class. I have no doubt about it.

Q. Are there any laws now regulating business in the Territory between whites and blacks?—A. No, sir.

Q. What evils, in your judgment, would befall them by opening up the Territory to settlement and establishing courts, &c.?—A. I do not know of any.

Q. Can there be any substantial improvement in the Territory and development of its resources under the existing state of things?—A. I think not, sir.

By the CHAIRMAN:

Q. If such changes were made as have been mentioned, would there not be better protection for life and property in the Territory?—A. Yes, sir; it would be a great blessing to all classes, whites, Indians, and negroes.

Q. There is not now much protection for life or property?—A. No, sir.

Q. Everybody protects himself?—A. Yes, sir; there is very little protection for life or property. I do not believe it would be possible to get an honest expression of opinion here from an ordinary Indian on the subject of territorializing the government.

Q. What is the reason?—A. Because the majority would be afraid to come out and express an honest opinion.

Q. Are not the affairs of the Choctaw Nation actually conducted and entirely controlled by a very few Indians?—A. Yes, sir; I suppose one-eighth control the balance.

Q. The remaining seven-eighths are afraid of the one-eighth?—A. Yes, sir; there might be some part of the one-eighth who would not perhaps coincide with the views of the one-eighth, but they would not break away publicly from the one-eighth dictation.

Q. Then there is really a reign of tyranny here?—A. Yes, sir.

JOHN E. SIMPSON, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Where do you live?—Answer. In this Territory here.

Q. When did you come here?—A. The 18th of March, 1869.

Q. Have you been here ever since?—A. I have.

Q. Of course you are well acquainted with the Choctaws of this vicinity?—A. Yes, sir.

Q. What would be the effect of opening the lands of the Territory for settlement, and extending the laws of the United States over it?—

A. I believe it would be better for the Indians and for the country generally.

Q. What improvement, if any, has there been among the Indians—I confine the question to the full-bloods—since you came here?—A. There has not been a great deal, though there are some more improvements here than when I first came.

Q. Are these improvements mostly where the Indians come in contact with the whites?—A. Yes, sir.

Q. In places remote from white civilization has there been any improvement?—A. No, sir; except in occasional patches here and there. The principal part of the farming is done by whites, mixed-bloods, half-breeds, and negroes.

Q. The full-blooded Indians do not do any work?—A. None except in rare instances. They generally depend on the government for support and do nothing.

Q. What do the people generally think here about opening up the Territory for settlement?—A. Some are in favor of it and some are opposed to it. I think if you take the half-breeds, mixed-bloods, negroes, and whites they are in favor of it, and some few full-bloods also.

Q. Has there been an honest expression of opinion on this subject?—A. No, sir; it has not been full.

Q. Are not the affairs of the Choctaw Nation controlled by a very few individuals?—A. It is to a certain extent controlled by a few leaders.

Q. What is the feeling in regard to the administration of the laws here?—A. They have laws here and also courts, and the laws are enforced against the Indians, but where the whites are concerned the courts are held at Fort Smith, Ark.

Q. How far is Fort Smith from here?—A. One hundred and thirty miles.

Q. Is there no court here having jurisdiction over both whites and Indians?—A. No, sir; the Indian laws extend in their operation over their own tribes only.

Q. What would be the probable effect on the Indians of sectionizing the lands in the Territory?—A. If the lands were sectionized and the Indians got what belonged to them and obtained a patent or deed to it, no doubt he would improve it or have somebody improve it for him. I have no doubt at all the Indians would be much better off then than they are now, because they could rent their land, and by that means get along with economy.

Q. As it is now, they get nothing?—A. That is it.

Q. What effect would it have now if the United States were to extend a Territorial government over this country, upon the lives and property of the residents?—A. Of course it would make life and property much more secure.

By the CHAIRMAN :

Q. Would it be better generally for the community if a government similar to those of the other Territories were established here?—A. Most decidedly.

E. T. WALKER, being duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. E. T. Walker.

Q. Do you live in the Territory?—A. Yes, sir.

Q. How long have you lived here?—A. Five years last April.

Q. What is your business now?—A. I have a saw-mill.

Q. We are inquiring, Mr. Walker, what effect, if any, it would have upon this community if the Indians were allotted their lands in severalty, and a Territorial government were established here, and the laws of the United States were put in operation over the residents of this Territory.—A. I think a Territorial government would prove beneficial to all classes and parties here. So far as the allotment of the lands is concerned, I do not think it would make the Indians any worse off than they are now. In my judgment, it would prove very beneficial.

Q. Have the full-blooded Indians improved their condition any since you came here?—A. There are no white settlements off from the railroads, and there has been no improvement made away from the lines of road. I do not see that there is any prosperity whatever among the Indians away from the white settlements. For that reason, I think that the allotment of the lands among them and the distribution of the white population throughout the country would be beneficial.

Q. Does the full-blood do much work?—A. No, sir; not as a general thing.

Q. Who does the work in the Territory?—A. That is principally done by white men. I have had a great deal of experience in hiring labor, and I myself have had to depend upon white labor entirely. Once in a while I have secured an Indian for a month, but they were not regular or reliable enough to depend on.

Q. Your judgment is that it would be for the interest of all classes to have a Territorial form of government here?—A. I cannot see why it would not be beneficial to the Indian, as well as to the whites here. There is no question about that at all in my mind.

Q. Are whites who have married Indians considered as Indians, and have the right to be regarded as such in the Territory?—A. Yes, sir; whites married into Indian families are considered as Indians. They are termed Indians.

Q. Do the mass of the Indians outside of the leaders dare to express themselves honestly upon these questions?—A. I do not know whether I could answer that correctly. I do not know much about their sentiments in that respect.

J. W. CASON, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. J. W. Cason.

Q. Do you live here?—A. Yes, sir.

Q. How long have you been in the Territory?—A. Six months.

Q. What is your business?—A. I am a carpenter.

Q. You understand this question of opening the Territory?—A. Yes, sir; but I have never heard it discussed a great deal.

Q. But it has been talked of some in the neighborhood?—A. Yes, sir.

Q. What do you think would be the effect upon all classes of Indians and other residents of the opening of the Territory?—A. In some respects I think that would be the best plan; then, in others, I do not think it would.

Q. In what respect would it not be?—A. On account of their stock.

Q. So the drawback would be that they would have to get their farms into smaller ones?—A. Yes, sir.

Q. What effect would it have upon the Indians in regard to locating them?—A. I think it would help them. They would cultivate more, and, seeing improvements going on around them, they would make more improvements themselves.

Q. Has that not been the result of your experience and observation, that where the white man has been the Indian has made more improvements than where they have been left to themselves?—A. It has.

Q. And the effect of white settlement would be to stimulate them to enterprise and development?—A. I think so.

Q. The full-blood does very little work?—A. He does scarcely anything more than hunt.

Q. They depend upon the government for support?—A. Yes, sir.

By the CHAIRMAN:

Q. If the laws of the United States were enforced here, would it not be a great benefit to Indians and other residents alike?—A. I am decidedly of the opinion that it would.

Q. Would you feel more secure?—A. Yes, sir; in my life, person, and property.

Q. I suppose that in this community the general feeling of insecurity makes everything uncertain?—A. Yes, sir.

Q. So there is no permanence in business?—A. No, sir; not a single bit.

W. W. HAYNES, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. W. W. Haynes.

Q. Do you live in the Territory?—A. I do.

Q. How long have you lived here?—A. About two years.

Q. What is your occupation?—A. Keeping a store.

Q. Have you ever thought much of the question of allotting the lands in severalty here and opening up this country for settlement?—A. I have not thought very much about it; but the question is talked about more or less here in the community.

Q. What, in your judgment, would be the effect upon all classes if this country was opened to white settlement, and the government was territorialized, and the laws of the United States were extended over it?—A. I have been acquainted with the Indians forty years. I have lived with them in the States, before their removal from the East, and I am supposed to know considerable about them and the state of the civilization. I do not see that they have made any progress during the last few years where they have been removed from the influences of white people. It seems to me that the Indians would be much benefited by the proposed change. The laws here now are in a very unsettled and unsatisfactory condition.

Q. You have no confidence in the law as it is now administered?—A. None at all. The courts are held so far away that justice is very often cheated out of its due. The nearest court for the settlement of disputes between whites and Indians is held at Fort Smith, 120 miles away.

Q. In what parts of the Territory are there any improvements among the Indians?—A. Where they come in contact with the whites only. That is my observation. There is no improvement in the Choctaw tribe where they are left to themselves.

Q. Do you think that the contemplated opening of the Territory would be beneficial to the Indians in any way?—A. I do.

Q. Are they not governed by very few of their leaders?—A. Yes, sir; that is the case in the Choctaw as in the Cherokee Nation.

Q. These leaders have the handling of the money, &c.?—A. Yes, sir.

Q. Is there use made, for educating the children, of any fund?—A. I am informed they do not pretend to use it for the schools.

Q. Do they have common schools here?—A. Not many, though there is a fund presumed to be used for that purpose.

Q. Your judgment, then, would be that opening the Territory would be beneficial to everybody?—A. I am decidedly of that opinion. If that change should be made there would be much greater improvement here in five years than there would be as it is now in 40 years.

Q. What do the Indians generally say about opening up the Territory and sectionizing the land?—A. Many of them, I think, are in favor of it, though they will not acknowledge it. They are completely under the control of their leaders. Some, however, of liberal education and views, do not hesitate to express themselves favorably toward a change.

By the CHAIRMAN:

Q. You think there would be in this community better protection for life and property if the laws of the United States were extended over the Territory?—A. I do.

P. B. FISHER, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. Yes, sir.

Q. Where?—A. Stringtown.

Q. How long have you been living here?—A. Two years last April.

Q. How long in the Territory?—A. Seven years.

Q. In what other portions of the Territory have you lived?—A. In Atoka.

Q. All the while in the Choctaw Nation?—A. Yes, sir.

Q. The committee are trying to find out what would be the effect upon the people if the lands were divided in severalty, and the laws of the United States were extended over the Territory, as they are in other Territories.—A. I believe it would be better for both the citizens of the United States and the Territory if the land were allotted.

Q. What would be the effect upon the full-blooded Indians?—A. It would be beneficial. They could have their lands worked if they did not care to do it themselves.

Q. Are they making any improvements?—A. Very little.

Q. Who makes the improvements that we see in riding through the Territory on the railroads?—A. Generally the white men make the improvements, but some few are made by half-breeds and negroes.

Q. Where improvements are made by the Indians, is it not generally on the line of the railroads?—A. It is.

Q. The Indians in the back country are about as they were when you came here?—A. Yes, sir; some have small farms of ten acres.

Q. Do the full-bloods work, as a class?—A. Very little.

Q. Do they depend on the United States for support?—A. No, sir; they raise stock.

Q. In case of a change, by opening up the Territory to settlement, would there be greater protection to life and property?—A. There would be.

Q. If the laws of the United States were put in operation, there would

be a more general feeling of security among all classes in the community?—A. Without doubt.

Q. You could then accumulate in safety?—A. Yes, sir; we all feel that. As it is now we can accumulate nothing.

Q. Whenever you have occasion to seek any redress from the courts you go to Fort Smith?—A. Yes, sir.

E. H. COLBERSON, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. I do.

Q. Where?—A. Across the road.

Q. How long have you lived in the Territory?—A. I have been here ten years last June.

Q. What is your occupation?—A. I am blacksmithing and wagon-making.

Q. The committee are trying to find out something about the probable effect of the opening of the Territory upon the citizens of the Territory. I would like to have you state your opinion upon the subject.—A. It is a thing I have studied a good deal. There is one class of people who would not be much benefited, perhaps, and then there are some others who would be greatly benefited and built up. The full-blood Indian is not prepared for the change. He has no resources to meet the emergency. He cannot compete with the whites and the half-breeds, who are the industrious portions of the community. The latter portion are inclined to accept any sort of government.

Q. Is it the full-blooded Indian who is opposed mainly to opening the Territory?—A. Yes, sir.

Q. Do the full-blooded Indians do any work?—A. Not as a general rule; perhaps three-fourths of them are industrious. I have had a good deal of experience with them in the shop. I have seen them also at their homes, where I have visited the settlements as a church member.

Q. Have not all the improvements that you have observed among the Indians been only where they have come in contact with the whites?—A. As a general rule that is the truth. The Indians upon the line of the railroad are much more prosperous than those in the interior, and have advanced more in the arts of civilization.

Q. Would not your judgment be that if the Territory was opened for settlement, and the laws of the United States were extended over it, immense benefit would accrue to the Indians and to all other residents of the Territory?—A. My opinion is that the benefit would be incalculable, so far as opening up the Territory is concerned.

Q. What would be the effect of establishing courts here, with the laws of the United States in operation?—A. So far as the law is concerned now, we have no enforcement of it. We have our laws, which are good enough if they were enforced and lived up to; but they are not.

THOMAS RUTHERFORD, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. I do.

Q. How long have you lived in the Territory?—A. Twenty-five years.

Q. In what part?—A. In Scullyville, on the Arkansas line.

Q. You have had a good deal of experience with the Indians?—A. Yes, sir.

Q. Are you married into the nation?—A. No, sir.

Q. What is your age?—A. Thirty-six years.

Q. This committee is here to ascertain the effect of sectionizing the land and opening the Territory to white settlement. What have you to say upon that subject to aid the committee in coming to a correct conclusion?—A. I do not know but that it would have a beneficial effect upon all classes; but for myself I would rather have it remain as it is.

Q. What is your business?—A. I am merchandising.

Q. Have you any schools here?—A. Of course, some few have schools.

Q. Are these schools so conducted that they are for the benefit of the leading Indians?—A. No, sir; I think all are allowed to send their children to school, though many do not do it, as they are not able to.

Q. Are the full-blooded Indians very poor?—A. Yes, sir; as a general thing. In some cases they have a little property.

Q. They do not work?—A. They work very little.

Q. Have not the improvements you have noticed since you came here been on the line of the railroad?—A. Yes, sir.

Q. So that, whenever the Indian has made any improvements, it has been by being in contact with the whites?—A. It has.

Q. If a Territorial government was established here, and the lands were allotted to the Indians, and United States courts were in operation, as in the other Territories, would there not be better protection for life and property?—A. I have no doubt of it. I think the Indians would be equal to it.

JOSEPH SPOFFORD, being duly sworn by the chairman, was examined and testified as follows:

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. Yes, sir.

Q. How long have you lived here?—A. Two years last October.

Q. What is your occupation?—A. I am a manufacturer of lumber.

Q. This committee are here to ascertain the effect of opening the Territory and sectionizing the lands. What is your judgment upon that subject?—A. I think it would be better for the citizens of the United States and the citizens of the nation.

Q. Your opinion is that all classes—whites, Indians, half-breeds, and negroes—would be benefited?—A. Yes, sir.

Q. What protection would the negroes have in the Choctaw Nation?—A. My understanding is that the native negro has the same right that the Choctaw has.

Q. Are they allowed to exercise it, though; to hold office and sit upon the juries?—A. No, sir; in regard to holding property, they do not amount to much; but they have the same rights under the law.

Q. Do the full-bloods do any work?—A. No, sir; the white men do the work and manage the business. The negroes do some manual labor.

Q. Is there any security for life and property under the present government?—A. No, sir.

Q. Do not you think that under a Territorial form of government there would be more protection for life and property?—A. I think there would. I think if we had United States courts it would be a great benefit, because now the people will not prosecute criminal cases. All that species of litigation now goes to Fort Smith, Ark., 130 miles away. A great deal of wrong is done in this way, because it is very easy to trump up a charge against a person, and have him called off from his business to Fort Smith.

CADDO, CHOCTAW NATION, INDIAN TERRITORY,
November 22, 1878.

Pursuant to the last adjournment committee met at 12.15 p. m. Present, the chairman.

GEORGE W. DALLAS, having been duly sworn, was examined

By the CHAIRMAN:

Question. Where were you born?—Answer. Alexandria, Va.

Q. How long have you lived in this country?—A. Two years.

Q. What are you doing here?—A. Teaching school.

Q. Are you married to a Choctaw woman?—A. I am married to a woman from Maryland.

Q. You are a teacher, are you?—A. Yes, sir.

Q. Employed by the Choctaw Nation?—A. By the United States.

Q. To teach whom?—A. The colored people.

Q. What condition are the colored people here in?—A. To answer that question it will take quite a statement. The condition of the colored people in this country is anything but favorable. They are deprived of citizenship among the Indians, and they are not really citizens of the United States. They are here simply upon their own resources; simply allowed to remain without citizenship; they are not allowed to vote; not allowed to hold office; not allowed any of the school privileges of the nation; they are not advancing; they are no better off than they were at the close of the war. As a general thing they are anxious for school, anxious for progress in civilization; but they have no way by which to accomplish it. They have no intelligent men among them; they have no persons among them who have learned anything since they have been free. They have no rights whatever.

Q. How many colored people are there in the Choctaw Nation?—A. To guess, I think there are from four thousand to five thousand.

Q. How many in the Chickasaw Nation?—A. From three to four thousand.

Q. Seven or eight thousand in both nations?—A. I judge not far from eight thousand.

By the CHAIRMAN:

Q. The colored people do all the work, generally?—A. Yes, sir.

Q. The Indians don't work—the full-bloods?—A. They work some, but then none compared with the colored people.

Q. Are the colored people allowed to sit upon the jury or have any voice in the courts?—A. None, whatever.

By the CHAIRMAN:

Q. What is the feeling of the colored people in regard to sectionizing the lands, opening up the Territory, and establishing a Territorial government?—A. They are about divided. A majority of them, I believe, would a great deal rather have it sectionized than remain as they are now, without any status whatever. But there is one thing about it; the colored people, as we understand the treaty now, are without any rights to the land whatever, and should sectionizing carry, why they would have their lands as those who are in the Cherokee, Seminole, and Creek Nations. They receive, whenever the country shall be sectionized, their one hundred and sixty acres; but the colored people in the Chickasaw and Choctaw Nations have no such stipulations.

Q. Congress would provide for that?—A. The bills thus far have never yet contained any provisions for the six or seven thousand colored

people here, because they have had no one at Washington to represent their interests.

Q. Have they a desire to send people to Washington to represent their interests?—A. That is their desire. To do it they lack the funds to send men to Washington. They have sent men to Washington who were not competent to transact business, therefore they came back without having accomplished anything

Q. Are the white people in favor of a change?—A. Universally, sir.

Q. How are the half-breeds?—A. They are mostly in favor of it.

Q. Is there any protection for life and property?—A. Hardly, sir; a man hardly dare say, especially those who live here—such as white people intermarried here—they hardly dare say their lives are their own. Persons here as I am get the protection of the United States. They are protected a little more, and are a little freer than what the others are. There is a great deal of lawlessness and crime committed, but they are never brought to attention, because the court is so far persons do not wish to go the distance.

Q. You mean the United States court?—A. Yes, sir.

Q. What is the distance of United States court from here?—A. I think about one hundred and seventy-five miles over across the country.

Q. Across the country?—A. Yes, sir; horseback traveling.

Q. I suppose their own local courts do not have much strength?—A. No, sir; the colored people here have nothing to do with the United States courts.

Q. Why?—A. Whenever there is any difficulty between the Indians and the colored people, they are obliged to go to Fort Smith. Sometimes they have to go two and three hundred miles, going from the Chickasaw country.

Q. Is there anything else you would like to state?—A. I would desire to say, or ask you if you could not have some means by which a representative might be sent from here to Washington at the expense of the government.

The CHAIRMAN. O, no; there is no way in the world to do that.

The WITNESS. You understand the colored people are here without any representative in Washington. No bill whatever can be passed; ere is no one there to look after the colored people's interest.

The CHAIRMAN. That is so; and there is no way to provide for you, except the government is changed. It is your unfortunate condition that you are here in the Territory without laws.

By Mr. BOUDINOT:

Q. These six or seven thousand colored people were formerly slaves?—A. Yes, sir.

Q. They were here when the war closed, with their families?—A. Yes, sir; and they are to-day without any legal status whatever; different from any other class of colored people in the United States. They remain here, but are looked upon as intruders. The Indians can come and cut down their fences and cut down their trees, and the colored men cannot say a word.

Q. Do you know whether these colored people in this nation have sent delegates to the Choctaw council, asking for their rights in the country; asking the council to do something for them?—A. Perhaps they have done it in a few instances, but there has never been any real concentrated action. Just a few have gone there upon their own responsibility.

NOVEMBER 23, 1878.

RUFLAND GARDNER, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Rufland Gardner.

Q. Where were you born?—A. Among the Choctaws.

Q. Were you a slave?—A. Yes, sir.

Q. Do they allow you to vote here?—A. No, sir.

Q. Hold office?—A. No, sir.

Q. Sit upon the jury?—A. No, sir.

Q. Send your children to school?—A. Yes, sir; now we send them to government schools.

Q. I mean the Indian schools.—A. No, sir.

Q. Do they recognize you as citizens at all?—A. No, sir; none of the colored people are citizens.

Q. Where were you during the war?—A. I was 12 miles below here.

Q. What do the colored people want done in reference to territorializing the government? Do they want a different form of government?—A. Some do and some want to be as they are.

By the CHAIRMAN:

Q. That is, adopted into the Indian tribes?—A. Yes, sir; we want to do that. They do not know where their homes are.

Q. They have no homes—any place?—A. No, sir.

Q. They have no encouragement to fix up any home?—A. No, sir.

By Mr. BOUDINOT:

Q. How many do you think there are?—A. Well, I think there are about five thousand and something in the Choctaw Nation, and four thousand in the Chickasaw Nation.

Q. That would come a little over nine thousand?—A. Yes, sir.

Q. They are in the same condition in the Chickasaw Nation as they are here?—A. Yes, sir.

Q. The most of them were slaves who came here with the Indians?—A. Yes, sir.

By the CHAIRMAN:

Q. None have come in since the war?—A. No, sir; none have come in since the war.

ISAAC JAMES, having been duly sworn, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Isaac James.

Q. Were you a slave here?—A. Yes, sir.

Q. Born here, was you?—A. Yes, sir.

Q. I suppose you are treated like all the other colored people—denied everything?—A. Yes, sir.

Q. Cannot vote?—A. No, sir.

Q. Sit upon juries?—A. No, sir.

By the CHAIRMAN:

Q. Would you rather have a home of your own?—A. Yes, sir.

By the CHAIRMAN:

Q. Would you like to have a change?—A. Yes, sir.

Q. Would you like to have a Territorial government?—A. Yes, sir.

Q. Lands allotted, so you could get some privileges?—A. Yes, sir.

Q. Colored people all feel that way?—A. Yes, sir; a majority are in favor of it.

Q. They would all be in favor of it if they understood it, would they not?—A. Yes, sir; some want to be adopted.

By the CHAIRMAN:

Q. They are willing to take anything to get out of this condition?—A. Yes, sir.

Q. Are there many negroes here who were here before the war, who were not slaves?—A. Yes, sir; a few, and they were here during the war and who were not slaves.

Q. Free negroes?—A. Yes, sir.

Q. They treat them the same as the others?—A. Some they do; but some remained under the old law in force before the war commenced, Choctaw law.

WILBUR HAMPTON, having been duly sworn, was examined.

By the CHAIRMAN:

Question. Do you live here?—Answer. Yes, sir.

Q. In the Territory?—A. Yes, sir.

Q. How long have you lived in the Territory?—A. Ever since I was a boy.

Q. You were born here?—A. No, sir; I was not born in this country.

Q. Where were you born?—A. In Mississippi.

Q. Of what people are you?—A. Choctaw tribe.

Q. What is your business?—A. My business is farming, raising stock, &c.

Q. This committee wants to find out what is the best for this people here to aid them in coming to an intelligent judgment in respect to it. The committee wants the opinion of men here as to what would be the best condition of this people; whether they are to remain as they are, holding lands in common, or whether they shall have them allotted in severalty, so that each man may have his own home, his own property, and have the laws of the United States extended over you; what do think about that, your own feeling in the matter?—A. My opinion is contrary to the questions asked.

Q. So you are opposed to it?—A. Yes, sir.

Q. Why are you opposed to it?—A. Well, I have never studied upon the subject, but I do not think the Indians would get along so well under United States laws.

Q. Do not the Indians do better where they come in contact with the whites?—A. No, sir; you never find an Indian on the line of the railroad. They get back.

Q. Did you ever know the Indians to improve any except where they come in contact with the whites?—A. I never thought of that.

Q. You think it for the best interest of the people, whites, colored people, Indians, that they should not be under United States laws?—A. I do not know about that. I would prefer—

Q. The question is not what your own preferences are; not what your own desires are; but what, in your judgment, would be for the best interest of the people of the Territory. Whether they should be under United States laws and have their own lands or be what they are to day?—A. I am unable to answer that.

Q. So that in saying you are opposed to opening the Territory you express your own feelings?—A. Yes, sir.

Q. Without any reference whether for the good or bad for the people?—A. Yes, sir; I think it is for the best interests of the Indian people not; as for other people I have no interest in any other people.

EDWARD MORRISON, having been duly sworn, was examined.

By the CHAIRMAN:

Question. You are a resident in the Territory, are you?—Answer. Yes, sir.

Q. How long have you resided here?—A. Three or four years.

Q. You are a clergyman?—A. Missionary minister Home Society, Congregational body.

Q. Your duties call you in different parts of the Territory?—A. They do.

Q. Do you travel much?—A. Not a great deal. I travel only in this nation occasionally.

Q. In the Choctaw Nation?—A. In the Choctaw Nation. I have one other permanent station, Durant, where I have preached in the Sabbath school for four years.

Q. I desire to make a statement to you: That the committee here are seeking opinion upon the question of the condition of this people, and the probable effect upon them in allotting the lands in severalty to the Indians, and extending the laws of the United States over the Territory, as in other Territories of the United States. Now, of course, your experience and observation will be of very great value to the committee, and I wish you to state your own views about their condition.

The WITNESS. If you will put your questions categorically—

By the CHAIRMAN:

Q. You are permanently located here?—A. Yes, sir; at Caddo.

Q. What will be the effect upon the whole people of the Territory—and you can divide them up into classes, if you please—of sectionizing the lands so every man can have his own home, and of extending the laws of the United States over the Territory?—A. As to the first question—and there are two questions—I think it would be a decided advantage, both to the Indians primarily and to the citizens of the United States.

Q. Resident here?—A. O, yes, sir; of course. It has been my opinion for years in reference to the Indian, and I could not change it. I am satisfied about it, and more so from my experience here.

Q. Give any reason which you may for that opinion, and state in what respect they would be benefited.—A. Well, you know, a man who has a right to his own homestead has encouragement to improve it. The land being held in commonalty it holds out strong inducements for a few who are known in the Territory as the ring—the Indian ring. It is to their interest to keep the country in its present condition, holding the lands in commonalty. Few are wealthy in consequence of owning large herds of cattle. They want the whole country to range upon, and that is the principal reason they do not want it divided in severalty.

Q. And that number, as compared with the whole number of the people, is very small?—A. Very small, but their influence is very great, because they are men with a great deal more white blood than Indian, such men as Ross, Overton, and Adair. I know them personally. It is under their direction, and I do not think they will ever get these Indians thoroughly civilized, for the most advanced civilized of them are only half civilized after all. You never can get them thoroughly civ-

ilized until they own land in severalty and have it in their own right. When they are simply staying upon it they do not progress.

Q. What class of persons in the Territory do the labor and business and carry on the enterprises?—A. Almost by white men.

Q. Freedmen do any labor?—A. Yes, sir; I do not know an Indian; and I find no Indian that works his own farm or his own land; he rents to white men, and rents to them under very disadvantageous circumstances from year to year, because they are liable to be turned out of it any hour; hence, they do not make any improvements. If you go back into the country you will see what a hinderance it is. Even where white men live it is merely a log cabin. They have no interest only to get off of the land what they can for the year that they are on it.

Q. Except where white influence has this influence upon the Indians, there is no improvement going on in the Territory?—A. O, no; I think they are derogating and going back. They are content to remain about in the winter time hunting for skunks and such things, that they may bring their skins in to trade off. Thousands and thousands are killed here every winter. The large game has disappeared.

Q. They depend upon their annuities for sustenance?—A. Yes, sir.

Q. Where any improvement has been noted, or is noticed, as, for instance, along the line of the railroad, is it not attributable to the white enterprise?—A. Certainly; nobody else.

Q. And is it not true of the whole Territory?—A. Yes, sir; all through the Territory. I am not acquainted with the Cherokees; they have intermarried with the white people, and they have more white citizens.

Q. I would like to ask you whether the administration or the enforcement of the local laws is of that character to inspire confidence in the security of life, persons, and property?—A. My experience is to the contrary. I have had my own life threatened twice in this town not many months ago, about three months ago, by a man a member of my own church. I was standing at the church door distributing literature to trains going to Fort Sill, and a fellow on horseback murdered one of my members just behind us, and rode by in view of my church door. I was standing there, and he lifted his piece at me and cursed and damned me, and said he would shoot me if I did not go in, and he reined in his horse and wheeled around in his saddle and raised his gun to his shoulder to take aim, but he swung from his saddle and fell on one side and the gun on the other. I had been a chaplain in the Union Army, so I was not going to flinch from him. That man has committed one murder and has not been arrested. He is an Indian and a white man cannot arrest him, and if he were tried in the Indian courts nothing is done to him. I knew a gentleman who was killed, and he had a list of those who had been killed, and there were over fifty murders on that list that had been perpetrated within twenty miles of Caddo within the last three years, and not a single murderer was ever punished.

Q. Do you know that fact yourself?—A. Yes, sir.

Q. There is no security for life?—A. There is no security at all; you do not know when they will ride into this town, drunken fellows, shooting. I do not think there is anything to be afraid of because I am so physically constituted that I am not afraid of them. I am never fearful, personally, of being molested by Indians when they are sober; I am in more fear of the half-breeds.

Q. Is it your opinion that the interest of the whole people, of the residents in the Territory irrespective of race or color, requires the extension or jurisdiction of the laws of the United States over the Terri-

tory, and their rigid enforcement?—A. That is my firm conviction. I believe it is the conviction of every white man. You will find vast numbers of them afraid to say it, especially men in business. This ring of Indians—I refer to them—can incite men of the best sort to kill and destroy your business.

Q. I will ask you if the control of the affairs of the nation and the making of the laws and the management of their funds are not in the hands of a very few?—A. Yes, sir.

Q. Just a small ring?—A. O, yes, sir. I could give illustrations; a number of them.

Q. Please do so.—A. Well, take the Chickasaws at their last election. Governor Harris was elected, and declared so by the legislature. Overton, the particular friend of Burney, he was treasurer of the ring, and, somehow, they managed to go behind the returns and have the ballots that had been cast for Harris thrown out and declared Burney elected. Burney directly appoints Overton as treasurer. They manipulate so nicely that another of the ring is now put in as treasurer, and Overton is going to Washington as delegate at a salary of three thousand a year. Now, they get the money somewhere. They say they do not get it out of the school fund. I do not know it personally, but it is reported they borrow it and they never pay it back again; they can legislate it away.

Q. The money is borrowed from the school-fund?—A. Yes, sir; they can testify that they have never taken any school money for those purposes, they simply borrow it. You have a copy of all the acts of the last council. Their legislation is all adverse to the citizens of the United States residing in the Territory; taking, for example, when I first came here into the Territory, a great many white men married Indian women, and Indian women will never marry an Indian man if she can get a white man; that is my experience. Under the treaty it gives white men all the rights and privileges of the Indians, and there were so many of those marriages going on that three years ago they took it up in their council. I have not got a copy of that act. I had one, but some one stole it. That act requires every white man proposing to marry an Indian woman to get the signature of twenty citizens of blood who had known him for twelve months; then he must get a license from the county clerk, for which he was to pay twenty-five dollars, and before the county clerk should issue that license he should take an oath to this effect—I am not reporting it verbatim—they required a man to swear never under any circumstances to apply to the authority of the United States for protection in any of the United States courts or to the general government. It is a stronger oath than the United States requires of foreigners when they swear allegiance to the United States and give up the allegiance to their own country. A great many white men wanted to be married to Indian women, but they said, "No; we cannot swear allegiance, we cannot take your oath or any oath like that." It has almost put a stop to white men marrying Indian women in this Territory; that is one example. Now they also tax laborers coming in here to hire. Secretary Schurz has written a decision adverse to that. They tax laborers, skilled mechanics, &c. They do not enforce the law now; they are making every effort to get that decision of the Secretary reversed. They said they did not mean to let go of them. Recently they passed a law there, and you can get a copy of it here in Caddo, that every citizen of the United States living within the Choctaw Nation shall give notice to the county clerk of the location of that property, and before the year 1878 closes he is to sell that property and move out of the Territory; that if he does not do so the sheriff of the county is instructed to take

possession and give due notice of sale, and it shall be sold to the citizens of the Cherokee Nation, and half of the proceeds go to the sheriff and the other half go to the treasury of the Choctaw Nation. They will try that if they can, but I presume that the United States Government will not let the property of its citizens be confiscated in any such way as that.

Q. You have no courts here within one hundred and eighty miles, and you have no remedies under the law?—A. We have no Choctaw courts here that anybody can take a case in except their own citizens, within that distance.

Q. And the United States have only jurisdiction over criminal cases?—A. That is all.

Q. So in civil matters there is no remedy or redress?—A. No, sir; there is no merchant who can collect a debt within this Territory unless they see fit to pay it. Within two years I know of a case where an Indian merchant snapped his fingers at the agent of a house in Saint Louis to whom he owed ten thousand dollars and told him that he did not intend to pay it, and that he could get it the best way he could. There is no civil jurisdiction at all in the courts here.

Q. In your opinion, to cut the whole matter short, don't you think the existing state of things will cause them to degenerate rather than to develop the Territory?—A. It is doing so among the Indians as a matter of course, and will always be so. The savage never civilizes himself. It is not human nature. I divide your question into two parts, and I have not stated what I think about the Territorial question at all. You asked me whether it was not my opinion that the laws of the United States should be extended over it like any other Territory. I thought you said should it be placed under Territorial jurisdiction. I would not say it would be an advantage to do that; but I would say this much, that if this Territory could be made into a State, I think it would be better for the Indians, and give them more satisfaction, and be quite as advantageous to the United States as if you made it into a Territory; if made into a State just as Texas was. It did not pass through a Territorial condition. And I want to say further, there is a part of the Indians, the best educated and intelligent ones, that favor that. While they favor that, and would favor some kind of a Territorial government, they have the conviction that the agitation of the Territorial question will not succeed, but that it can aid in warding off the inevitable by raising the question of bringing it in as a State. I have talked with a good many, especially with Allan Wright, who is a finely-educated gentleman, and that is his opinion expressed to me three years ago. I have talked with Peter P. Pitchlyn—the old man Pitchlyn—who is of the same opinion that I have spoken of. When I spoke to him some years ago he was in favor of sectionizing the country. I believe they have got him around from that. He is getting old now. I have a son who married his grand-daughter. There are a good many in favor of this.

Q. Whatever may be the remedy, of one thing you are perfectly clear, there should be a change of existing things in the nation?—A. Yes, sir; most decidedly, and the laws of the United States extended over it and make them citizens of the United States and make them responsible to the laws of the United States and give them the protection of the laws the same as white men. What a splendid country this would be in the hands of educated Indians. It has millions of acres that will produce millions of bushels of grain of every kind; cattle, grain, producing wealth of every kind. There are persons who know there is silver on their places—Robert Nail knows there is silver on his place on Red River.

Q. I suppose there are immense mines of coal, too?—A. Yes, sir.

C. E. NELSON, having been duly sworn by the chairman, was examined

By the CHAIRMAN:

Question. What is your name?—Answer. C. E. Nelson.

Q. Are you a Choctaw?—A. Yes, sir.

Q. Are you the treasurer of the Choctaw Nation?—A. Yes, sir.

Q. How long have you been treasurer of the Choctaw Nation?—A. Ever since last August a year ago.

Q. Do you know how much money has been spent by the Choctaw delegation at Washington within the last five years?—A. I think within the last five years forty-five hundred dollars.

Q. A year?—A. I think only forty-five hundred dollars within the last five years.

Q. Has any been taken from the school-fund?—A. No, sir.

Q. What is the amount of the school-fund?—A. Twenty-seven thousand five hundred and thirty-four dollars.

Q. Is that all applied to school purposes?—A. Yes, sir.

Q. Do you make any appropriation from the general fund for school purposes?—A. No, sir; the whole amount of the funds from the government is about sixty thousand dollars.

Q. Do you expend any more for school purposes than is appropriated for that?—A. No, sir; not in addition to the general fund.

Q. Have you any other fund devoted to school purposes?—A. Yes, sir; royalty on coal and stone, &c.

Q. Then you expend more for school purposes than is appropriated by the government?—A. No, sir.

Q. You expend just the amount of that fund provided for in the treaty?—A. Yes, sir.

By the CHAIRMAN:

Q. Who represented the nation at Washington within the last five years?—A. Peter P. Pitchlyn represented them, I suppose.

Q. Who last has been there?—A. D. F. Harkins.

Q. Who else?—A. That is all, I believe.

Q. Is that all the delegates who have represented this nation in Washington for the last five years?—A. That is all that I know of; that was in 1868.

Q. I am speaking of the five years past.—A. That is all, then.

Q. Then Mr. Harkins has been the only representative?—A. Yes, sir.

Q. How much did you pay him last year?—A. Nothing, last year.

Q. Did he pay his own expenses?—A. Yes, sir; he paid his own expenses.

Q. Did you pay for any expenses to Washington during the last five years, not excepting the forty-five hundred dollars?—A. No, sir.

Q. Did Judge Folsome ever represent you as delegate?—A. Yes, sir.

Q. When was that?—A. That was in 1873 or 1874; I do not recollect exactly what year.

Q. How much did you pay him?—A. I do not remember the exact amount; I think about two hundred and fifty dollars.

Q. You say you paid forty-five hundred dollars to him. Did you pay it?—A. Forty-five hundred dollars were paid to D. F. Harkins, King, and Roebuck.

Q. Those three got fifteen hundred dollars apiece?—A. Yes, sir.

Q. When was that?—A. In 1874, I think.

Q. Did you pay Governor Pitchlyn anything?—A. No, sir.

Q. Has he ever drawn anything?—A. Not that I know of.

Q. Don't you know you are swearing to the full amount paid within

the last five years?—A. That is all that was paid for delegates to Washington to protest against territorializing the government.

Q. Did you pay anything else?—A. Nothing.

Q. This four thousand five hundred dollars was spent to prevent the organization of a Territorial government, &c.?—A. They went on to make a settlement with the government about the strip of land in the east on the eastern boundary of Arkansas.

Q. Was that a part of the money paid these same men, Harkins and the two others?—A. Yes, sir.

Q. The only money that has been spent for expenses for the last five years has been four thousand five hundred dollars?—A. That is all.

Q. I am asking whether Harkins did. Do you know whether Harkins was the national agent?—A. Yes, sir.

Q. He collects money and passes it over to the nation?—A. I do not know.

Q. You do not know how much Harkins has paid out, do you?—A. No, sir.

Q. Is he not the national agent who has collected royalty upon stone, timber, &c., for the last three years?—A. Yes, sir.

Q. And has he not managed the business of the nation in Washington?—A. Yes, sir; he has been working upon the boundary question, &c.

Q. Has he not been managing the affairs of the nation in this Territorial business?—A. Yes, sir; I suppose he has.

Q. Then you mean to be understood that this forty-five hundred dollars that appears upon the records of the Choctaw Nation during the last five years has been spent by him?—A. I suppose so.

Q. You simply swear to what appears upon the records?—A. Yes, sir.

Q. What has been spent, and the individuals, you do not know?—A. That is all; yes, sir.

The WITNESS. I submit a statement which is as follows:

Whereas a resolution of the United States Senate has instructed a committee to ascertain among other things,

1st. How much money has been expended by the several tribes of the Indian Territory during the last five years in supporting delegations to Washington, and in opposing the organization of a civil government over said Territory, and whether any of such money has been taken from school funds.

2d. Whether a government cannot be organized over the Indian Territory for the better protection of life and property.

3d. Whether the lands held in common by said Indian cannot be divided in severalty among the Indians without confirming land grants to railroad companies. And whereas, a portion of said committee is expected to visit the Indian Territory for the purpose of taking testimony on the subject-matter of said resolution, and of ascertaining the sentiment of the Indian people to a Territorial government and to the division of Indian lands: Therefore, Resolved, That the General Council of the Choctaw Nation assembled doth hereby declare and set forth for the information of said committee—

1st. That the whole amount expended by the Choctaws for delegates to Washington during the time specified in the Senate resolution is \$4,500, for the expenses of three delegates sent in 1874 on a special mission, the settlement of the eastern boundary question, and to protest against the organization of a Territorial government over the Choctaw Nation, no part of which money was taken from the school funds.

2nd. That so far as the opinion of the Choctaws is concerned, no one is authorized to speak for them on matters affecting their lands or their government in the Indian Territory but the General Council, whose members are elected for the express purpose of attending to national business.

3rd. That the General Council speaking collectively for the whole, and each individual member thereof for his constituents, declares the Choctaw people to be unanimously opposed to the formation of a Territorial government over the Indian Territory, or to any interference with the exclusive jurisdiction guaranteed in 7th article of the treaty of 1855, or with the rights, privileges, and customs secured in the treaty of 1866.

4th. That life and property are as safe and will be protected in all cases coming under the jurisdiction of the Choctaw courts, as they are in either of the adjoining States.

5th. That by order of the General Council at an extra session called for the purpose, the question whether their lands should be surveyed or not was submitted in July, 1870, to the Choctaw people, who decided against the survey by an overwhelming majority, which vote was considered then and is considered now as having settled the question.

6th. That neither the General Council as a body nor any of its members know of any one who desires to reopen the question thus settled.

7th. That it is the strong conviction of the Choctaw people that the division of the lands now held by the nation in common among its individual citizens, to be held by them in severalty would inevitably lead to their ruin.

8th. That this conviction has been forced upon them by the experience of one-third of the nation which became entitled to allotments in severalty under the treaty of 1830. Their homes were sold as the United States land sales, and they have never been able to secure indemnity for their losses, though it has been repeatedly promised by the government.

9th. That the General Council protest against admission as evidence in contradiction to the foregoing declarations of the statement of unauthorized irresponsible person who are not of Choctaw blood.

Resolved further, that in the event said investigation committee fails to visit the General Council of the Choctaw Nation at its present session, it shall be the duty of the Principal Chief to cause them to be furnished with a certified copy of these resolution.

Resolved further, that these resolutions take effect and be in force from and after the passage.

Proposed by Committee on Relation with the United States.

Wm. B. Pitchlynn, Chairman.

Jacob B. Jackson, Senator.

T. H. Byington, “

Charles Winston, “

Isaac McClure, “

B. J. Pickins, “

C. E. Harkins, Representative.

Sylvester Williams, “

Isham Walker, “

Thos. D. Ainsworth, clerk.

Approved of Nov. 5th, 1878.

J. Q. GARVIN,
Principal Chief Choctaw Nation.

I hereby certify that the foregoing resolutions are true and correct copy taken from the original now on file in my office at Chahta Tamaha, this the 6th day of Nov., 1878.

[SEAL.]

THOMPSON MCKINNEY,
National Secretary Choctaw Nation.

G. W. DALLAS recalled.

By the CHAIRMAN:

Question. What is it you wish to say in addition to what you did state?—Answer. I wish to state that the security and protection of the colored people to their life and property here is very dissatisfactory. I can name several instances which may show you that plainly. About three years ago, a colored fellow was accused of stealing. Some Choctaws waylaid him; he was out on the prairie, and some Choctaws got him and hanged him to a tree, and his father went out to look for him, and he was lost. These fellows who hanged the son were watching to see who came, and they chased him and shot him, and nothing has been done with the parties. They are here now. Last year, when I closed school, we had an exhibition. Some three or four Choctaws came there, and the colored people were driven off. They would come among them and fire off their guns, breaking up the school, and nothing has been done. We dare not mention it, for fear we may be shot. I am afraid to let it be made public that I have testified in regard to my honest convictions.

Q. Afraid for it to be known?—A. Yes, sir; it is through dread that I testify. I fear that some one may follow me, and take advantage of me in some way.

Q. In other words, you are afraid of your life?—A. Yes, sir; there are eight thousand colored people here who are in this condition. They have no legal status whatever, and it would be much better for them if they were removed from the country than to be staying here in this unsettled condition. You cannot make improvements for them here; they cannot make them for themselves, and they are not doing or making any improvement. They have no rights here; they are in a continual state of agitation, and in an unsettled condition all the time. That is all I wish to state to you.

L. A. MORRIS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. L. A. Morris.

Q. Are you a resident of the Territory?—A. Yes, sir.

Q. How long have you been?—A. About six years a permanent resident.

Q. You are married to a Choctaw woman?—A. Yes, sir.

Q. Are you engaged in trade here?—A. Yes, sir.

Q. General merchandising?—A. Yes, sir.

Q. You are well acquainted with the people here, and their condition and wants?—A. Yes, sir; pretty well in this part of the country. My trade is mainly full-blood trade. I have been among them—around through their homes, and I am pretty well acquainted with them.

Q. What is your opinion as to the propriety of sectionizing the lands here, giving the Indians the lands in severalty and selling the balance for their benefit, and opening the country to white settlement?—A. I am in favor of a change here, but let the Indians have an equal division of the land and let them sell the lands themselves.

Q. You mean let the lands be held in severalty?—A. Yes, sir; every man own his own home.

Q. And have the laws of the United States extended over them?—A. Yes, sir; there is no protection for life and property here. As it is we have no protection here whatever, and if you have trouble with a man there is no protection unless you get the "drop" first.

By the CHAIRMAN:

Q. It is a question of revolvers?—A. Yes, sir.

Q. Every man protects himself?—A. Yes, sir.

Q. Do you know how many persons have been shot within fifteen or twenty miles of this place within the last three years?—A. I know of thirty-five or forty within the last three years. They were killed, but I do not know how many were murders; some were murders and some were supposed to be horse-thieves.

Q. Was anybody punished?—A. They never punish anybody for murder in the courts here. If a person found a citizen living here killed he had better not know anything about it, because he would have to go to Fort Smith as a witness for three or four years.

Q. Then there is a general indisposition to interfere or investigate a murder case?—A. Nobody wants to investigate it—Indians or anybody else living here.

Q. The authorities take no notice of it?—A. If a citizen took any notice of it he would be summoned for trial, and they do not convict anybody. There is one county here in which they have not convicted anybody since the war. I heard my father-in-law say that himself.

Q. Do you know how many cases have been tried?—A. I do not; but I know seven or eight Indians have been killed in the county, and I know that nobody has been punished; that county is forty miles below here. I do not know this of my own knowledge.

Q. Is there any other reason why they have a disinclination to investigate crime, except that of going to Fort Smith?—A. Yes, sir; a person living here is not safe, if he testifies, in coming back. You report a person for crime, you are liable to be shot down for it when you come back here.

Q. There are two reasons for this; one is the distance and the expense of getting to Fort Smith to testify, and the other is a person's safety after getting back?—A. Yes, sir; then there is no protection here.

Q. Do you know anybody who has a list of murders committed in this district within the last five years?—A. Doctor Jones had a list.

Q. Did you ever see the list?—A. Yes, sir; he had about a hundred names upon it; these bodies had been found.

Q. Do you know what has become of that list?—A. Whatever has become of that list I do not know.

Q. This list was made up within the last three years?—A. Yes, sir; there were eighteen bodies at Cross-blue, within forty miles, within three months past.

Q. Eighteen bodies within three months?—A. About a year ago.

Q. They found that many bodies within three months?—A. Yes, sir; I had five skulls at one time in my store that had been gathered up and brought in there.

Q. Were the parties known who committed those murders?—A. Some were known; yes, sir.

Q. When was Doctor Jones killed?—A. Doctor Jones was killed about three months ago. I am not positive when he was killed.

Q. Where was he killed?—A. At the end of the depot.

Q. Who killed him?—A. Henry Steward.

Q. How did he come to kill him?—A. Well, there were some hard feelings between Henry Steward, Wiley Steward, and Doctor Jones. Henry Steward went away to Texas and got in with a ring of horse-thieves, stealing horses, &c., and he came back here, and Doctor Jones made some remarks about it and Steward shot him down as the train was passing by.

Q. In daylight?—A. Yes, sir.

Q. What was done with Steward, who shot him down?—A. One is at large now, the other is in jail at Fort Smith.

Q. Is he a white man, citizen by marriage?—A. He claims he was not a citizen.

Q. Are they Choctaws?—A. Yes, sir. Wiley Steward was the only white man. Henry Steward has proven up his rights according to the laws here. Doctor Jones was shot down about half past two o'clock in the afternoon. He was an Indian—a full-blood.

H. HOTCHKINS, having been sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Where do you live?—Answer. At Caddo.

Q. How long have you lived in the Territory?—A. I was born here.

Q. Is that so?—A. Yes, sir.

Q. What is your age now?—A. Forty-two years old.

Q. Are you a Choctaw?—A. My father was a missionary who came here in 1832 from Mississippi. I was born here, and that gave me the right to stay, and I have been here ever since.

Q. You are not married in the Territory?—A. I married a white lady from Ohio.

Q. Of course you know there is a great deal of discussion about sectionizing the lands here and extending the laws of the United States over this Territory, as in the other Territories of the United States; and of course the opinions of intelligent men like yourself will help the committee to come to a conclusion. Now, what in your judgment would be the effect upon all classes of opening the Territory to white settlement, like other Territories of the United States, and extending the laws of the United States over it?

The WITNESS. Do you mean for me to answer for all classes, or any particular class?

The CHAIRMAN. The general effect upon the whole Territory.

The WITNESS. Well, taking all things into consideration, I think it would be a good thing for all classes.

By the CHAIRMAN:

Q. In what respect will it be?—A. The law would be enforced and every man would have justice. I believe in giving every man justice—red man, white man, colored man. I want them all to have equal rights.

Q. What would be the effect upon the whole community and upon the Indians, too, if, for instance, instead of having land in common, he should have his own farm and own home?—A. The people are very much opposed to it. They think they would be deprived of their homes; and it is a fact, too, a majority of them are poor and they would sell everything away before they will work. There are some few exceptions to that, but they are all very much opposed to it, all of them. If you ask me my opinion as to the effect of it upon the Indians entirely so I would object to it.

Q. Why?—A. Well, because I know how much suffering it would produce among certain classes of them.

Q. How?—A. They would soon ship themselves out of home.

Q. Suppose the law provided the land should be inalienable?—A. If that could be done I should be in favor of it.

Q. So your objection, so far as the Indian is concerned, would be if you give him the right to sell his lands as the white man he would make himself poor?—A. Yes, sir.

Q. That is your objection so far as the Indian is concerned?—A. Yes, sir.

Q. But if the land was made inalienable for a certain number of years, that would remove all objection to it?—A. Yes, sir; my private plan—of course this is only my opinion about it—I should not want the whole country sectionized, that is, opened, immediately, allotting it all at one time. Make them like the New York Indians, so that those who do sell shall have a little place or piece of ground secured to them.

Q. You mean there should be reservations, small ones, for the Indians in different localities so that those who do not want to adopt the plan could go back upon a reservation and live in common?—A. That is exactly my idea. There is not one county in this nation but that would support all the Indians in it.

Q. Land enough in one county to support all the Indians in the Territory?—A. Yes, sir.

Q. Under existing state of things, is there any prospect for the further improvement of the Indians, or the development of the resources of the Indian Territory? Suppose they remain as they are to-day, would there be any development or improvement here?—A. No, sir; none whatever; it is going down every day. I could go back before the war when the Presbyterian Board and American Board had a full corps of missionaries here; then they had peace and prosperity. Ever since the missionaries have been removed they have been going down hill. There has been more money spent in Fort Smith ten times over to keep peace and order than before the war.

Q. So the condition of the nation is worse to-day than it was ten years ago?—A. Yes, sir.

Q. Instead of improving it is going down?—A. Yes, sir; going down. They have laws but cannot execute them some way. That is rather strong language, and I expect I will be thought wrong in saying so.

G. A. GALLIE, having been sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. I do, sir.

Q. How long?—A. Three years.

Q. What is your occupation?—A. Merchant and trader.

Q. Are you married into the Choctaw Nation?—A. No, sir.

Q. Are you a licensed trader?—A. Yes, sir; licensed trader.

Q. What is the result of your observation and experience upon this territorializing question?—A. Well, I do not know exactly how to answer that question; I would like to answer it. I think it would be better for a part of the classes to have it divided up so they would know the lands belonged to them.

Q. What part?—A. Well, not all of them.

Q. Is it or is it not your opinion that the sectionizing of the lands and the organization of a territorial government would benefit the Territory?—A. It would, sir.

Q. Have you any doubt upon that subject?—A. None in the least.

Q. Who perform the labor and transact the business and push all the enterprises in the Territory here; what classes of people, I mean?—A. That would be pretty hard to say; principally done, however, by white men.

Q. I suppose the negroes perform the manual labor to a certain extent?—A. To a certain extent they do.

Q. Do the Indians do much work?—A. Some work very well; they work very well for the chances they have had.

Q. What do you mean by that?—A. Well, they have not always had it to do like white people; they have never been raised to it.

Q. You mean considering they are Indians they work pretty well?—A. O, no, not that at all; but on account of never having to till the soil previous to white men coming to the country.

Q. Have they made any improvement except as they have come in contact with white civilization?—A. I cannot say they have. Whenever they get in contact with white men then they begin to improve.

H. A. RICH, having been sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live here?—Answer. Yes, sir.

Q. How long have you lived here?—A. Seven years.

Q. What is your business?—A. Farming.

Q. Are you a citizen of the Territory?—A. I am not.

Q. I will ask you the same question that I have asked Mr. Hotchkins and Mr. Gallie?—A. Well, Mr. Hotchkins's ideas are pretty much mine, with some few exceptions.

Q. Is it not your opinion that the existing state of things requires some change?—A. I do undoubtedly think so, sir.

Q. What is the feeling here as to the security of person and property?—A. Well, sir, the feeling is not very good. No person feels safe at all times in person and property.

Q. Is that feeling pretty general?—A. Yes, sir.

Q. Does not that prevent permanent improvement upon property, because a person does not know how long he can keep it, owing to this feeling of insecurity?—A. To a certain extent, I think it does.

Q. Suppose that a law should be passed by which the Indian would be protected in the enjoyment of his allotment for a certain number of years by making it inalienable, and the balance sold for their benefit, and the laws of the United States extended over the Territory, what would be the general effect upon the whole Territory?—A. It would undoubtedly be a good affair.

Q. Benefit all classes, would it not?—A. I think so; there is certainly a change wanted and much desired.

Q. There has been no improvement in the Territory since you came here except what has been done by white men, has there?—A. The general improvements have been done by the white classes; none other.

Q. In those portions of the Territory where there has been improvements, has it not been confined almost exclusively to localities where the have located?—A. Yes, sir, where they have been employed by citizens of the country.

Q. By Indians?—A. Yes, sir; nearly all the work I have known of being done has been done by white men employed by citizens of the country.

Q. Take it farther back off from the railroad, is there any particular improvement in the country going on?—A. No, sir; not a great deal.

Q. It is only upon the line of the railroad where the improvements have been made?—A. Yes, sir; in places like Wachita and the favored places.

R. C. FREENY, having been sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. Yes, sir.

Q. Are you a Choctaw Indian?—A. Yes, sir.

Q. How long have you lived here?—A. Born and raised here.

Q. How old are you?—A. Twenty-eight.

Q. What is your occupation?—A. Farming.

Q. You ought to be able to express an intelligent opinion upon these subjects as you have lived here so long. I would like you to tell your views in your own way upon the subject of allotting the lands.—A. I think it would be a good thing to have a change in the form of government.

Q. You think the condition of things demands some change, do you?—A. Yes, sir; I think we ought to have some kind of a change. I think the lands ought to be allotted among the Choctaw citizens, divided equally to the Choctaws, giving them title to them, and pass a law preventing them selling the lands in a certain number of years.

Q. You think it would be decidedly for the benefit of the Indians to have that state of things here?—A. Yes, sir.

Q. The best both for the country and all classes?—A. Yes, sir.

Q. I suppose you would prefer to have your own farm?—A. Yes, sir.

Q. You would feel like making permanent improvements, would you not?—A. Yes, sir; I would.

Q. Does not that very feeling retard improvements in the Territory?—A. It does a good deal.

Q. What, in your judgment, would be the effect of opening the Territory to white settlement, like other Territories of the United States, after providing restrictions for the protection of the Indians in the possession of a reasonable amount of property?—A. I do not think it ought to be cut down to any small number of acres and let the United States take the balance and dispose of it for the benefit of the Indians. I do not think that ought to be done.

Q. You do not?—A. No, sir.

Q. Your idea would be to have the Choctaws dispose of it for themselves?—A. Yes, sir.

Q. Have it opened to settlement, but allow the Choctaws to manage it?—A. I think they ought to locate a United States court here. It causes a good deal of suffering for people to go to Fort Smith; it is so far away.

Q. Would it not be safer for person and property if you had the laws of the United States extended over you and have the laws executed in courts nearer home?—A. I do not know about that. I think they ought to have United States courts to try all classes of cases between United States citizens and Choctaw citizens here.

HENRY BARRINGTON, having been duly sworn, was examined.

By the CHAIRMAN:

Question. You are a native Choctaw?—Answer. Yes, sir.

Q. Were you born in this country?—A. Yes, sir.

Q. How old are you?—A. Twenty-seven years old.

Q. What would you like about this thing? You heard my questions to the other gentlemen?—A. Yes, sir. I do not know but that I would like to have the land divided up.

Q. You mean it would be better for each one to own his own home and farm?—A. Yes, sir.

Q. Are you a farmer?—A. I am; a little.

Q. Where do you live?—A. Here.

Q. Right in town?—A. Yes, sir.

Q. You have a farm on Red River too?—A. Yes, sir.

Q. Do you work it any down there?—A. No, sir; I get a white citizen to work it.

Q. White men do most of the work here, don't they?—A. Yes, sir.

Q. Don't you think honestly it would be better for your people if every head of a family had his own home; owned it, and it was protected and secured to him by law; that is, so he could not sell it and nobody could get it away from him for a certain length of time?—A. Yes, sir.

Q. Have you any doubt about it?—A. No, sir.

Q. What part of the Territory were you born in?—A. In the Choctaw Nation.

EDWARD MORRIS, Jr., having been duly sworn, was examined:

By the CHAIRMAN:

Question. What is your name?—A. Edward Morris, jr.

Q. You live here in the Territory?—A. Yes, sir; and I have been travelling through it more or less for nine years.

Q. You are pretty well acquainted with the people in the different nations of the Territory?—A. Yes, sir; I have been traveling for a Saint Louis house through this Territory for about nine years.

Q. For the last four years it has been your permanent home?—A. Yes, sir.

Q. Well, Mr. Morris, the inquiry has been mainly upon two subjects: 1st, the allotment of the lands, sectionizing them; 2d, the extension of the laws of the United States over this Territory. What, in your judgment, would be the effect of opening the Territory to white settlement, &c., &c.—A. I do not think the Indians will ever amount to anything until the lands are divided up. The way they live here, by taking a bit of separate land and cultivating it for a little while and then moving off; this moving around results in no improvements. They do not understand what belongs to them, and there is no encouragement for a man to make a home as it ought to be.

Q. So far as the Indian himself is concerned it is his only salvation to change the existing state of things?—A. Yes, sir; it is his only salvation. It is the only way to make anything out of this country. It has had a good chance for sixty years in schools and everything.

Q. What is the difference in the country now and when you first became acquainted with it?—A. I think the country is going back. They really have less cattle; they are not working any. They do not work; the work is done by the white men and negroes; white men go upon the land and rent of the Indians and work about fifty acres and give the Indian a certain share of the crop; they get along in that way. It is a very poor way; it is very poor encouragement to white men. They are not safe under the laws. They cannot own any property of their own. The Indians make trouble, too, if they keep stock except in small numbers. If a white man gets twenty-five or thirty

head of cattle he gets into trouble. The Indians are prejudiced and jealous; they get jealous, and it makes them jealous to see a white man raise much stock. The two governments working here is a very bad thing in the country. Our Indian agent will send out his decision one way and the Indian authorities will hold it is the other, and they keep United States citizens in a perfect turmoil; they never know when they are right or wrong. When the Secretary of the Interior decides in favor of the Indian agent there is no officer who has any control over it at all. The agent can only call on the United States marshal for help, and he may be away in some other part of the Territory. And the United States marshals will go around and encourage people to make a little violation in the revenue laws. They are about the only class of people the United States marshal has any control over. If some negro steals a hog, that case goes to Fort Smith, a hundred and eighty or four hundred miles away. The only way to get there is to take a horse and ride across the country. They take a little piece of bacon to live upon, and sleep on the ground going. If they take the cars and go to Muskegee they are not able to do it. They never arrest any murderers, because they are hard characters. The marshals are not to blame; they cannot arrest them. A marshal may arrest them, but they are bound together and they always have friends to aid them. He can only trouble them when there is trouble between citizens of the United States and Indian citizens. In cases between Indians, citizens of the nation, he cannot trouble them. Now, that permit law was a bad thing, and there was a great deal of trouble about this permit business in writing backward and forward to Washington to make United States citizens pay twenty-five dollars for permits. Some had their crops in and could not pay it, and were shoved off of their farms and driven out of the country. They went about putting out farmers, men who were making an honest living, because they did not have twenty-five dollars to pay this tax. They did not get rid of the horse-thieves, because they live upon their horses. Everybody who wrote to Washington about it was spotted, and got into trouble. There is one thing I was going to speak about here: a person who does not live here does not know what a person labors under here. My brother is a citizen here, and an Indian might step up and kill him. There would be nothing done about it; there might be something done if he was a United States citizen, and he has a little more protection because he has a court at Fort Smith.

Q. What is the feeling as to the security of person and property here under the existing state of things?—A. None whatever.

Q. Is there no law?—A. No, sir; we have no law whatever. The laws are a dead letter. The Indian laws look very nice on the books, but that is as far as they get.

Q. Then the law that governs you is the revolver?—A. That is all. Rarely they can arrest a party. They never arrest any hard cases. It is only for violating the revenue laws that arrests are made.

Q. Are not persons very adverse to giving information?—A. They will not notice anything they can help. Ninety-nine times out of a hundred if a horse is stolen they do not mention it.

Q. For what reason?—A. Because it might make a Fort Smith case. The marshal gets it, and that makes a Fort Smith case. It is tried there and you get through with great expense, and you would rather lose your horse than go through a trial.

Q. Besides, is there not some danger?—A. Yes, sir; of course, especially if the person tried is a citizen here.

Q. Is not that an additional reason why offenses are not reported?—

A. It is one reason; not so much in regard to stealing; the Indians are rather good as to that. But in murder cases, you had better keep clear of reporting a murder case if you can. It is so that a person would hardly dare report or give evidence against an Indian for murder, for fear of his life. Three men lay out here at Buzzard's Head, and nobody would report them; they were afraid. They would have been bound to have gone to Fort Smith as witnesses. I made a memoranda of the number of murders around Caddo within the last three years, and they amounted to sixty-five, four women being among the murdered. There has never been but one arrest made, and he was cleared. That Indian shot a man down in cold blood. When the court was over they came here and got on a big spree. Now we could count a great many more. Judge Parker has had over a hundred cases from this Territory. Now, what I was going to say in addition to this was that only one has been arrested for killing Dr. Jones in this town.

Q. Have you that list with you?—A. I have it with me, but no one could understand it. I could call it off. I have no doubt in my mind but that the murders in the same length of time would amount to 500, taking the whole Indian Territory through. We have got so we do not think much about it. The witnesses can be bought up. We heard of some one being killed last night. There is no encouragement here for a young man growing up. They do not do anything. They have a little place and a few horses. All they want is a set of spurs and a six-shooter and they are happy. They make laws to keep whisky out of the Territory, but they get whisky here, and they drink as much here as any other place I know of. You cannot keep it out. They go to Texas and buy it and bring it in. They will ride from 100 to 200 miles to get whisky and bring it in. The young men grow up in idleness because there is nothing here to encourage them. A young man who had been off to school told me this was a poor place for a young man to educate himself. He had a good education, and he told me that. None except the few headmen have any education, and they have charge here.

Q. Their money is managed and disbursed by a few men, a little ring?—A. Yes, sir; a little ring. A few intelligent ones do it; the others know nothing at all. They put a few of these on the ticket to make it strong. There is nothing to encourage young men to do anything. Our council here passed a law here to get rid of United States citizens. They passed a law making it a fine of \$250 for selling to United States citizens a cord of wood. They passed another law at this council to sell all United States citizens' property here in the nation not in the employ of the Indians.

Q. Confiscate it?—A. Yes, sir. That law gives them to the first of January coming to leave and instructing the sheriffs to sell them out after that date. I asked why that was passed and they said it was not so much against the white men, but that they wanted to make the negroes leave. The negroes are rather mixed. The treaty provides that all persons of African descent living in the nation before the treaty was made and their descendants formerly held in slavery among the nations shall have all the rights and privileges and the right of suffrage of citizens of the nations, and that they shall give such persons who were here before the treaty forty acres each of the land of the nations on the same terms as the Choctaws and Chickasaws and should adopt them within two years after the treaty was made. And if not adopted then the United States was to remove them in ninety days and if the nations adopted them they were to have three hundred thousand dollars set apart in Washington. I was talking with Allen Wright and he was

speaking about it. I said, "Do you calculate to remove them; is that a part of the programme?" They have no voice in the government at all; they do not want to bring that question up for fear it would work against them. Still, there are a good many negroes who have married citizens here and they claim the right to remain.

Q. Then your idea generally would be that there is no hope for improvement until the lands are sectionized and the laws of the United States extended over the Territory, and that the country will never amount to anything until it is done, and that the tendency now is backward?—A. It is backward. Men with whom I have talked think it has gone back and think the tendency is backward all the time. The politicians, who handle the money, are getting sharper and know better how to handle the people. There was a time when the money was handled pretty honestly, but now they have as sharp politicians here as in the States.

Q. They manage the whole business of the nation?—A. Yes, sir; they manage the whole business.

F. M. FOX, having been sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Do you live in the Territory?—Answer. Yes, sir.

Q. How long have you lived here?—A. About eight years.

Q. What is your occupation?—A. I am in the mercantile business.

Q. What is your opinion, from your observation and experience here, in reference to opening up this Territory to white settlement like other Territories of the United States, and sectionizing the lands, after providing proper restrictions for the protection of the Indians in the enjoyment of a reasonable amount of property?—A. I think it would be a good thing—the best thing to be done.

Q. Do you not think it almost indispensably necessary?—A. Yes, sir; I do.

Q. What is the condition of things now as compared to what it was when you first came here?—A. Very bad; a very bad state of affairs indeed.

Q. In what respects?—A. In respect to licensed traders.

Q. What law have you here to protect trade?—A. We have very little, if any; very little indeed. I am not a citizen of the Chickasaw Nation.

Q. In your opinion, is it not the only hope for the prosperity and development of this country that it should be opened to white settlement, and the laws of the United States extended over it?—A. O, yes, sir; it is the only hope—the only chance.

Q. What is the condition of things—improvements, &c.—to-day as compared with when you first came here?—A. I believe they are retrograding; it is worse than when I first came here, and I have been doing business here seven or eight years, in Stonewall, Atoka, and Caddo.

Q. What is the feeling as to the security of persons and property?—A. Very insecure.

Q. The people fear personal danger?—A. Yes, sir.

Q. And, of course, no one feels entirely certain about the tenure of property?—A. O, no; there is nothing to protect us here with; we have had a few quarrels in this country.

Q. Has your life ever been in jeopardy?—A. Yes, sir; two or three times; but I do not know by whom.

Q. You mean you have been fired at?—A. Yes, sir; two or three

times through the window. I was shot at through the front window. They shot through my residence. I don't know who it was. The first shot struck the back of my neck a little.

Q. There is no court having jurisdiction of offenses of that sort, except at Fort Smith?—A. No, sir.

Q. And you don't feel like making complaint at Fort Smith?—A. It would break a man up.

Q. And besides you would incur the hostility of the man?—A. Yes, sir; if he did serve his time out he would come back and kill me another time. If a man commits any depredation and another man reports it, if you go as a witness it will take everything you have going and coming. It will cost you forty or fifty dollars, and the case will be put off from one time to another, and then the party may come clear. You can get men to swear to anything around Fort Smith, and they are liable to kill you and waylay you.

Q. Have there not been a good many murders around Caddo?—A. A good many.

Q. Have you any idea how many?—A. I do not know how many.

Q. So common you hardly think of them?—A. Yes, sir; pay no attention to it.

Q. How many have been punished?—A. None that I know of. They do not catch them.

Q. They do not try to catch them, do they?—A. Not much. They are generally desperate men and they generally do not like to attack them. They killed Loly at a ball up here; a man just got on his horse and rode off; no one arrested him at all; the deputy marshal had no authority.

Q. If a person shoots a man in this town, there is no person who can issue a writ except a commissioner at Fort Smith, 180 miles away?—A. No, sir; it would take ten days to get a warrant for him.

Q. Suppose that the Territory was sectionized under such restrictions that should protect the Indian in his allotment of the land, and the laws of the United States were extended over the Territory, what would be the result of a Territory of that class?—A. I think it would be a good thing.

Q. Beneficially, would it not?—A. Yes, sir.

Q. The land is rich, is it not?—A. Yes, sir.

Q. Timber abundant?—A. Yes, sir.

Q. An abundance of water?—A. Yes, sir.

Q. And very little of the land that is not susceptible to cultivation?—A. Very little.

Q. Could you form any idea what proportion of the land of the Territory is cultivated at all?—A. Well, I have not thoroughly studied it; but very little; not a twenty-fifth part, if that much.

Q. Hardly an acre in a thousand?—A. Not more than that; in some little neighborhoods there is some cultivation.

By Mr. BOUDINOT:

Q. You have traveled over this country a good deal; please state what proportion of the lands are cultivated by white and negro labor as compared with the Indian labor.—A. The way I find it it is almost all cultivated by whites and negroes—all that I know anything about.

Q. Very little by the Indians?—A. Very little by the Indians.

Q. Is not nine-tenths of the wealth of this country in cattle, horses, sheep, &c., owned by whites, or made by white or negro labor?—A. Pretty generally all; yes, sir.

The following papers were submitted by Dr. D. M. Haley as showing the condition of the Choctaw Nation as regards the safety of life and property. Also, copies of the permit law of the Choctaw and Chickasaw Nations.

STATEMENT OF FACTS.

In the year 1874 the firm of L. A. Morris & T. I. Maxwell, doing business in the city of Sherman, Tex., concluded to extend their business into the Indian Territory, and fixed upon the town of Caddo, in the Choctaw Nation. They applied to the United States Indian agent, G. W. Ingalls, who instructed them to get a permit from the legislative authority of the Choctaw Nation, from a judge, or some one holding office in the Choctaw Nation; they had a permit draughted and sent to Judge Ellis Folsome, of McAlister, at that time one of the judges of the supreme court of the nation. Judge Folsom signed it, and sent it to the United States Indian Agent, G. W. Ingalls, who at once took the customary action, and on the strength of that permit issued to the firm a "license to trade," &c.

Not long after the firm had carried on their business, under the permit and license referred to, the cupidity of another firm became excited because the Indians were more liberally dealt with by the new firm than they were ever before; and it was openly reported they were bound to break them down.

In accordance with this purpose a statement was made to the principal chief, Coleman Cole, that the said firm of Morris & Maxwell were trading under a defective permit in contravention of the 39th article of the treaty of 1866. The principal chief then affirmed that he was the proper authority to sanction the issue of a license, and not Judge Folsome of the supreme court, and proceeded to take adverse action upon it. The Indian agent, G. W. Ingalls, at once communicated with the principal chief, taking all the blame, if any, upon himself, supposing that explanation would end the matter, as no wrong was intended. In the mean time the firm made application in the usual form to the principal chief. This application was signed by the requisite number (12) of the Choctaw citizens of influential standing, some holding high official position in the nation, and well known to the principal chief. Yet, notwithstanding, he paid no attention whatever to the application.

The firm then prepared an application to obtain a permit from the legislative authority of the nation, viz, the Choctaw council. A few weeks before the convening of the council, who, without doubt, would have issued the permit, the principal chief sent his sheriff, with a posse of 8 or 10 light-horsemen, all armed and fully equipped, to arrest and transport out of the nation the resident partner of the firm, L. A. Morris, who at once became the prisoner of an armed force, and all he had, comprising his portion of the stock in trade, also that of his partners, his trunks, with all his clothing, his private letters and papers, access to which was absolutely forbidden him. They seized the books and papers of the firm. All was taken by force of arms, under protest, and the store locked up, the sheriff and armed light-horsemen only having free ingress and egress for fifteen days.

The Indian agent promptly took up the case, and directed the principal chief to stay further action. He disregarded those directions until the United States Indian agent caused a deputy United States marshal to come to Caddo, who told the Choctaw sheriff that he made an illegal seizure of property and arrest of a United States citizen. The key was then restored, and the firm took possession of what was left after the

Indian armed force had been in free and full possession for fifteen days. Even that which was left was in a very depreciated condition.

The firm was then vindictively followed, and the case thrown into the United States court of the western district of Arkansas, in a suit for the forfeiture of their bonds, viz, \$5,000, for a violation of the 39th article of the treaty of 1866. The case is still pending, and judgment may be rendered against the firm any day.

The prosecuting attorney argues that United States Agent G. W. Ingalls had no right to issue the license under a permit granted by a judge of the Choctaw supreme court, and therefore the firm were transacting business unlawfully. "No person shall be licensed to trade with the Choctaws and Chickasaws except by the agent, with the advice and consent of the legislative authorities of the nation he may purpose to trade in." About every year the Choctaw council changes this legislative authority. This year it is the county judge; next year it may be one of the district judges, or it may be the sheriff of the county where the party wants to trade. These councils are hard to keep track of.

The question arises, if the United States Indian agent, believing he was right, issued the license on the authority of a permit only *technically defective*, will the United States Government stand supinely by and allow its citizens to be oppressed by a *conflicting authority in this nation*, when everything was done, as was believed, according to law? Can it be possible that the United States Treasury is to be replenished by the ruin of its own innocent, law-abiding citizens?

The firm and securities will certainly ask those and other questions of the Secretary of the Interior and that of the Treasury.

But these facts are presented to your honorable committee, in case judgment should be rendered against the defendants, that its distinguished members may use their influence, if solicited, in having the judgment remitted by the Secretary of the Treasury.

Submitted by

EDWARD MORRIS,

On behalf of the firm of L. A. Morris & T. I. Maxwell.

CADDO, C. N., IND. TERR., November 17, 1878.

NOTE.—The firm did business under the title of Maxwell & Morris.

ACTS PASSED AT LAST COUNCIL.

AN ACT entitled an act regulating the granting of permits to trade, expose goods, wares, merchandise, or drugs for sale within the Choctaw Nation, and to reside within the same, and for other purposes.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That before any person or persons, non-citizens of the Choctaw or Chickasaw Nation, shall be permitted to expose any goods, wares, merchandise, or drugs for sale within the limits of the Choctaw Nation, he, she, or they shall be required to obtain a permit from the principal chief of the Choctaw Nation, which permit shall be granted by the principal chief on the following terms and conditions only:

First. Person or persons wishing to obtain such permit shall make application in writing to the principal chief, setting forth the county and the place therein in which they desire to carry on their business, and the probable amount of capital to be employed therein. Such application shall be signed by five citizens of the county in which the person or persons applying propose to do business, and thereupon the prin-

cipal chief shall issue to such applicant or applicants, under his hand and the seal of the nation, a permit authorizing such person or persons to carry on their business at the place mentioned in the application, and for the period of one year from the date of such permit: *Provided, however,* That the principal chief may renew such permit from year to year by indorsement thereon under his hand, and such renewal shall have the same force and effect as the original permit.

SEC. 2. *Be it further enacted,* That any person or persons obtaining such permit, and who shall expose any goods, wares, merchandise, or drugs for sale in the Choctaw Nation, shall, on or before the first Monday of July in each year, pay to the sheriff of the county in which the business is located an annual compensation for the privileges granted in the permits of one and one-half per centum on the original cost and value of all such goods introduced for sale for and during the twelve months next preceding the first Monday in June of said year, which inventory of the actual amount of goods introduced and the accuracy and correctness thereof shall be verified by the affidavit of the party in whose favor the permit was issued, before any judge of a court of records of this nation, and such inventory shall prove the basis by which the sheriff shall be governed in collecting the compensation above mentioned; and the said sheriff shall file with the national auditor a duly certified copy of the same; and the auditor shall then charge him with half the amount to be collected thereon, and the said sheriff shall also file in the county clerk's office of the county of which he is sheriff a certified copy of inventory, and it shall be the duty of the county judge at the next regular term of the county court to examine such inventory filed by the said sheriff, and have the clerk to charge the sheriff with one-half of the amount of such assessment, and the amount to be collected thereon, and the same judge shall be entitled to receive the sum of (2.50) two dollars and fifty cents, to be paid out of the county treasury, for examining each and every such report of the said sheriff.

SEC. 3. *Be it further enacted,* That the sheriff, in collecting the compensation mentioned in the second section of this act, from any merchant, trader, or druggist, shall receive, if tendered to him, national warrants (scrip) for one-half of the amount for which the said merchants, traders, or druggists may be assessed, and county scrip for the other half of the amount, and the half of the amount that is paid in national (scrip) warrants or its equivalent shall be turned over to the national treasurer for national purposes, and the other half that is paid in county scrip, or its equivalent, shall be turned over to the county treasurer for county purposes.

SEC. 4. *Be it further enacted,* That before any carpenter, wagon-maker, blacksmith, millwright, wheelwright, tailor, shoemaker, miller, machinist, sawyer, tanner, clerk, renter, lawyer, doctor, editor, or any such like mechanic, artisan, or professional character, except school-teachers, shall carry on his trade or avocation, or exercise any of the functions thereof within the limits of the Choctaw Nation, he, she, or they shall first obtain a permit, which permit shall be obtained in the following manner, viz: The person or persons desiring such permit shall make application in writing to the county clerk or the judge in vacation term of the county in which he, she, or they may wish to reside and engage in their business or profession or professions, which application must be signed by at least three citizens of such county; and if the county judge approve of the same, he shall order the clerk, authorizing such person or persons to remain and engage in his, or her, or their business or profession in such county for the period of one year from the date thereof: *Provided,*

however, That the county judge may renew such permit, from year to year, indorsement thereon under his hand, and such renewal shall have the same force and effect as the original permit.

Provided, The seal of the county clerk shall be affixed to such renewal; and further, that the county judge shall be entitled to receive for examining each application or for each renewal (to be paid by the applicant) (50) fifty cents, and the county clerk shall be entitled to receive from such applicants (50) fifty cents for each permit issued, or the affixing of the county seal to each renewal.

SEC. 5. *Be it further enacted*, That the county clerk shall deliver such permits to the sheriff of the county, and shall charge the amount thereon against the said sheriff; and it shall be the duty of the sheriff to deliver such permits to the person or persons in whose favor the permit was issued: *Provided*, He, she, or they shall first pay the sheriff the sum of (\$15.00) fifteen dollars as a compensation for the said permit, and also pay to the sheriff the sum of one dollar as his fee for the delivery of such permit: *And provided further*, That for every renewal of such permits, the persons shall pay the like compensation and fee to the sheriff as for the original permits, and the county judge shall not renew any permits unless the person desiring such renewal shall present a receipt from the sheriff showing that such person has complied with this law, and the sheriff shall be charged with the same by the county clerk, and the sheriff, in collecting the compensation mentioned in this section, shall receive, if tendered to him, county scrip or its equivalent, for the whole amount, which shall be turned over to the county treasurer for county purposes.

SEC. 6. *Be it further enacted*, That any person or persons, citizens of the Choctaw or Chickasaw Nation, or persons who may be residing in this nation by the permission of this act, desiring to employ and retain in this nation any non-citizen to work for them as laborers, teamsters, or servants, or in any other such like capacity, shall report to the county clerk in which he, she, or they may reside the name and age of such person or persons so hired or employed by them, and shall pay the clerk (10) ten cents for each name so reported; and it shall be the duty of the clerk to register such names in a book kept for that purpose; and the clerk shall furnish the sheriff of the county with a list of such names, and charge the same against him; and it shall be the duty of the sheriff to collect of every citizen or person, who may be residing in this nation by permission of this law, (\$5.00) five dollars for each and every laborer, teamster, or servant he, she, or they may have in their employ: *Provided*, The compensation mentioned in this section may be paid in the county scrip, or its equivalent; and the said sheriff shall turn over all such collections to the county treasurer for county purposes.

SEC. 7. *Be it further enacted*, That the sheriff shall be entitled to, and receive, ten per cent. of all moneys that may come into his hand by virtue of this act.

SEC. 8. *Be it further enacted*, That all acts or parts of acts heretofore passed, especially the act entitled an act regulating the granting of permits to trade, expose goods, wares, or merchandise for sale within the same, and for other purposes, approved November 11th, 1875, and an act approved November 20th, 1867, entitled an act regulating the granting of permits, be, and the same are hereby, repealed, and that this act take effect and be in force from and after its passage.

Proposed by B. J. Pickens.

Passed over the veto by a vote of two-thirds.

AN ACT entitled an act directing and authorizing the appointment of a committee by the General Council.

SECTION 1. *Be it enacted by the General Council of the Choctaw Nation assembled*, That any person who is not now recognized as a citizen of this nation or of Choctaw descent, and claiming to be a citizen or of Choctaw descent, shall petition to the General Council during the regular session thereof for the rights and privilege of citizenship of the Choctaw Nation. Such petitioner shall prove his or her blood, or either means by which they claim citizenship, by not less than two good, respectable Choctaws, disinterested persons, before a proper committee or the chairman thereof, and the chairman or secretary of the committee shall have power to administer any and all oaths that may be necessary in conducting the investigation.

SEC. 2. *Be it further enacted*, That the committees aforesaid be appointed by the General Council, and they shall report to the body, by act or resolution or otherwise, in reference to the petition or petitions of person or persons claiming to be citizens, or of Choctaw blood or descent, and in the event of the adoption of such report of the committee, then such person or persons shall thereafter be deemed and considered to be bona-fide citizens of the Choctaw Nation.

SEC. 3. *Be it further enacted*, That it is hereby made the duty of the sheriff in each county of this nation to ascertain, at as early a day as is practicable, the number and names of persons (colored excepted) or parties in their counties who claim Choctaw rights by blood or otherwise, who are subjects of this act, and who have never established the same in accordance with the laws of this nation; also all such as may hereafter come into this nation, and report the fact to the principal chief immediately.

SEC. 4. *Be it further enacted*, That all persons as mentioned in the preceding section of this act, living in this nation, and claiming to be a citizen by blood or otherwise, and who shall fail to comply with the provision of this act, after having been duly notified thereof by the sheriff or other authorized person, shall be removed beyond the limits of the nation forthwith by the principal chief.

SEC. 5. *Be it further enacted*, That any and all persons who may make the attempt under the provision of this act to establish their rights and fail in establishing the same, shall be reported immediately to the principal chief by the president of the senate, and the principal chief shall forthwith proceed to remove them as other intruders.

SEC. 6. *Be it further enacted, etc.*, That the national secretary be and is hereby required to furnish the sheriff of each county in this nation with a copy of this act at as early a day as possible to furnish the same, certified to by him.

SEC. 7. *Be it further enacted*, That all expenses incurred on the part of the officers of this nation in carrying out the provisions of this act, be and the same shall be paid by parties wishing to establish citizenship: *Provided, however*, That the cost shall be made out by the principal chief and presented to the committee for collection, previous to said committee's proceeding to act upon the case before them; the said cost collected under the provisions of this act to be, by the chairman of the committee, paid into the national treasury for national purposes.

SEC. 8. *Be it further enacted*, That all acts or parts of acts heretofore passed, coming in any manner in conflict with the provisions of this act, be, and the same are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved October 19, 1876.

A PROCLAMATION.

CHICKASAW NATION, EXECUTIVE DEPARTMENT,
Tishomingo City, Ind. Ter.

Whereas the Chickasaw legislature did, on the 17th day of October, A. D. 1876, enact a law requiring all non-citizens wishing to hire or rent land or be otherwise employed in this nation, to enter into contract with the citizens of said nation, and upon proof before the county clerks of the different counties, of said contract, the clerk is thereby required to register said non-citizen under the employment of the citizen contracting with the same, and the non-citizen shall pay twenty-five dollars for the said privileges, and the term of contract shall not extend beyond the limits of twelve months:

Now, therefore, I, B. F. Overton, governor of the Chickasaw Nation, do in pursuance of said act, passed and approved October 17, 1876, permitting non-citizens to reside within the Chickasaw Nation under the employ of citizens, without becoming citizens or members of said tribe—and 7th article of the treaty of 1855 between the United States, Choctaws, and Chickasaws—issue this my proclamation, ordering all citizens of the United States, now living within the limits of the Chickasaw Nation, or who may hereafter be introduced as laborers in said nation, to comply with said provisions, and to obtain the assent of the United States Indian agent, or they will be removed beyond the limits of the nation by the proper authority; and the officers of the nation are hereby commanded to report to this office all individuals living in violation of the laws providing for the introduction of whites or other persons who are not citizens of this nation into the Indian country.

Given under my hand and seal of office, at Tishomingo City, Chickasaw Nation, Ind. Ter., on this the 30th day of January, A. D. 1877.

B. F. OVERTON,
Governor of the Chickasaw Nation.

Attest:

JOSIAH BROWN,
National Secretary.

PERMIT LAW OF THE CHICKASAW NATION.

SEC. 1ST. *Be it enacted by the legislature of the Chickasaw Nation,* That citizens of any State or Territory of the United States wishing to hire or rent land, or be otherwise employed in this nation, shall be required to enter into contract with a citizen; said contract to be reported by the citizen to the county clerk of the county where said citizen resides.

SEC. 2D. *Be it further enacted,* That any citizen who shall employ any non-citizen, shall apply, within fifteen days after entering into contract, to the clerk of the county where said non-citizen wishes to reside, for a permit for male non-citizen over the age of eighteen years, in his employ, and for each permit so obtained the non-citizen shall pay to the clerk issuing the same the sum of twenty-five dollars, and the clerk shall retain for each permit issued, twenty-five cents for his services, and shall report to the auditor and treasurer, quarterly, of all money received by him for permits, and, after deducting out his fee, shall pay the balance over to the treasurer for national purposes.

SEC. 3D. *Be it further enacted,* That every foreigner who shall come into this nation for the purpose of farming, or being otherwise employed, without the proper authority of the United States Government, shall be

deemed an intruder by virtue of section 2134 of the revised statute of intercourse law.

SEC. 4TH. *Be it further enacted*, That all licensed merchants and traders (non-citizens) shall, in addition to the tax paid on goods, be required to procure from the county clerk of the county in which they wish to trade, and all physicians, non-citizens, wishing to practice their profession, shall procure from the county clerk of the county in which they wish to reside, a permit, for which they shall pay each twenty-five dollars; conditioned upon the faithful observance of the laws of this nation, and the clerk shall dispose of the funds in the manner prescribed in section 2d of this act.

SEC. 5TH. *Be it further enacted*, That no permit shall be granted for a longer time than twelve months, and in case of violation of any law of this nation, the offender shall be ordered out of the limits of the Chickasaw Nation. And any citizen who shall employ any non-citizen for a longer time than fifteen days without procuring a permit for the same, shall be deemed guilty of a misdemeanor, and be subject to a fine of twenty-five dollars before the county court having jurisdiction, and all fines collected under this act shall go to the county treasury for county purposes.

SEC. 6TH. *Be it further enacted*, That any non-citizen having entered into contract with any citizen of this nation and obtained a permit under his employ, and shall leave the employ of said citizen without his knowledge and consent, shall forfeit his permit, and no other permit shall be granted any non-citizen forfeiting the same, by either clerk or either county of this nation.

SEC. 7TH. *Be it further enacted*, That any person living in this nation under permit shall not be allowed to bring into or hold more than five head of milch cows, and shall have no hogs outside of inclosure, but shall be allowed all the work horses, mules, and cattle as may be necessary to work said farm, and shall be allowed to feed surplus corn to beef-cattle under fence.

SEC. 8TH. *Be it further enacted*, That all freedmen not owned by Chickasaws or Choctaws at the date of the treaty of Fort Smith shall be required by the sheriffs of the respective counties of this nation to procure permits as provided in this act.

SEC. 9TH. *Be it further enacted*, That all acts and parts of acts in conflict with this act are hereby repealed, and this act take effect and be in force from and after its passage.

Approved October 17, A. D. 1876.

B. F. OVERTON,
Governor of the Chickasaw Nation.

NATIONAL SECRETARY'S OFFICE,
TISHOMINGO CITY,
Chickasaw Nation, I. T.

I do hereby certify that the foregoing is a true and correct copy of the original act of the legislature of the Chickasaw Nation, which may be found on file in this office.

Given under my hand and seal of office this the 25th day of January, A. D. 1877.

JOSIAH BROWN,
National Secretary, Chickasaw Nation.

[From the Caddo Free Press, August 9, 1878.—Extra.]

HORRIBLE TRAGEDY—ANOTHER MURDER ADDED TO THE LONG LIST OF CRIMES COMMITTED IN CADDO—DR. J. B. JONES DELIBERATELY ASSASSINATED—THE MURDERERS ESCAPE, AS USUAL.

Yesterday, at about half past 2 o'clock, Dr. J. B. Jones, a prominent physician of this city, was brutally assassinated near the depot building, while waiting the distribution of the mail.

He was walking on the platform near the southern end of the building, when he was accosted by young Wiley Stewart and Henri Stewart, who were on horseback. Henri Stewart was armed with a Winchester repeating rifle, and Wiley with a double-barreled shot-gun, and both had revolvers.

The first words from Wiley to Dr. Jones were, "You reported me to the marshals, you s—n of a b—h!" The doctor replied that it was not so. Wiley continued asserting it, and also applied many abusive epithets. The conversation was very brief, not exceeding three minutes, when, without a word of warning, Henri Stewart drew his revolver and fired, wounding Dr. J. in the forefinger of the right hand.

Young Wiley turned his horse immediately, but seeing that the shot had not been effective enough, turned in his saddle, and, taking aim at Doctor Jones with his shot-gun, said, "I'll give you another, G—d d—n you," and fired, the shot taking effect in the left shoulder and neck, severing the jugular vein and ranging downward, two shot coming out of the back below the shoulder-blade.

The doctor fell on his back, only exclaiming, "O, Lord! O, Lord!" and was dead in an instant. The assassins then, seeing that they had accomplished their work, rode slowly off toward the Congregational Church.

Both men were drunk, and it was at first thought that the act was not premeditated, but recent developments go to show that the plan was made to murder several other citizens and raid the town.

It was also supposed that no one but the two Stewarts were in the party, but it is known now that several desperadoes from Texas were here to take part in the affair; it is believed that two of them are still here, and they are closely watched. If the fact of their connection with this gang is satisfactorily proven, *their trial will follow their execution.*

[From the Caddo Free Press, August 9, 1878.]

STILL THIRSTING FOR BLOOD.—PARSON MORRIS THREATENED.

The parties who assassinated Dr. Jones retreated, immediately after the shooting, up the road in front of the Congregational Church. The pastor, Rev. Edward Morris, was standing in the doorway, waiting to distribute to a train of freighters about to leave for Fort Sill a supply of reading matter. As they rode by one of them (the same man who threatened the life of Rev. Robert West a few weeks ago) called out to him to go in out of that doorway or he would shoot him. Not supposing he really intended to shoot, Mr. Morris stood where he was, when the desperado reined in his horse, wheeled around, raised his gun to his shoulder to take aim, but he swung from his saddle, he falling one way, his gun the other. Mr. Morris says, whatever others may think, that the hand of Providence was in it.

His companion rode back, and made him get on his horse and ride on with him.

This is the second time that the parson's life has been threatened. He was with Rev. Mr. West when this same man held a pistol to the head of each.

The parson, who is an ex-post chaplain, says, if he had been killed, his friends would have had the satisfaction of knowing that he "fell in the line of duty."

LETTER FROM INDIAN TERRITORY.

The secretaries of the American Home Missionary Society came very near having to write an obituary notice for one of their superintendents. Rev. Robert West came within a shade of being murdered in the town of Caddo, Ind. T., on Saturday evening, May 4. On his way home to Saint Louis, from an official exploring tour he had been making in Texas, he made a visit to our solitary missionary, resident in Caddo.

As the two were walking together down the main business street, a half-breed was picking up a revolver he had let fall on the sidewalk; as he did so, another one fell from his belt. Mr. West remarked pleasantly, as he passed around him to pass on, "Well, my friend, you've got lots of them." He replied with a terrific torrent of oaths, "Yes, I have got lots of them, and I'll soon show you that I know how to use them"; and obstructing the pathway, he yelled out: "Only crowd me a little, and — I'll blow your heart out." Then in the midst of his blasphemy he ranged himself behind the two clergymen, holding a Navy revolver at the back of each of their heads, marching them before him, and threatening all the while with instant death. Mr. West heard the click of the hammers as he cocked them for action. Of all on the street no one dared to interfere. He turned back as they neared the hotel. A gentleman at the door remarked to Mr. West: "It is well you didn't answer him back, or he would have shot you down like a dog; that he had just before driven two other white men before him in a similar manner."

There is no protection for the thousands of United States citizens—no, nor for Indians either. There have been forty-nine murders during the past three years within a radius of twenty miles around Caddo, and no one arrested. An Indian paper of last week gives a list of thirty-three murders in the Cherokee Nation, and only two of the murderers punished, one by the United States court, western district of Arkansas, and one under Cherokee law. There is no United States court in this Territory, no military power, and Choctaw law is too weak to protect Indians.

For several months past the Choctaw Congregational preacher has had his life threatened and shots fired into his house. The Sabbath and day school have been suspended, and the teacher, a lady from Wisconsin, frightened away. Sabbath before last the son-in-law of a Choctaw Cumberland Presbyterian minister was called out of their Sabbath school by an Indian and shot fatally. He was a white man.

If we were of foreign birth, having taken out our first papers, and on board Austrian ships, in Austrian waters, the United States Navy would protect us; but our flag does not wave over these independent sovereignties.

JAPHETH.

PERILS BY LAND.

Rev. Robert West, of Saint Louis, came within a shade of being assassinated last Saturday evening in the town of Caddo, Choctaw Nation, Indian Territory. As superintendent of the Congregational missions in this region, he was returning from Texas to Saint Louis, through the Indian Territory, taking the one solitary mission in a territory of seventy thousand square miles on his way, that he might strengthen the hands and cheer the heart of Rev. Edward Morris, the lone missionary of the Massachusetts Home Missionary Society.

As they were walking along the main business street, a half-breed Indian was stooping right in the path to pick up a navy revolver. As he stooped another one fell out of his belt. As Mr. West stepped aside to go round him, he good-naturedly remarked, "Well, my friend, you've got lots of them." The fellow sprang towards him, and with an avalanche of terrific oaths, with a revolver in each hand, he roared out, "Yes, and I can use them, too! Only crowd me a little and I'll blow your hearts out!" He followed the two ministers, with a pistol pointed at each of them, swearing fearfully all the while that he would kill them. Mr. West, who is much taller than Mr. Morris, says that amid the curses he heard distinctly the click of the hammers, as he prepared to fire. No one on the street dared to interfere. One gentleman at the hotel door remarked to Mr. West, "It is well you didn't talk back, or he would have shot you down like a dog."

The people of the States are inexcusably ignorant of the dislocated state of society in this Territory. Here are thousands of United States citizens, both black and white, without any protection for life and property. There is a mere shadow of it in the western district of Arkansas. There have been forty-eight murders within a radius of twenty miles around Caddo, within the past three years, and no one punished.

When will Congress give us a government in this Territory which shall alike protect white men, Indians, and colored people? Is there not wisdom enough in the United States to devise a plan to divide this Territory in severalty, and secure the balance to the Indians, and thus make us one people?

JAPHETH.

CADDO, IND. TER., August 3.

To the Editor of the Witness:

DEAR SIR: Your valuable paper comes every week, and I wish you to accept of my most humble thanks. It certainly contains by far the most reading matter (just what we poor colored preachers want) of any paper for the price I ever saw. I have not been in the Indian Territory long. I came from Washington City here. But, believe me, I could write you very, very much about the treatment which the colored people are receiving at the hands of both Indians and whites. Not long ago three black men were killed. One was killed because he was an eye-witness of the killing of the other two. All were killed without trial, judge, or jury. One was suspected of stealing; but there was no certainty of the fact. Nothing has ever been done with the murderers, nor is it even expected that anything will ever be done with them.

Last month a young colored man was accused of committing rape upon two young white women. He was caught by some white men, who pretended that they were going to take him to Fort Sill and hand him over to the United States authorities. When about sixty miles away, the prisoner experienced the most brutal and barbarous treatment that

a knife could make upon his person, then hung to a tree until almost dead, and then he was taken down and chopped to pieces. It is terrible; but nothing is done, nor do we expect that anything will ever be done with any of the parties concerned in this dreadful affair.

The people do not know in the North and East how much suffering the poor colored people are enduring. They dare not say anything; they are kept afraid.

No wonder Liberia is sought for by many for deliverance. They have waited for deliverance and protection for ten years. But, Mr. Editor, as a reality, the colored people do not feel any safer to-day than in 1868. What shall we do? Is the government never to give us a protection under which we can feel secured? God grant that it may.

Yours, &c.,

G. W. DALLAS.

[Extract from a letter from Robert West.]

"Some one, unknown to me, had a communication in your last issue concerning an attempt on my life in the Choctaw Nation, as I came through the Indian Territory on my return from Texas. The facts are about as stated, save that, not knowing the fellow was in earnest, I refused to give the sidewalk to him. I have no doubt that, being half drunk, he meant to kill me. To hear the ominous 'click' of a revolver in the hands of such a man, who declares he means to shoot you, makes a man feel solemn for a whole minute. Lawlessness pervades the Indian Territory. The great body of the Indians down there are in no way to blame for it. The whole system is wrong. These Indians should be allowed to hold their land in severalty and not in common. The present system is nothing but communism in its worst form, and there is no protection to life or property in all that vast country. Do the people of the United States realize that there is a section of country larger than the State of Illinois within our borders that has not a Territorial government?

"The Indians who wish to do right have no encouragement whatever to farm or accumulate property, since all is held in common. The school funds are used by an Indian ring at Washington, composed of Indians and white men, who draw ten dollars per day and expenses, besides other perquisites. What for? Nominally, to keep white men from stealing the Indian Territory, but really to keep that country in its present lawless condition, in order that rings may plunder the people forever. It is a disgrace to our civilization and a great wrong to the Indian. I have some facts and figures bearing on this subject and shall speak of it at another time.

"ROBERT WEST."

COLBERT STATION, CHICKASAW NATION,
Indian Territory, November 23, 1878.

Committee met at 10 o'clock a. m.

Present, the chairman.

ESQUIRE WOLF, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Where were you born?—Answer. I was born in North Carolina.

Q. Were you a slave?—A. Yes, sir.

Q. Brought here by the Chickasaws?—A. Yes, sir; I was raised by them.

Q. What do you do now?—A. I am farming.

Q. For yourself?—A. Yes, sir.

Q. How much do you cultivate?—A. One hundred acres.

Q. Do you raise any cattle?—A. Yes, sir.

Q. How are the colored people getting along?—A. They are getting along extremely well, sir.

Q. Do they allow you to vote?—A. They have not yet.

Q. Do they allow you to sit upon the jury?—A. No, sir.

Q. Do they allow you to send your children to school?—A. No, sir.

Q. You are not adopted as citizens?—A. No, sir.

Q. Are you satisfied with that state of affairs?—A. No, sir.

Q. You would like a change?—A. Yes, sir.

Q. You would like to have some rights that the negroes have in other places?—A. Yes, sir; that is what we want.

Q. You would like to have the lands divided up in severalty?—A. No, sir; we would sooner have that as it is, and be like the other nations.

Q. I suppose if that could not be done you would like to have your own lands?—A. I do not know about—we want to take it as they give it to us.

Q. If the Indians won't give you your rights and the government gives them to you, won't you take them?—A. Yes, sir.

Q. Have you got protection under the laws at all—under the Chickasaw laws?—A. No, sir.

Q. Then you would like to have the United States laws to protect you so as to make United States citizens of you, would you not?—A. I do not know about that; I would like to be under some protection. We cannot live without protection; if the Indians adopt us, and take us in as citizens, then we would be protected.

Q. Don't you want the law to protect you; the laws of the United States?—A. The desires of our people are to be adopted and become as natives of the country.

Q. Suppose that cannot be done, then what do you want done?—A. I cannot say for myself; I do not know what the people want done.

Q. Suppose the government was to make them adopt you?—A. Well, sir, we would have to submit to it.

Q. Would you not be glad to submit to it?—A. Yes, sir; whatever the government did.

Q. Your children are growing up in ignorance, are they not?—A. My children are going to school some.

Q. You have a right yourself?—A. Yes, sir; it is free here.

Q. The colored people all in that condition?—A. Yes, sir.

Q. Do the full-bloods work any?—A. O, yes, sir; they work; a good many of them work right along and have pretty good farms.

ISAAC WILLIAMS, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Isaac Williams.

Q. Were you a slave?—A. Yes, sir; all my days until the end of the rebellion.

Q. Have you the right to vote here in the Territory?—A. No, sir; not yet.

Q. Do you sit on the jury?—A. No, sir; not yet.

Q. Are you allowed to send your children to school?—A. Yes, sir; we have been sending them to school.

Q. To the schools of the nation?—A. No, sir.

Q. To schools you keep up yourselves?—A. Yes, sir.

Q. They don't allow you to send your children to school at all?—A. No, sir.

Q. They don't furnish any schools for you?—A. No, sir.

Q. Are the colored people satisfied with that arrangement?—A. No, sir.

Q. Would you like to have a change?—A. Yes, sir.

Q. Do you want the government to extend the laws of the United States over you and protect you and give you your rights?—A. No, sir.

Q. What do you want?—A. Well, sir, I want them to extend the laws here and give me the rights the Indians have; I wish to be a citizen of this nation, to have all the rights and privileges as a free Chickasaw or any born Chickasaw.

Q. Suppose the government should extend the laws over here and make you a free citizen and give you the right of an American citizen; that is, all the rights that the Chickasaws have?—A. If I had my wish I would rather live under the laws of the Chickasaw Nation.

Q. Suppose the Chickasaws do not do it. Then what are you going to do?—A. I do not know what else to do, but that is my wish. This is my native home. I was born among the Chickasaws. I came from Mississippi with them. My race is weak, and there is no protection here.

Q. Then you have no protection under the law at all?—A. None, except what they told us last fall. He said he was going to adopt us, the same as the Chickasaws, and give us all the rights and privileges of the Chickasaws.

Q. What governor told you that?—A. Governor Overton, and Mr. Burney when elected said he would do the same thing.

Q. Has he done it?—A. No, sir; not yet. But he says he will do it; that is what he told me.

Q. Have you any right to own property here?—A. Yes, sir; and cultivate as much as we want to.

EDWARD COHEE, having been duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. Edward Cohee.

Q. Were you a slave?—A. Yes, sir.

Q. Born with the Chickasaws, were you?—A. Yes, sir.

Q. Have the colored people here any right to vote?—A. I never had a vote here.

Q. Do you sit upon the jury?—A. No, sir.

Q. Are you allowed to send your children to school?—A. No, sir.

Q. You get no part of the school-fund?—A. No, sir.

Q. You have no rights here at all, have you?—A. Well, we have been allowed here. We have no voice in the government here; none in the council or government in any way.

Q. Are you tired of that, or do you want it to continue?—A. I would like to have it changed.

Q. How do you want to have it changed? Do you want the lands divided up, so each man could get his own land?—A. I would like to have it in this way, so we could have our laws here, so that we would not have so far to go to attend court. As to the other, we have agreed

to come into equal rights with the Chickasaws. We have had no equal rights yet, but they have agreed to do that for us, and we have agreed with them to do it.

Q. They have not done it yet?—A. No, sir; not yet.

Q. Do you think they will do it?—A. I do not know whether they will or not; they say they will do it. We would rather have it that way if we could get it, and come in equal rights with them, and have the same rights and privileges with the Chickasaws.

Q. Have you any protection for life and property now?—A. The only protection we have now is at Fort Smith, Arkansas. If we do anything we are dragged off down there, two hundred and fifty miles, to get any protection at all. That is, the marshal drags a man off, and you have no justice when you get there. I suppose you could get justice, but our people are ignorant, and men get around them and make them swear to almost anything. There is no justice there.

Q. Then you really have no protection for your lives, and every one takes care of himself?—A. Every one takes care of himself. The Chickasaws have treated us mighty well. They have no jurisdiction over us, no more than treat us well and act friendly with us. We could not expect anything better from them. From what they have done for us we are satisfied as we are.

PHILLIP STEVENSON, having been duly sworn by the chairman, was examined:

By the CHAIRMAN:

Question. What is your name?—Answer. Phillip Stevenson.

Q. Have you been a slave?—A. Yes, sir.

Q. With the Chickasaws?—A. Yes, sir.

Q. Do the colored people here have a right to vote?—A. No, sir; never.

Q. Sit upon the jury?—A. No, sir.

Q. Send their children to school?—A. No, sir; the government has a school to which we send our children.

Q. Do you want a change or do you want it to continue?—A. We want a change in this way: if the Chickasaws will receive us in full citizenship the same as native-born Chickasaws, and give us the same rights and privileges, we would wish to remain as we are; anything else than that, we would rather change the other way if they won't agree to give our people equal rights.

Q. As it is now, you have no protection for your life?—A. No, sir; only what the government gives us.

Q. What the United States give, you mean?—A. Yes, sir.

Q. You have to go to Fort Smith to be tried, do you?—A. Yes, sir.

Q. That is 250 miles from here?—A. Yes, sir.

Q. Across the country?—A. Yes, sir.

Q. Are you able to read and write yourself?—A. No, sir.

Q. You are not an educated man?—A. No, sir.

Q. You never went to school at all?—A. No, sir.

Q. Has anybody instructed you here as to the manner in which you should give your testimony here?—A. No, sir.

Q. Nobody has told you what to testify to before this committee?—A. No, sir; they have not. The Chickasaws never adopted us, but they have agreed to do it under full rights, and if the Chickasaws do not give us people adoption the same as the other born citizens, we would rather remain in the country where we were raised.

At 10.40 a. m. the committee adjourned.

FORT SCOTT, KANS., *November 28, 1878.*

The committee met at 11 a. m.; present, the chairman.

R. L. REAM, Jr., being duly sworn, was examined.

By the CHAIRMAN:

Question. Where do you reside?—Answer. At Ream's Station, Choctaw Nation.

Q. How long have you lived in the Choctaw Nation?—A. Since 1865; about 13 years.

Q. Are you a member of the Choctaw Nation—a citizen of the Choctaw Nation?—A. A citizen of the Choctaw and Chickasaw Nations. I married my wife as a Chickasaw, and have three children.

Q. Your wife is a Chickasaw?—A. Yes, sir.

Q. Please go on and state your views of things in the Territory, and, so far as you know, the views of your people with reference to the existing state of things, and the desire for any change.—A. I feel that the people of the county in which I live are strongly in favor of a change; many of them would ask for a Territorial government; many of us would want a State government at once. We would agree with Gov. Allen Wright, who proposed State government eight years ago. We want our homes secured to us, if it is only a forty-acre tract. I have been a citizen by adoption for more than ten years, and I have a family of children to support, and it seems almost impossible to do it without. I hold a title to that land that I improved or cultivated. I am a citizen of the Choctaw Nation under the law, and I am willing and ready to abandon all the rights and privileges that a white man could claim by marriage to give it to my children—to my wife and children. I want to become a full citizen of the United States, and I want to make my children citizens of the United States. I have had a great deal experience with the wild tribes and the frontier tribes, and I can see no reason why we might not be as well taken in as citizens of the United States as the negro, for I have found, although I have lived in the South all my life, and have roamed among the wild tribes of the plains, I have never found them inferior to the negro in any respect at all. They were always a self-governing and a self-sustaining people.

Q. Are your people of the Choctaw and Chickasaw Nation, so far as you know, satisfied with the present form of government?—A. I don't think they are.

Q. Why do they not express their opinions more freely on the subject?—A. If you will allow me to state a case I will state one of very recent occurrence. Yesterday evening my wife went to McAlister. She first informed me on her return that the committee would be here to take testimony. She received her information from William Pusley. This is what she said to me—she said: "I asked if he was going up." He said, "I gave my testimony before that same committee last winter, and it has worked against me, and I am afraid if I go up voluntarily to Fort Scott and give testimony again that I will be killed when I get home."

Q. Is that feeling pretty general, so far as you know?—A. It is very general. It is not only general, but it is the feeling all over the country.

Q. Do you know of any person being driven out of the Territory because of the expression of their views in favor of the allotment of lands and the opening of the Territory to white settlement?—A. I do.

Q. Name them.—A. William Pusley, Tandy Walker, formerly sheriff of our county, and representative of my county, and J. J. McAllister and myself.

Q. When?—A. We were arrested on the 26th of July, 1877, by an or-

der from the chief, the governor, who had no authority to arrest us at all.

Q. Did you escape?—A. Yes, sir.

Q. How long did you remain from the Territory?—A. We came into Kansas and spent about two months here, and I sent for my family to join me.

Q. Were you arrested by what is known as their light-horse infantry?—A. We were arrested by their light-horse, but not by any warrant except by order of the chief.

Q. What security is there for life and property, except a man defends himself?—A. There is none; only self-defense.

Q. Does not that state of things lead to frequent homicides?—A. I think it does.

Q. In your judgment, is not the honest feeling of a large majority of citizens of your nation that it would be better for them if the laws of the United States were extended over them and their lands were allotted to them in severalty, if allowed to express their opinions freely?—A. I know that in the county that I live in—in Tobucksy County—that they would express it freely to-morrow by ballot, by a large majority.

Q. If they dare?—A. They dare do it, but it is the only county, perhaps, in the whole Choctaw district that they dare to do it.

Q. Do you believe that to be the sentiment of the majority of the people of the Choctaw Nation, if allowed to express their opinion, the citizens of the Choctaw Nation?—A. I believe that a survey and an allotment would please a large majority.

Q. In your judgment, what is the prospect for improvement and for the development of the resources of the Indian Territory under the existing state of things?—A. There are no prospects at all; I have thousands of dollars invested in mines there that I cannot develop under the existing state of affairs.

Q. In what portions of the Territory, if any, have there been any improvements since you have been there?—A. I would like to state, there have been no improvements made, except they were made by white men. I have a farm, and the labor was all done by white men.

Q. On farms that are occupied by the Indians, the full-bloods, who does their work?—A. Ninety per cent. of the farming that is done in my county is done by white men.

Q. Do you know whether that is true throughout the Territory?—A. I think it is; I mean cultivation of the land.

Q. Is it not your judgment that the only prospect of any improvement to the Indian is by his coming in closer contact with the white man; I mean adapting themselves to the white civilization?—A. My experience in twenty years is that I consider that that is the only way to bring them to a proper stage of civilization.

Q. Suppose that the Territory were opened to settlement, and the lands allotted to the Indians in severalty, in proper quantities, under certain restrictions as to alienations, what, in your judgment, would be the effect upon the Indians?—A. If the property were not subject to alienation I consider that they could manage the balance far better than the white people could. We make voters of our children at 18 years of age; our young men are better trained to the value of property at 18 years of age than your children are at 21. Each and every one of us give our children a few pigs, a pony, a few cows, and they raise from them. They learn to value property far quicker and far earlier than the young people of the States do. My judgment is, then, that it would

benefit the Indians, improve them, and stimulate them to work for themselves.

Q. The government of your nation is now administered mainly by white people, is it not?—A. Yes, sir. I wish to say that I never have met an Indian, when I could explain to him, and have an opportunity to talk to him, and show him that he could hold his lands, and that the railroad company could not take them from him, but what he was in favor of sectionizing and allotment. I met a great many; I am a miller; I run a mill, and my custom comes from all over the country in 40 miles from me, and I never have met one that I didn't talk to on this question, and I never have found one that didn't state that he was ready for allotment at any time if he could secure the land for himself, and if they could not go to the railroad company.

Q. Now, I will ask you whether these leaders do not seek to intimidate them by saying that if the Territory was opened and the lands allotted the railroads would steal all the lands?—A. Always; that is the great cry.

I would like to make a little individual statement, without having it taken down if you do not desire it. I am speaking of my individual feelings. I would prefer 40 acres of land in that country or in any other to the present title that I have there. For myself and my whole family I have made improvements; they are worth thousands of dollars; but they are not worth a dollar in reality; I can't sell them for nothing and I can't trade them for nothing or mortgage them for nothing; in fact, I am poorer by the amount I have spent upon them than if I had kept it in my pocket and lived as some people do live.

Q. In other words, you are actually poorer from having made improvements?—A. From having made improvements.

Q. I will ask you if there is not a feeling of great insecurity to life and property there?—A. I consider that we have no protection for life and property; a white man may take my horse to-morrow, and if he should take it before my eyes I would not follow him, nor I would not undertake to take it from him, for if my horse were worth one hundred dollars it would cost me two hundred dollars to go to Fort Smith to prosecute him, and consequently I would abandon to him the horse and turn him over to the thief, which I have done in instances almost similar to that which I have mentioned.

Q. Isn't it a fact that many persons, knowing the fact of crime having been committed, conceal it for fear that their own lives will be taken if they expose it and bring it to the knowledge of the authorities?—A. I have known of hundreds of cases.

Q. So that, in fact, criminal law is scarcely ever administered?—A. Only in such cases as the United States marshals may discover. We have perhaps twenty cases of petit and grand larceny in our neighborhood to where there is one that is prosecuted.

Q. Do you think of anything else that you would like to state?—A. There is a feeling in our country that the railroad company may get a portion or a part of our land; but I would rather give up a portion or a part of the land than to remain in the situation and condition that we are now. I have no protection for my family nor myself nor my property. If by giving up one-fourth of it or one-half of it I could secure a home for my little ones, I would be glad to do it. I have spent the best days of my life there. I have a family which I feel that I ought to support and sustain and educate, and without some change I do not see how I am going to be able to do it.

Q. Are not all the people of your nation in the same box?—A. I believe they are.

Q. You believe then that if your people could be assured that the railroads were to get no portion of the lands there would be no objection to sectionizing and extending the laws of the United States over the Territory?—A. I can't think of a single Indian in my whole acquaintance that would object to it except the ring.

Q. Except the leaders?—A. Except the ring—we have broken the ring in our country—the Choctaw country.

Q. How many acres of land do you occupy now?—A. I presume five hundred acres.

Q. And you would prefer forty to which you had a title and could call your own?—A. Yes, sir.

Q. Which could go to your children when you die?—A. Yes, sir. Let me make another statement that perhaps it would be well to take down. I never knew a man of wealth or means to die in our country whose heirs received the benefit of his estate.

Q. What becomes of it?—A. It is squandered, gobbled up by petit courts, and administrators and rings generally. My father-in-law died worth \$32,000 of assessed property. My wife received only \$75 from that whole estate.

Q. How many children were there?—A. There were six. I wish to state too that I was ready to make this statement at McAllister, or Armstrong Academy, or Caddo, or any other point in the Territory. As I am here, I desired to appear before the committee in the Territory, and I made every endeavor to do it, and I went as far as Cana Switch and learned that the committee had dissolved and that the chairman had gone to Hot Springs, and that the train containing the young men was coming back, and there was no use for me to go further, and so I turned back on the next train. I desired to appear before the committee in the Territory, and I mentioned it to Senator Grover, at Vinita; that I would appear before them when they got down into our district, because if there were any parties there who could gainsay anything that I remarked I was ready and willing to hear them.

E. POE HARRIS, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your name?—Answer. E. Poe Harris.

Q. Where do you reside?—A. I reside at the present at McAllister, Choctaw Nation, but my home is at Tahlequah, Cherokee Nation.

Q. Are you a citizen of the Cherokee Nation?—A. I am.

Q. How long have you resided in the Indian Territory?—A. I have been in this Territory since 1863, and in the Cherokee Nation since 1867, except about one year spent in Kansas, until last March, when I came to McAllister.

Q. Why did you leave the Cherokee Nation and go to Kansas?—A. For fear of being assassinated.

Q. For what were you in danger?—A. Because I had advocated the allotment of the lands and the establishment of such measures as would give more security to life and property in this country, and had signed a paper addressed to the "peace commission" to that effect. This, taken in connection with my opposition to certain measures of what was known as the "Ross party," made it necessary for me to leave the country to save my life.

Q. Did any other Cherokee citizens leave the country at the same

time and for the same cause?—A. Yes; S. H. Downing, S. S. Stephens, then superintendent of public schools, and others.

Q. Have you ever held any office or appointment in the Cherokee Nation?—A. Yes, sir; I have held the position of medical superintendent of the asylum for the insane, blind, &c., and am and have been for several years president of the medical examining board of the nation.

Q. Are you a graduate in medicine?—A. I am. I graduated at the University of Virginia in 1856.

Q. How are the laws executed in the Territory?—A. Very poorly.

Q. Are life and property as safe here as in the States?—A. I do not think they are.

Q. What reason do you give for that opinion?—A. Because I have known of larceny being committed, and on the trial, although the proofs were positive, yet, owing to political influences or party bias, the offenders were acquitted; I have known of murder most foul, yet the testimony of accomplices and accessories was admitted to clear the accused; I have known of crimes which it was the duty of the officers of the law to punish, yet no effort was ever made to bring the offenders to trial. And as a further reason I do not think life and property as safe here as in the States, because there is more crime committed in this country than in any State or community of ten times its population, and the perpetrators are less frequently brought to justice than elsewhere.

Q. How many murders have you known committed in Tahlequah and its immediate neighborhood within the past ten years?—A. I cannot now recall but twelve.

Q. Does this number include all in Tahlequah district?—A. No, only in Tahlequah town and within two or three miles around.

Q. Can you give the names of the murdered men?—A. I can, on inquiry.

Q. How many of the murderers were convicted?—A. One only.

Q. How many murders have been committed in Illinois district within the last ten years?—A. I do not know certainly how many, but I can count up 33. There may be more.

Q. What is the population of Illinois district?—A. About 3,000.

Q. How much money has been spent through delegations to Washington from these five tribes within the last five years?—A. I have no means of knowing accurately; but if the amount used by other nations is proportionate with the Cherokee, it will aggregate two hundred to two hundred and fifty thousand dollars, probably \$500,000 within the last eleven years.

Q. Have any of the school funds been used for that purpose?—A. In the Cherokee Nation they borrow nearly every year from the school funds to defray the expenses of the council and for other purposes. It is claimed that is all paid back. The books of the treasurer should show whether it is or not.

Q. Has the orphan fund of the Cherokees been diverted from the purposes intended by treaty?—A. There has been \$28,000 paid out of this fund for the purchase of a location for the orphan asylum, which was a misapplication of the funds.

Q. How is this a misapplication?—A. Because there was only \$20,000 appropriated out of certain funds in the hands of the United States for building an asylum, and no provision that any of the regular annuities set apart for the orphans, consisting of 15 per cent. of the whole annuity, should be expended for that purpose. Besides this, \$28,000 was not paid for the execution of the buildings. They were built with the \$20,000 provided for by act of Congress; but the \$28,000 was paid to

the heirs of Lewis Ross for a location that would, I believe, have been gladly sold to an individual for one-fourth of the money. The location was sold by William P. Ross as administrator on, and one of the principal heirs to the estate, to the board of trustees of the orphan asylum, of which "board" he was at that time president as well as chief.

Q. Did the Cherokee council ever pass an act appropriating this \$28,000 for the asylum location?—A. They did not that I have ever heard of.

Q. Is there any sentiment in the country in favor of a change of government?—A. There is, and a constantly increasing one. The intelligence and enterprise of the country favor a change but not a radical one. If they can have their lands allotted in severalty, which would enable them to manage their own interests and engage in enterprises made impracticable by a "title in common," and had United States courts established to protect those interests, it would meet the approval of a majority of the people; but it is next to impossible to get a public expression of the sentiments of many.

Q. Are you in favor of allotment?—A. I am, most emphatically.

Q. Are you in favor of the establishment of a Territorial government for this Territory?—A. Not in the sense in which this people generally understand that term; at least until after the lands are allotted and the title secured. After that is done I do not think it material how soon a Territorial government is established; in fact, the interests which an allotment would soon develop would induce the people themselves to ask for some form of government that could better protect those interests than the tribal forms now existing. I believe the treaties of 1866 with the five tribes provide for and anticipated a Territorial government or an inter-tribal organization, which is nothing more nor less than a Territorial government, call it what you will.

Q. Are you in favor of that organization as provided for by treaty being carried into effect?—A. I am, provided the wild tribes of the Territory are excluded—as they did not consent to it it is not obligatory on them—and with the additional provision that the lands of the five tribes be immediately allotted in severalty. These wild tribes are not in a condition to be benefited by the legislation needed for these civilized Indians, and by adding them to the organization it would only complicate the administration of its provisions and impair its effectiveness. After they have attained the same condition of progress under governmental direction as have these five tribes, it would be proper to increase both their liberty and responsibility by placing them on a plane with their now more advanced brothers.

Q. What changes in the government do you consider as needed now?

A. 1st. That the lands be allotted in severalty so that every man may control his own and prevent the squandering of the common domain of the common people by delegations and rings.

2d. That a United States court or courts with ample jurisdiction, both civil and criminal, be established.

3d. That a Delegate to Congress be elected.

Q. Is there any objections to the establishment of United States courts?—A. There is not, except it be by a few perhaps who fear it might make them do better. On the contrary, several of the national councils have more than once instructed their delegates to ask that they be immediately established.

Q. Do you believe that such changes as these would be willingly accepted by the people when once made?—A. I do. If once the changes

were made a large majority would be glad of it; but, as I before remarked, they will hardly ask for it, at least by public expression.

Q. Do you believe the testimony offered as against the allotment properly represents the sentiments of the people?—A. I do not, because many do not understand the question; and, further, on account of the influences at work in the shape of systematic intimidation or bull-doing.

Q. For the last ten to fifteen years while you have been intimately associated with the people, what is the result of your observations as to the progress made by the full-blood Indians?—A. When they have come in contact with whites and their enterprises they have advanced; this is markedly the case along the line of the railroad and about the towns. In other cases as found still back in the country, I do not see much improvement. In fact, it is my opinion from the experience of a number of years, that there is, materially, very little progress in a full-blood Indian when left without associating with the progressive race.

Q. Is there not perfect freedom of speech and the press in this Territory?—A. There is not; there is more tolerance of opinion in the Chickasaw and Choctaw Nations than elsewhere; but even there the promulgation of views at variance with the prejudices of certain parties and classes is dangerous; in the Cherokee Nation it is worse.

Q. Did you ever edit a newspaper in the Creek Nation?—A. About three years ago Col. C. C. Boudinot and myself established a newspaper at Muscogee for the purpose of advocating liberal and progressive ideas on the interest and policies of these civilized tribes, but the Creek council of "kings and warriors" passed an act confiscating our office and compelling us to remove toward the limits of the Creek Nation in fifteen days.

Q. Has there been any other newspaper published in the Creek Nation?—A. Yes; the Indian Journal.

Q. What is its political platform?—A. It is what is known in the Territory as "pullback."

Q. Was there any attempt made to establish another progressive paper at Muscogee recently?—A. Yes; the press and material are, I believe, still at Muscogee; but Ward Coachman, the acting chief of the Creeks, ordered Mr. Hemby not to start his paper without a permit from the Creek council. I heard Mr. Coachman give Hemby the order.

Q. Is it necessary to get a permit from the Creek council to reside in the Creek Nation?—A. Not that I am aware of, for any other purpose except a progressive newspaper.

Q. How is the newspaper published at Tahlequah (the Advocate) supported?—A. It is conducted at the expense of the Cherokee Nation.

Q. How much has it cost the nation for this last year?—A. I think between nine and twelve thousand dollars.

Q. What are the receipts from the paper?—A. I cannot state accurately, but do not believe they exceed \$1,000 in cash. The paper is paid for mostly in "tickets," worth only 25 cents on the dollar.

Q. What has been the expense of the "court of commission" of the Cherokees for trying the rights of citizenship?—A. Between eight and ten thousand dollars, I believe.

Q. How many cases have they decided?—A. I cannot tell exactly at this date; not over 30, I think.

Q. How many applications are there before the court?—A. I have been informed by the clerk that the number would exceed 1,500.

Q. What is the outstanding debt of the Cherokee Nation as represented in "tickets," warrants, &c.?—A. About \$200,000.

Q. What was the amount of funds held in trust by the United States

for the Cherokees at the close of the war?—A. Between six and seven hundred thousand dollars.

Q. What amount is now to their credit?—A. Between two and three millions.

Q. From what source has this increase in their invested fund been obtained?—A. From the sale of lands—the common domain.

Q. Did the Cherokees receive full value for lands sold?—A. If the lands had been sold in severalty, the lands would have aggregated at least four times the amount to the owners.

Q. How much money is there in the Cherokee treasury to meet this outstanding indebtedness of \$200,000?—A. In the general fund, not one dollar. The last \$704 was appropriated on the 15th or 16th to “feast the people” at Tahlequah, for the purpose of getting an expression under directions of the leaders as against any changes in their government.

Committee at 3 p. m. adjourned.

FORT SCOTT, KANS., *November 9, 1878.*

The committee met at 10 a. m.

Present, the chairman.

BENJAMIN KEMP, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. You reside in the Indian Territory?—Answer. Yes, sir; at Polono, in the Chickasaw country.

Q. You are a Chickasaw?—A. Yes, sir.

Q. You were born in Alabama?—A. I was born in Alabama.

Q. And came to the Territory with your people?—A. Yes, sir; I came there with my people.

Q. The treaty of 1866 provided for the survey of the Chickasaw lands; did it not?—A. Yes, sir.

Q. And for individualizing whenever the Choctaws should agree to it?—A. Yes, sir; whenever the majority of each tribe consented to it it should be done.

Q. The Chickasaws consented, did they not?—A. They consented according to the treaty—that is, they consented through their legislature that it should be done; they consented by resolution, asking it done according to treaty; showing willingness to have it done; that is, whenever the Choctaws agreed; that was the treaty; of course they could not do it without the consent of the Choctaws. I think you will find the resolution there in the department somewhere yet.

Q. The Choctaws never consented?—A. Never consented.

Q. Are the majority of your people still of that opinion?—A. Well, if we are to be governed by the late election—the last election—the majority of the people are in favor of it; according to the counting by the casting votes, the majority of the votes cast were cast in favor of Governor Harris.

Q. Governor Harris, then, represented this party?—A. Yes, sir; this party.

Q. You call it the progressive party?—A. The progressive party; yes, sir.

Q. As I understand from you he was elected—declared elected by the

speaker of the house of representatives?—A. He was elected and declared by a majority of ten votes; was declared by the speaker of the house; the law gave no other person but the speaker of the house the right to open and count the votes.

Q. The votes were counted by the legislature and he was declared elected?—A. Yes, sir; they were counted by both houses in the representative hall on Monday.

Q. Go right on there and state what took place.—A. I was a senator—

Q. I would like to ask you whether you are not now a member of the Chickasaw senate?—A. Yes, sir.

Q. And was at the time these votes were counted and the result declared?—A. Yes, sir; I can state exactly, because I was one among the first witnesses that was called before the house, and I would like to make the following statement without stopping.

Q. State it in your own way.—A. Under our constitution, as near as I recollect, according to the constitution, the constitution provides that our general election shall be held on the second Wednesday of August each third year. The election is opened at eight o'clock, or as near that time as is practicable; there is a county judge and an associate judge and a clerk and associate clerks to open and receive the recording of votes cast in each county, and I was one of the judges of election for Polono County; we opened our vote, commencing at the hour under the constitution and closing at the hour, and made our returns and sent them up, as the law directs, by an officer, the county sheriff or the constable of the county, on the first Monday of September. As the law directs, the legislature met and we organized and were notified that the house was ready to open the ballot-boxes, I believe at two o'clock on Monday evening; we met Monday evening at two o'clock, and the speaker and his clerk counted the votes and the result of the election from the different counties; after counting the votes on Monday, according to his statement, Governor Harris was elected by a majority of ten votes and he was declared elected, and Judge Sheco asked of the house that Governor Harris be brought forward and be qualified, and Samson Sill, a Panatuck County member of the house, stated that it was too late, and he would make a motion to adjourn until Tuesday morning at ten o'clock. On Tuesday morning the house met, and the first notice I got was that I was called before the house to make a statement in regard to the election of Polono County. I went up and Mr. Sill spoke to me and said, "You have violated the constitution in being judge of the election down in Polono." Said I, "How?" Said he, "You have allowed a crazy man to vote." Said I, "Who was it?" Said he, "Morgan Barry." Said I, "It is no such thing; Morgan Barry has got as good sense as you or me; he has fits of apoplexy and fits at times, but as soon as he gets over those he is as good as you or me." Said he, "It has been stated so and we want your deposition." I said "All right, I will give my deposition;" and on the witness-stand I learned that it was a notorious thief, Edward Jefferson, who is a thief; he is looked upon as being a hog-thief. I heard his testimony; I heard a part of his statement; and he said that he knew Morgan but didn't know of his own knowledge that he was an insane man, but that that was the report; that he knew the man but didn't know anything about his being insane or not, but that was the report, and I told them that I had known Barry and I admitted that he had fits, but that I had never seen him have one; that I had been told so by his own family, but I was satisfied that the man did have fits, but that when he got over the fits he was just as rational as I was. The

only question I heard them ask this man Jefferson was, "How did he vote at the election; did he vote as a sane man?" and he said it took him a long time to vote. I didn't consider that as any evidence that the man was sane or insane. Me and Colonel Reynolds made our statement under oath, and we stated to them that the man was a sane man, but they ruled out his vote and declared him to be an insane man.

Q. Upon that testimony?—A. Upon that testimony. It was the only testimony we had, I understood; that is what I heard. I understood that some man wrote to this Harris that he had been dropped from the jury-roll for the last five years. I didn't know what the intention of it was, but I suppose it was to substantiate this man Jefferson's report. You see we do not allow any but sane men to act as jurors. I admit that he was dropped from the roll, but it was not on account of his insanity, but on account of his moving into the Choctaw Nation, where he married, and came back last winter, and for that reason he has never been summoned as a juror; first, because the county judge, according to law, has never given his name to the clerk, but not on account of insanity. They say, to get out of ruling him out on Jefferson's testimony, that it was on account of that that they ruled him insane—that is, so far as Jefferson's evidence is concerned. This man was ruled out upon Jefferson's evidence against three of us—I, Colonel Reynolds, and Newberry, all of us members of the senate from the same county.

Q. Who was managing this thing?—A. A man by the name of Samson Sill and a man by the name of Chicoka managed it as members. They were both preachers.

Q. Who was managing them?—A. I say only according to my inferences on that; all the actions showed that Governor Overton was the man that was managing it.

Q. They went on with others in the same way, did they, until they had thrown out enough?—A. They went on and threw out enough from the different counties to give Burney a majority of six votes. Judge Sheco fought them and done all he could to convince them that they were wrong; but, after we found out that they would do it, we kept up the same course. We had to try to keep out some of Burney's votes, and we did so; but out of about seven votes that we challenged, we got to throw out one vote, but every man that was challenged on the part of the house was thrown out. They even went so far as to throw out General Cooper. He has been a draughtsman for our legislature, and received his pay, and we had paid him an annuity.

Q. There was no notice given of the contest or of anything of this sort until after the result was announced?—A. Until after the result. There was no words said about it until Tuesday morning—until after they had read their minutes and adopted them—that surprised us.

Now, to satisfy you that I am right, there is papers that went on in regard to what had taken place in the legislature; and you will find several witnesses to that paper. It asked the President—we made a full statement of the whole thing just as it occurred, right at the time, and you will find those papers in Washington filed. I wish only to state just the facts.

Now as regards General Cooper. I heard Governor Overton—he came up before the house and told the house that Cooper was not a Chickasaw, and could not be considered as such, from the fact that the Choctaws had not adopted him, and that he was only allowed to live and breathe the air. No one but a member by birth or by adoption or by marriage can hold office and receive pay out of our public funds. We elected Cooper and paid him for his services. He was adopted

under the treaty of 1865, and readopted under the treaty of 1866 by the consent of the Choctaws—and we pay annuity by the consent and the decision of one of the captains of the different counties. They brought up that question—Frank Overton did himself. When was the annuity? In July, 1876? I believe it was in 1876 that the annuity was paid. That question was sprung before the captains as to whether he was entitled to an annuity, and Overton tried to convince them that he was not; but the captains agreed unanimously that he was a Chickasaw, and paid him the money; and Overton told me when we elected him draughtsman of the legislature that he was not a Chickasaw, and that he would see that he didn't get his pay. But he didn't kick at it, and Cooper received his pay without more remark.

Q. This whole thing you understand was engineered by Overton?—

A. Yes, sir.

Q. He wanted another man for governor?—A. He run Burney and he made speeches in his favor, and I was told by prominent men that he selected Burney two years ago last August in a speech. He told them that he could not serve them longer than two years, but that when his time was over he would pick them a man. I know he nominated him in the canvass.

Q. Overton has been governor for four years?—A. He has been governor for four years. Overton was elected at the last election as senator and he held the governor's office until this question was decided, and as soon as Burney was inaugurated as governor he took his seat and kept it from Tuesday evening, I believe it was, until Wednesday, and then his name was sent in as treasurer by Burney, and he was then elected by the senate, and he held that office until the election was held for delegate to Washington, and as soon as ever he was nominated and elected for delegate he resigned his treasurer's office, after he was elected delegate to Washington.

Q. Then Overton pretty much runs the government?—A. Overton? It is the general opinion of the intelligent portion of our people and from what I have seen myself, that Frank Overton has run our government for the last four years—him and his party.

Q. They handle the funds?—A. Yes, sir; they have handled the funds ever since he has been governor. Burney was treasurer for four years, and as soon as Burney went out he nominated a man by the name of Woods, a brother-in-law of his, but he was not confirmed. And then he nominated Overton, and Overton was confirmed, and he resigned after he was elected delegate. And then he appointed Simon Jones, who was a member of the Overton family. I don't believe—I am satisfied there never has been a man outside of Overton's party appointed to a position since he has been in office. I heard him say he would not appoint any man delegate to Washington who was opposed to his administration, and I don't believe we ever had a man outside of Overton's administration who was ever appointed to office since he has been governor. The man that is appointed to office has got to do just as he says; he has run all of the government for the last four years. I am very positive of one thing, that he could go before that legislature and have any law passed or killed, as he chose, and that was the way the legislature was run.

Q. Are the intelligent portion of the Chickasaw Nation satisfied with that proceeding?—A. No, sir; we are not.

Q. Does not he hold his power mainly through the full-bloods and the less intelligent portion of your people?—A. Yes, sir; that is the way he holds it. I will say one thing, that I do not believe outside of his own family that there is an intelligent man that belongs to his administration.

Q. So that all the progressive and intelligent people of the Chickasaw Nation desiring improvement are opposed to his administration?—A. We showed it—we showed it by our vote. There are some men that know better, but they do it for the sake of office and what they can make, but our popular vote shows that we desire Governor Harris for governor.

CHARLES SHECO, being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. Did you hear Judge Kemp's statement just made to the committee?—Answer. I have. I am a full-blood Chickasaw; I live in the same county, Polono County, Chickasaw Nation, and I am a member of the present Chickasaw house of representatives.

Q. Do you agree with that statement?—A. Yes, sir; it is just about what I can state; but if there is any other question you want to ask me, I am willing to answer it. I could not state anything more than Judge Kemp has stated.

Q. What position do you occupy in the Indian Territory?—A. At the present time I occupy no official position, but am the late United States Indian agent of the late Union Agency. I was appointed agent for those five civilized tribes of the Union Agency by President Grant in April, 1876, and held this position until the 1st of last July, at which time the agency was abolished by an act of Congress. I am now doing no business in the Indian country, but reside here, as do many other United States citizens, without authority of law, and am considered, I suppose, by the Indian authorities as an intruder.

Q. What Indians were included in Union Agency, and what was their number?—A. Union Agency was made up of the five civilized tribes, viz: 19,000 Cherokees, 14,000 Creeks, 16,000 Choctaws, 6,000 Chickasaws, and 2,553 Seminoles; total, 57,553.

Q. With the information you gained while agent of those tribes as to their agricultural prosperity, please state whether, in your opinion, their prosperity may be attributed to the industrious habits of the full-bloods, or to the whites, mixed-bloods, and negroes?—A. From my personal observation and knowledge, I would say that it is not in keeping with the natural inclination or education of the full-blood Indians to perform much manual labor. I have noticed that their hands are usually very soft, and that they enjoy much leisure, and have but little, if any, anxiety as to how their necessary wants are to be supplied in the future. Their present wants are mainly supplied by the proceeds of the sale of their cattle, in which their wealth mainly consists. They raise but little produce, except at the expense of the mind and muscle of others. I may say, however, that some of the full-blood Indians are very good financiers, and have in their possession considerable personal property; but, from my own observation, I judge that it has been obtained, not by the exercise of any amount of agricultural skill on their part, but from the natural increase of their stock and the labor of white men and negroes whom they have employed to make, improve, and work their farms. Cattle are raised and fattened ready for market with but little expense to their owners, except to brand and mark them, and the land is usually improved and cultivated among the full-bloods by white men, who work the land on shares.

Nearly, if not all, of the prosperous farmers, especially those who excel in wealth, are either white men who have married into the tribes or those who have a preponderance of the white man's blood or enterprise.

It may also be observed that some of the former slaves of these Indians, now in the enjoyment of their freedom, are inclined to be industrious, and with these privileges would get around them large herds of cattle, well-cultivated farms, and comfortable dwelling-houses.

The number of whites and mixed-bloods among these Indians is much larger than what is usually supposed. It is said that more than one-half of the Chickasaw tribe are white and mixed-bloods. The proportion of white and negro blood among the other tribes is probably not quite so large. And yet I believe it is a fact too patent to be denied that nearly all of the agricultural and commercial wealth of the Indians in this country may be attributed, directly or indirectly, to the presence, influence, and industry of whites and negroes. When I see in traveling over the country a well-improved farm, with a large herd of stock grazing around it, and good and well-arranged buildings and orchards upon it, I need not inquire if these improvements are the result of Indian skill and industry. Such evidences of civilization and comfort prove with absolute certainty the presence and influence of the white man.

I cannot state the exact amount of agricultural and personal wealth among these five civilized tribes of Indians which may be attributed, directly or indirectly, to the presence and industry of the whites and negroes, but I think I am justified in saying that nine-tenths of it has been produced by them.

In proof of this statement I would say that during two consecutive months of this year, prior to the abolishment of the agency, I issued, at the request of Cherokee citizens, about six hundred permits to white men to reside among the Cherokees as their employés or renters. These United States citizens, with their families, are employed as farmers and mechanics; and once in the country they usually remain. The other tribes also employ a large amount of white labor. I think it would be no exaggeration to say that there are 8,000 United States citizens now residing among the five tribes of the late Union Agency. And among these may be found many men of wealth, intelligence, and social influence. And among the mixed-bloods there are also many more wealthy and influential men, who control in the main the financial interests, and occupy the most lucrative offices of the tribes. If it be true that all persons who have any amount of white or negro blood in their veins are to be considered citizens of the United States, then it is safe to say that more than of the people of this country are United States citizens, and that nearly all of the agricultural and commercial wealth of this country belongs to them, and that the small amount which is found among the full-blood Indians may be attributed directly to their example and influence.

Q. What have you to say as to the security of property and life in the Indian Territory?—A. As to the security of the property of a white man, I believe there is no law, statute or otherwise, and no treaty stipulation by which it may be protected in this country; and, on the other hand, there seems to be no redress for the Indian who has been made the victim of the white men's avarice. This absence of law to regulate and control the obligations of the white man to the Indian, and the obligations of the Indian to the white man, places the property of both in an insecure position.

I have a case now in mind which will serve as an illustration of the insecurity of the property of a white man in this country.

Mr. Charles Willie, a white man, living at Muskogee, sold a steam-engine and boiler to another white man, on time; the proper notes, secured by mortgages, were taken for the property. The purchaser disposed

of the property to a citizen of the Creek Nation, J. H. Crabtree (who is to all appearances a white man), and who now has possession of the property, and refuses to give it up or compensate in any way the lawful owner of it, claiming that in this country the possession of a white man's property amounts to nine points in law. This case was referred to me, while agent, to Judge Parker, of the United States court at Fort Smith, Arkansas, who gave it as his opinion that Mr. Willie, the owner of the property, had no legal redress. Such cases were frequently brought before me while I was agent, and it was my usual custom, in the absence of all law, to effect the best possible compromise practicable between the contending parties. In the case just mentioned Mr. Crabtree promised me at one time that he would compromise the matter by paying Mr. Willie \$425, but afterwards refused to pay anything, on the ground that he had possession of the property, and there was no law to compel him to pay for it, or to return it to its rightful owner.

All civil and criminal offenses committed among the Indians themselves are punishable by the Indian laws. These laws vary in the different tribes, and while their penal character may be commensurate with the crime committed, there is a lack of judicial enforcement; and it is too often the case that partiality and inaction on the part of the officers of the law hinder the exercise of justice, and the guilty escape unpunished.

In criminal cases where a United States citizen is a party to the crime, the guilty may be arrested by the United States marshals and tried in the United States court at Fort Smith, Arkansas, a distance of from one to three hundred miles from the places where crimes are committed. Very many guilty ones go unpunished for no other reason than that the injured party and the witnesses to the committal of the crime are unwilling to subject themselves to the tediousness of a trip to Fort Smith, and the still more dreadful tediousness of waiting there in suspense, it may be for weeks, until their case shall come before the court in its regular turn.

So far, therefore, as my personal observation and knowledge extend, I am forced to the conclusion that for the want of uniform and well executed laws, the property and lives of people in the Indian Territory are far from being as secure as they otherwise might be.

Q. What have you to say as to the condition of the freedmen among the Indians of the Territory?—A. The Indians of this Territory, prior to the late civil war, were the owners of a great many slaves, but as the result of the war, in which nearly all the Indians took a very active part, these slaves were liberated. There were estimated to have been from 16,000 to 20,000 of them. The most of those who were qualified for service in the army, fought with the Indians, for or against the United States Government. At the close of the war they and their families settled down among the Indians of the respective tribes to which they belonged, and are here to-day, numbering probably about as many as before the war. By the treaties of 1866, the Cherokee, Creek, and Seminole tribes of Indians adopted their freedmen, and granted to them equal rights and privileges with themselves.

Q. Have these rights and privileges been fully granted to the freedmen?—A. Among the Creeks and Seminoles, I think they have, or at least I have heard no serious complaint to the contrary; but the freedmen of the Cherokee Nation have complained bitterly that the rights and privileges granted to them by treaty stipulations have not been theirs to enjoy.

While I was in the government service, numerous and well-grounded

complaints were made to me by the Cherokee freedmen, that their children were not allowed school privileges, that they were not allowed to vote and hold office or share in the annuity funds, and that their improvements were infringed upon, and citizenship refused to some of them who were lawfully entitled to it.

Q. How about the freedmen in the Choctaw and Chickasaw tribes?—A. The Choctaw and Chickasaw freedmen probably number between 5,000 and 6,000. Their condition is quite different from that of the freedmen among the other civilized tribes. In the treaty of 1866 it was provided that the Choctaw and Chickasaw Indians should have \$300,000 if they would adopt their freedmen within two years from the date of the treaty, but in case they did not, that at the expiration of that time the United States Government should remove them from the country and give the \$300,000 to them in their new home. The sequel shows that there has been no action taken by either the Indian authorities or the United States Government, and the freedmen remain in the country without status. They are neither citizens of the Choctaw and Chickasaw Nations nor of the United States. They are without law and without protection. They enjoy no school privileges except what is furnished, to a very limited extent, from the civilization fund of the Indian Bureau. The abuses and trespasses which they endure without any possible opportunity of legal redress is measured by the prejudice and race hatred of the mixed and full blood Indians whose riches and comforts before the war were purchased at the expense of their servitude. It would seem but just and humane to this class to extend to them the protection of law and the rights and privileges of United States citizens.

Q. What are the prospects for the further improvement of the Indian, or the development of the resources of the Territory, under the existing state of things?—A. The Indians progress in the arts of civilization only as they come in contact with the civilization of white men. The improvement already made by the Indians of the Territory in the way of agriculture, house building, personal attire, and mental, moral, and religious culture, can, of course, be attributed, as I have already intimated, only to the presence and influence of the whites and mixed-bloods. And these influences seem to have extended their force, or rather, the bad influence of lawless white men, who escape in large numbers from justice in the States and take refuge in the Indian country where there is no law to call them to account, appears to counteract whatever good influences there are being brought to bear upon the Indians at the present time.

So that under the existing state of things the prospect of further improvement of the Indian looks somewhat discouraging.

About the same may be said in regard to the development of the resources of the country under the present state of affairs. The natural resources of the country are almost unlimited. It possesses in many places a soil of great fertility, adapted to the production of corn, wheat, cotton, hemp, and all the fruits and cereals of the temperate zone, and where the soil is not so good for cultivation, native grasses grow in abundance for summer and winter pasturage. I judge that not more than one acre in a thousand of the rich lands are being cultivated, and not more than one ten thousandth part of the grass that grows spontaneously is consumed by the stock of the Indians. The greatest portion of the wealth of the soil is destroyed by the prairie fires. It would be no exaggeration to say that the country now occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, were it cultivated as industriously as New England, would sustain a population of 10,000,000 better than it sustains the 57,000 people now occupying it.

As to the mineral resources of the country but little at present is known, enough, however, to prove that there is an abundance of coal, lead, zinc, copper, silver, gold, salt, and petroleum. At present not one of these resources of wealth is being developed, except that of coal, which is mined to a very limited extent by white men. Under the existing state of things there is but little if any prospect of the development of the resources of the country, for the simple reason that the Indians have not the inclination to do it, and will not allow it to be done by others. There seems to be a necessity for some change or other that will beget and develop the activity and industry of the Indians.

Q. What, in your judgment, would be the effect of opening the Territory to white settlement like other Territories of the United States, after providing with proper restrictions for the protection of the Indians in the enjoyment of a reasonable amount of property?—A. If the territory can be opened so that the unoccupied lands may be cultivated by white settlers, who shall be under the control of law, and whose example and influence shall be salutary and elevating, and the Indians be protected in the enjoyment of such rights as to property as a judicious policy may bestow upon them, I should think the effect would be good. The closer the social and financial relation of the Indian to the white man of integrity, the more improved his condition becomes. Past experience proves this. The influence of the whites and mixed-bloods now residing in the Territory is felt for good upon the full-bloods; and I think an increase of the white population would add much to the social enjoyment and elevation of all. There would, doubtless be some of the full-blood Indians who might not be benefited by this change, but I hardly think their condition would be made any worse for it. While the opening of the Territory and the establishment of a United States Territorial government over the people might conflict with the expressed wishes of the present officials in the tribal government (who are most all whites or mixed-bloods) and be in opposition to the views of many of the full-bloods, it would unquestionably ultimate in the greatest good to the greatest number. Those now in the Territory would enjoy increased educational and church privileges, and the effect upon all agricultural and industrial enterprises would be marvelous indeed. In short I can conceive of no department of moral and religious work and no branch of industry but what would be benefited and advanced.

GEORGE W. MCFARLAND was recalled and examined.

I desire to state that while the committee was there at Choctaw Junction Ross and Adair were present, and the people were afraid to testify. During that time they held a caucus at the school-house, at which about one hundred and forty and some odd full-bloods came in and signed a petition. They represented to them if they didn't do that that the lands would be taken from them and that they would be driven out of the country the same as they were in the old nation, and about one hundred and forty-two signed it; and among them there were a good many white men—no citizens—men that didn't claim citizenship at all; they told me that afterward; I have the names on a petition here (petition referred to by witness is marked Exhibit A, attached to McFarland's deposition), that they would not appear before the committee; that they were afraid on account of the delegation being present. Voluntarily they came and signed this; I took it around myself.

Q. Are these all citizens?—A. All citizens; I know them to be citizens; they are men every one of whom lives in Vinita and in the vicinity of Vinita, with the exception of one; one man lives some twenty-seven

odd miles out. In regard to the Shawnees we got up a protest, and I believe forty-two signed it. Before this Adair went to the chief of the Shawnees, Decker, and he says to Decker, "How do you stand on this question?" He says, "I would rather not have anything to do with it one way or the other." And Adair says, "If you will promise not to try to influence your people one way or the other I will leave them the same way."

There was a council at the same time at Blue Jacket Switch to attend to some business in regard to some money they claimed that Adair had defrauded them out of, some forty thousand dollars, and they appointed delegates to go to Washington and examine into it, and Adair promised the chief that he would not have anything to do with them, and when the chief comes he goes to a man named Comatzer—he is a white man who intermarried with the Shawnees; he is a Cherokee citizen—and he tells him, "You go in and try and make this petition up as a protest against any change whatever"; and Comatzer went up and made a speech and told them that if they didn't sign that protest the lands would be taken from them and would revert to the United States Government; and that if they wanted land they could come in and get it the same as any other white man by paying a dollar and a quarter an acre for it, provided they got ahead of the white man; but that if they waited and didn't come in, and he should get in first, that they would be ruined; that they didn't stand any show whatever, and he induced forty-two to sign the protest. Since then I have talked with the Shawnees. These men say that the question was misrepresented to them, and that they are willing to make affidavit to that effect that they didn't understand it; that they are in favor of making an allotment of lands. Some of them asked me if I could not get the use of the town seal, as they were under the impression that all evidence had to be taken under that or it amounted to nothing, and they asked me if I could not get the town seal and they would make affidavit.

Q. Those are Cherokees?—A. They are Cherokee citizens, but there are four Shawnees on there (referring to Exhibit A, attached to McFarland's deposition); these Shawnees all of them went before the committee in Vinita, all but Ironsides.

Q. Since the committee left, there has been a good deal of discussion?—A. A good deal of intimidation. One of our most influential townsmen made threats stating, "We will have to kill off some of these damned leaders before we can stop this thing." A man by the name of Cunningham, a druggist there, he made the remark that "We will have to kill off some of these damned leaders before we can live in peace—something to that effect; it is the general talk that they will have to do something of that kind.

Q. How many petitioners do you think you could get within 50 miles of Vinita that would sign that petition?—A. I think I could get 500 that didn't dare come before the committee.

Q. Within a range of 50 miles of Vinita?—A. Yes, sir; those very men that signed that protest for Adair and Ross will sign that (referring to Exhibit A attached to McFarland's deposition) when the question is explained to them; most of them—a majority of them will do it.

A.

To the honorable Committee on Territories :

We, the undersigned, citizens of the Cherokee Nation, are in favor of an allotment of all our lands in severalty, the establishment of United

States courts, and a Delegate to Congress. We believe our school and other funds have been squandered by useless delegations to Washington, and would hail with satisfaction any legislation by Congress which would prevent it in the future.

Thos. Howie.

Chas. Hunter.

C. C. Ironside.

J. C. Wood.

E. Miller.

E. H. Jenkins.

Lewis Baker.

Robert Ironside.

Wm. Taylor.

Geo. W. McFarlin.

J. M. Duncan.

H. Cox.

Claud Cox.

A. E. Ridge.

Watie Bell.

Sally C. Watie.

J. M. Bell.

S. C. Parks.

John L. McCoy.

G. W. Daugherty.

R. D. Knight.

Josh Whitmire.

A. P. Goodykoontz.

L. S. Arnold.

G. W. Niemeyer.

Joe Heinrichs.

C. B. Wrayfield.

F. L. More.

Cumsing Day.

J. V. Jackson.

Lowery England.

P. Brogam.

S. W. MARSTON being duly sworn by the chairman, was examined.

By the CHAIRMAN:

Question. What is your occupation?—Answer. I am a clergyman, and have been such for more than 25 years.

Q. What position do you occupy in the Indian Territory?—A. At the present time I occupy no official position, but am the late United States Indian agent of the late Union Agency. I was appointed agent of these five civilized tribes of Union Agency by President Grant, in April, 1876, and held this position until the first of last July, at which time the agency was abolished by an act of Congress. I am now doing no business in the Indian country, but reside there, as do many other United States citizens, without authority of law, and am considered, I suppose, by the Indian authorities as an intruder.

Q. What Indians were included in Union Agency and what was their number?—A. Union Agency was made up of the five civilized tribes, viz: about 19,000 Cherokees, 14,000 Creeks, 16,000 Choctaws, 6,000 Chickasaws, and 2,553 Seminoles; total, 57,553.

Q. With the information you gained while agent of these tribes as to their agricultural prosperity, please state whether, in your opinion, their prosperity may be attributed to the industrious habits of the full-bloods, or to the whites, mixed-bloods, and negroes.—A. From my personal observation and knowledge, I would say that it is not in keeping with the natural inclination or education of the full-blood Indians to perform much manual labor. I have noticed that their hands are usually very soft, and that they enjoy much leisure, and have but little, if any, anxiety as to how their necessary wants are to be supplied in the future. Their present wants are mainly supplied by the proceeds of the sale of their cattle, in which their wealth mainly consists. They raise but little produce except at the expense of the mind and muscle of others. I may say, however, that some of the full-blood Indians are very good financiers, and have in their possession considerable personal property, but from my own observation I judge that it has been obtained not by the exercise of any amount of agricultural skill on their part, but from the natural increase of their stock and the labor of white men and

negroes, whom they have employed to make, improve, and work their farms. Cattle are raised and fattened ready for market with but little expense to their owners, except to brand and mark them. And the land is usually improved and cultivated among the full-bloods by white men, who work the land on shares. Nearly, if not all of the prosperous farmers, especially those who excel in wealth, are either white men who have married into the tribes or those who have a preponderance of the white man's blood and enterprise. It may also be observed that some of the former slaves of these Indians, now in the enjoyment of their freedom, are inclined to be industrious, and with those privileges would get around them large herds of cattle, well-cultivated farms, and comfortable dwelling-houses.

The number of whites and mixed-bloods among these Indians is much larger than what is usually supposed. It is said that more than one-half of the Chickasaw tribe are white and mixed bloods. The proportion of white and negro blood among the other tribes is probably not quite so large; and yet I believe it is a fact too patent to be denied that nearly all of the agricultural and commercial wealth of the Indians in this country may be attributed directly or indirectly to the presence, influence, and industry of whites and negroes. When I see in traveling over the country a well-improved farm, with a large herd of stock grazing around it, and good and well-arranged buildings and orchards upon it, I need not to inquire if these improvements are the result of Indian skill and industry. Such evidences of civilization and comfort prove with absolute certainty the presence and influence of the white man.

I cannot state the exact amount of agricultural and personal wealth among these five civilized tribes of Indians which may be attributed directly or indirectly to the presence and industry of the white and negro, but I think I am justified in saying that nine-tenths of it has been produced by them. In proof of this statement I would say that during two consecutive months of this year, prior to the abolishment of the agency, I issued, at the request of Cherokee citizens, about six hundred permits to white men to reside among the Cherokees as their employés or renters. These United States citizens, with their families, are employed as farmers and mechanics, and once in the country, they usually remain. The other tribes also employ a large amount of white labor. I think it would be no exaggeration to say that there are 8,000 United States citizens now residing among the five tribes of the late Union Agency, and among these may be found many men of wealth, intelligence, and social influence. And among the mixed bloods there are also many more wealthy and influential men, who control in the main the financial interests and occupy the most lucrative offices of the tribes. If it be true that all persons who have any amount of white or negro blood in their veins are to be considered citizens of the United States, then it is safe to say that more than half of the people of this country are United States citizens, and that nearly all of the agricultural and commercial wealth of this country belongs to them, and that the small amount which is found among the full-blood Indians may be attributed directly to their example and influence.

Q. What have you to say as to the security of property and life in the Indian Territory?—A. As to the security of the property of a white man, I believe there is no law, statute or otherwise, and no treaty stipulation, by which it may be protected in this country; and, on the other hand, there seems to be no redress for the Indian who has been made the victim of the white men's avarice. This absence of law to regulate and control the obligations of the white man to the Indian and the obligations of the

Indian to the white man places the property of both in an insecure position. I have a case now in mind which will serve as an illustration of the insecurity of the property of a white man in this country. Mr. Charles Willie, a white man, living at Muskogee, sold a steam-engine and boiler to another white man on time; the proper notes, secured by mortgage, were taken for the property. The purchaser disposed of the property to a citizen of the Creek Nation, J. H. Crabtree (who is to all appearances a white man), and who now has possession of the property and refuses to give it up or compensate in any way the lawful owner for it, claiming that in this country the possession of a white man's property amounts to nine points in law. This case was referred by me, while agent, to Judge Parker, of the United States court at Fort Smith, Arkansas, who gave it as his opinion that Mr. Willie, the owner of the property, had no legal redress. Such cases were frequently brought before me while I was agent; and it was my usual custom, in the absence of all law, to effect the best possible compromise practicable between the contending parties. In the case just mentioned, Mr. Crabtree promised me at one time that he would compromise the matter by paying Mr. Willie \$425, but afterward refused to pay anything, on the ground that he had possession of the property, and there was no law to compel him to pay for it or to return it to its rightful owner.

All civil and criminal offenses committed among the Indians themselves are punishable by the Indian laws. These laws vary in the different tribes, and while their penal character may be commensurate with the crime committed, there is a lack of judicial enforcement, and it is too often the case that partiality and inaction on the part of the officers of the law hinder the exercise of justice, and the guilty escape unpunished. In criminal cases, where a United States citizen is a party to the crime, the guilty may be arrested by the United States marshals and tried in the United States court at Fort Smith, Arkansas, a distance of from one to three hundred miles from the places where crimes are committed. Very many guilty ones go unpunished for no other reason than that the injured party and the witnesses to the committal of the crime are unwilling to subject themselves to the tediousness of a trip to Fort Smith and the still more dreadful tediousness of waiting there in suspense, it may be for weeks, until their case shall come before the court in its regular turn. So far, therefore, as my personal observation and knowledge extends, I am forced to the conclusion, that for the want of uniform and well executed laws the property and lives of people in the Indian Territory are far from being as secure as they otherwise might be.

Q. What have you to say as to the condition of the freedmen among the Indians of the Territory?—A. The Indians of this Territory, prior to the late civil war, were the owners of a great many slaves; but, as the result of the war, in which nearly all the Indians took a very active part, these slaves were liberated. There were estimated to have been from 16,000 to 20,000 of them. The most of those who were qualified for service in the Army fought with the Indians for or against the United States Government. At the close of the war they and their families settled down among the Indians of the respective tribes to which they belonged, and are here to-day, numbering probably about as many as before the war. By the treaties of 1866, the Cherokee, Creek, and Seminole tribes of Indians adopted their freedmen, and granted to them equal rights and privileges with themselves.

Q. Have these rights and privileges been fully granted to the freedmen?—A. Among the Creeks and Seminoles I think they have, or at

least I have heard no serious complaints to the contrary; but the freedmen of the Cherokee Nation have complained bitterly that the rights and privileges granted to them by treaty stipulations have not been theirs to enjoy. While I was in the government service numerous, and apparently well-grounded, complaints were made to me by the Cherokee freedmen that their children were not allowed school privileges; that they were not allowed to vote and hold office or share in the annuity funds; and that their improvements were infringed upon, and citizenship refused to some of them who were lawfully entitled to it.

Q. How about the freedmen in the Choctaw and Chickasaw tribes?—

A. The Choctaw and Chickasaw freedmen probably number between 5,000 and 6,000. Their condition is quite different from that of the freedmen among the other civilized tribes. In the treaty of 1866 it was provided that the Choctaw and Chickasaw Indians should have \$300,000 if they would adopt their freedmen within two years from the date of the treaty; but in case they did not, that at the expiration of that time the United States Government should remove them from the country and give the \$300,000 to them in their new home. The sequel shows that there has been no action taken by either the Indian authorities or the United States Government, and the freedmen remain in the country without status. They are neither citizens of the Choctaw and Chickasaw Nations, nor of the United States. They are without law and without protection. They enjoy no school privileges except what is furnished, to a very limited extent, from the civilization fund of the Indian Bureau. The abuses and trespasses which they endure without any possible opportunity of legal redress is measured by the prejudice and race-hatred of the mixed and full blood Indians, whose riches and comforts before the war were purchased at the expense of their servitude. It would seem but just and humane to this class to extend to them the protection of law and the rights and privileges of United States citizens.

Q. What are the prospects for the further improvement of the Indian or the development of the resources of the Territory under the existing state of things?—A. The Indians progress in the arts of civilization only as they come in contact with the civilization of white men. The improvements already made by the Indians of the Territory in the way of agriculture, house-building, personal attire, and mental, moral, and religious culture, can, of course, be attributed, as I have already intimated, only to the presence and influence of the whites and mixed-bloods. And these influences seem to have extended their force, or rather the bad influence of lawless white men, who escape in large numbers from justice in the States and take refuge in the Indian country, where there is no law to call them to account, appears to counteract whatever good influences there are being brought to bear upon the Indians at the present time. So that under the existing state of things the prospect of further improvement of the Indian looks somewhat discouraging. About the same may be said in regard to the development of the resources of the country under the present state of affairs. The natural resources of the country are almost unlimited. It possesses in many places a soil of great fertility adapted to the production of corn, wheat, cotton, hemp, and all the fruits and cereals of the temperate zone; and where the soil is not so good for cultivation, native grasses grow in abundance for summer and winter pasturage. I judge that not more than one acre in a thousand of the rich lands are being cultivated and not more than one ten-thousandth part of the grass that grows spontaneously is consumed by the stock of the Indians. The greatest portion of the wealth of the soil is destroyed by the prairie-fires. It would

be no exaggeration to say that the country now occupied by the Cherokees, Crèeks, Choctaws, Chickasaws and Seminoles, were it cultivated as industriously as New England, would sustain a population of 10,000,000 better than it sustains the 57,000 people now occupying it.

As to the mineral resources of the country but little at present is known; enough, however, to prove that there is an abundance of coal, lead, zinc, copper, silver, gold, salt, and petroleum. Not one of these resources of wealth are being developed except that of coal, which is mined to a very limited extent by white men. Under the existing state of things there is but little if any prospect of the development of the resources of the country, for the simple reason that the Indians have not the inclination to do it, and will not allow it to be done by others. There seems to be a necessity for some change or other that will beget and develop the activity and industry of the Indians.

Q. What, in your judgment, would be the effect of opening the Territory to white settlement like other Territories of the United States, after providing with proper restrictions for the protection of the Indians in the enjoyment of a reasonable amount of property?—A. If the Territory can be opened so that the unoccupied lands may be cultivated by white settlers, who shall be under the control of law, and whose example and influence shall be salutary and elevating, and the Indians be protected in the enjoyment of such rights as to property as a judicious policy may bestow upon them, I should think the effect would be good. The closer the social and financial relation of the Indian to the white man of integrity, the more improved his condition becomes. Past experience proves this. The influence of the whites and mixed-bloods now residing in the Territory is felt for good upon the full-bloods; and I think an increase of the white population would add much to the social enjoyment and elevation of all. There would doubtless be some of the full-blood Indians who might not be benefitted by this change, but I hardly think their condition would be made any worse for it. While the opening of the Territory and the establishment of a United States Territorial government over the people might conflict with the expressed wishes of the present officials in the tribal governments (who are most all whites or mixed bloods), and be in no opposition to the views of many of the full-bloods, it would unquestionably ultimate in the greatest good to the greatest number. Those now in the Territory would enjoy increased educational and church privileges, and the effect upon all agricultural and industrial enterprises would be marvelous indeed.

In short I can conceive of no department of moral and religious work, and no branch of industry, but what would be benefitted and advanced.

CAMPS OF THE NEZ PERCÉS,
NEAR SENECA MISSION,
Sunday morning, November 17, 1878.

The CHAIRMAN. Chief Joseph, we have come down here to inquire about your affairs. We are here for the purpose of hearing any complaints you may have to make, in order that we may take them to Washington. We are your friends. We will try to see that justice shall be done you by the authorities at Washington. Tell us the truth. We want to hear what you have to complain of.

Chief JOSEPH. I object to this country. I have seen enough of it since I have been confined in it. I have lost eighty of my people, and

I am afraid of this country because I have already lost so many of my people. Day by day I am still losing them. I see with my own eyes that it is a most unhealthy country for us. We must all die if we stay here. We have been very well pleased with two white chiefs. When we quit fighting, I surrendered to Howard and Miles. I wished for peace. My people wished for peace. At that surrender we came to an understanding with those two generals. It was a true understanding. We supposed we were to be sent back to our own country; but we were brought down here. In consequence of having been brought down here we are all going to ruin and death.

Why do the authorities at Washington still hesitate to carry out their agreements? I shall never forget that surrender and the understanding we had at that time. There is one sentiment I wish to express to you: Our country is very dear to us. We never committed murder. We never did anything to justify you in taking our lands away from us. We never did anything to justify you in taking us away from the lands where we were raised. We never committed any depredations of any kind. We gave no trouble in the north before our lands were taken away from us and we had been driven from them. I now see what has become of that rash act and the way we were treated in our own country. I can say that all of my people who were lost were lost in a good cause, defending their homes. Our lands were lost in that trouble, and I think I ought to be permitted to select a home without being compelled to go into a country that the people do not see fit to go to and be compelled to live in. We ought not to be forced into a country not adapted by climate to our health; a place where we cannot live, and where the health of the country will not permit us to live. Besides, this is a poor country. I see nothing here. It is not a rich country. It is not a healthy or good country at all. In a good country I would see my people prosper and multiply. In this country I do not and they cannot. Wherever you see grass growing abundantly there you find rich people. Here it does not grow at all, and all are poor.

Senator GROVER. Joseph, I come from Oregon. I know the land where you used to live on Snake River. The white people have now settled all over that country where you used to live. Your father lived there, and he refused to give up this land when you were a boy. When the treaty was made, it was made without his assent and without your consent. That paper-talk said you should live upon the Nez Percés Reservation. Your heart was not in that paper-talk. Your father's heart was not in that paper-talk. He went away hunting buffalo when the council was held. You all refused to agree to that treaty. The Great Father at Washington thought you had agreed to that treaty, and he thought your people had agreed to go and leave the State of Oregon. He sent surveyors to survey your lands into sections. They put up lines and set up pins throughout your country. Your people did not agree to that; they pulled up the pins. They told the white people not to come on their lands. But the laws of the United States opened this country for settlement by the white people when your people did not understand it. By the laws and treaties the white people could lawfully settle in your country; but by your understanding of the laws and treaties they could not come. Therefore you said to the white people they should not come. Your father refused to leave this land; you refused to leave it. The white men, by the laws of their country, kept coming into your country. You wanted the land. It was your country. It was your home. There was the grave of your father, and the graves of your ancestors. You said, "I will not go away; I will defend my

country with my warriors." The Great Father at Washington said there was the treaty. You said there was no treaty in which you ever joined. The treaty was made by the chiefs of the Nez Percés tribe. You were one branch of that tribe. The Great Father said the Nez Percés had made the treaty, and you must obey it. General Howard came and told you you must go in thirty days. You believed the country was yours, and you said you intended to defend it. After one moon had elapsed you moved in defense of your rights. The white men were more warriors than you, and you are here. The whites occupy all your country there. They have law to defend their right to it, and they have patents to their lands from the United States. Now, you cannot return to that land. Is there any other land in this country you like better than this you occupy? Where do you wish to go? Where do you wish to live?

Chief JOSEPH. All you have said is true, and all the Indians here know it to be true. I have never received anything for my lands. I have never received any annuities. When that treaty was made with the Indians there, they received annuities, and the land they ceded to the government was all right, but my land that was ceded was ceded without my consent or knowledge. There was not one Indian of us who was of a different sentiment in regard to our lands. Our hearts made us love our lands as much as our mothers; my mother raised me. Would I want to lose my mother? That land raised us. Would we want to part with it? That is what makes us love our lands, because we grew up upon it.

You spoke of my father. Of course I took up what my father said to me and carried all he said in my heart. From the advice I got from my father I could conceive of no lawful or just way in which my lands could be taken from me; nor could I conceive by what right the government could take our lands from us and order us off of them. That land was the gift of the Great Spirit, and he prized it as sacred and dear to us; on that account we think the more of it, and wanted to hold on to it. You say the laws of your country has given the whites permission to settle in our country, and that they have settled all over it. I understand the feelings of the white people there; let them be on it—let them live there. As they have settled upon our lands, let them be there, but give me permission to settle farther north. If we cannot go to our own country, give us a home farther north where it is more healthy. I do not want to live in this country; it is nothing but death to live in such a country as this. I think a great deal of my people. Here there is nothing but death day by day. This is all I have to say.

Senator GROVER. Joseph, where do you want to go and settle?

Chief JOSEPH. I would like to go up on Sun River, upon Jappa Reservation, on the Upper Columbia River.

Senator GROVER. We will use our influence to get you settled upon that reservation.

The CHAIRMAN. Every white person here this morning is your friend. I am sure every one has felt pained by the sad story you have told. The authorities at Washington are your friends. I am sorry all the people of the United States could not be here this morning to hear your sad story. You have made friends of us all, and we will speak for you. When the other committee was here some weeks ago you made them your friends. Wherever they have gone they have spoken of the great injustice that has been done you and the hardships undergone by the Indians located here. You should not hesitate to make any complaint, through your interpreter, to the government, about your agent. The government will remedy the wrongs you complain of. If you have any

complaints to make of the agent, you can do so now, and we will report it to the government.

Chief JOSEPH. As soon as I arrived here I began to watch the agent, so as to learn his ways in order to see what kind of man he is. I watched him all the time, and I have noticed what kind of man he is. It appears to me that the agent has given me half of what is due me, and has been keeping the other half for himself. If I had thought I should be compelled to live in this country all the time I should have complained very severely of the agent. The reason I have not made complaints against him is because I have had hopes of getting out of this country, and go somewhere else where we could sustain ourselves. The interpreter stands between us and the white people. Our interpreter came with us after the surrender, and we want him to remain. He suits us; we like him. He has taken great care of us, and has given us medicine all the time. I think as much of our interpreter as I do of my brother. I do not want to part with him. The agent has been seeking his removal and trying to get an Indian in his place. I do not want an Indian. An Indian cannot understand what the whites have to say when they talk to us. Our interpreter understands the whites, and he understands the Indians. He gives correct interpretation of all the speeches. It was our understanding that he would stay with us and remain as our interpreter. At first when we first arrived here we were supplied regularly; but it is very irregular now. Then the Modocs said, "Wait and you will find out what kind of a man the agent is. He will not issue all that is allowed, and will always keep back a part from you." I have seen it with my own eyes now, and we have not had enough, whether it is all or not. I do not know how much is allowed at Washington. I have to rely upon the interpreter for my knowledge on that subject. All along, until recently, we have not had enough supplies. Every two or three days we do not have enough to eat. Now it's about half the week that we do not have enough to eat. I never get medicine regularly. I never had a full supply, and the people have been dying ever since we have been here. We have lost eighty since we have been here. We arrived on the Missouri River the 26th day of November, 1877, and remained there until July, 1878. We came without medicine. The people got sick, and one by one dropped off into typhoid fever and died. On the 22d July, 1878, we left the Missouri River and came here, and now we have but 383 left. The others have died from the exposure.

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APPENDIX.

Decision of Hon. J. A. Williamson, Commissioner General Land Office, upon the claim of the Atlantic and Pacific Railroad Company to lands in the Indian Territory.

Copies of mortgages and bonds referred to by James Baker, esq., president of the Saint Louis and San Francisco Railroad Company, pages 2 and 3 of the testimony, and transmitted to the committee by the Secretary of the Interior in compliance with the request of the chairman.

UNITED STATES SENATE CHAMBER,
Washington, March 22, 1878.

SIR: Will you please furnish to the Committee on Territories, United States Senate, the following: a copy of the decision of Commissioner Williamson, General Land Office, given about September or October, 1877, in reference to land claimed by the Atlantic and Pacific Railroad in Indian Territory, Judge James Baker being the attorney before the department; also a copy of all mortgages and of a bond included in the mortgage; also mortgage of the Atlantic and Pacific Railroad.

By the order of the committee.

W. H. PATTERSON,
Clerk Committee on Territories.

Hon. J. A. WILLIAMSON,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 19, 1878.

SIR: I have the honor to transmit herewith, in compliance with a request communicated by Mr. W. H. Patterson, clerk to your committee, in letter of 22d ultimo, printed copy of my report to the Hon. Secretary of the Interior of 13th October, 1877, touching the claim of the Atlantic and Pacific Railroad Company to lands in the Indian Territory.

The mortgages and bonds referred to are on file in the office of the Secretary, to whom requests for copies should be addressed.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. JOHN J. PATTERSON,
Chairman of Committee on Territories, United States Senate.

UNITED STATES SENATE CHAMBER,
Washington, April 20, 1878.

SIR: Will you please send to the Committee on Territories a copy of all mortgages, and of a bond included in the mortgage of the Atlantic and Pacific Railroad.

Yours, respectfully,

JOHN J. PATTERSON.

Hon. CARL SCHURZ,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 20, 1878.

SIR. I have received your letter of this date, in which you ask that the Committee on Territories may be furnished with a copy of all mortgages of the Atlantic and Pacific Railroad.

In reply, I have the honor to state that the act of 20th April, 1871 (17 Stat., 19), requires said mortgages to be filed and recorded in this office. They are four in number, and the record of them fills ninety-five pages of folios. The time and labor involved in making copy of them, together with the very limited clerical force in the division of my office where they are filed, lead me to ask whether the object aimed at by the committee cannot be accomplished by an examination of the papers here, or by sending them to the committee in charge of one of my clerks, for an examination in the committee room. If neither of these modes meets your wishes, the copies will of course be made, but it will be some time before they can be furnished.

Very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

Hon. JOHN J. PATTERSON,
Chairman Committee on Territories, United States Senate.

ATLANTIC AND PACIFIC RAILROAD COMPANY.

Discussion upon the claim of this company to lands in the Indian Territory.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 13, 1877.

SIR: I have the honor to acknowledge the receipt of letter of August 28, 1877, from W. H. Coffin, president of the Atlantic and Pacific Railroad Company to the President of the United States, demanding that lands along the line of that company's road in the Indian Territory, between the western boundary of the State of Missouri and the town of Venita, be surveyed, and that patents be issued to the company for such of the lands as are claimed by it under the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast." (14 Statutes, p. 292, *et sequitur*.)

This letter, having been referred to me for report to you, is transmitted

to me "for report as to the condition of lands for which patents are demanded, and reasons, if any, why the demand cannot be complied with." In returning it to you, I therefore submit the following statement:

The condition of the lands in what is usually denominated the Indian Territory, is that of lands to which the ultimate fee is vested in the United States, but which, by treaty, stipulations, statutory enactments, and executive acts thereunder, have been set apart and reserved for the solè use and occupancy of certain Indian nations and tribes so long as their national or tribal organizations are preserved.

The boundaries of this section of country are defined only by the terms of the various treaties with these nations and tribes, and by the legislative action which has prescribed the limits of the contiguous States and Territories of the Union. Over it the public-land system has never been extended, nor has any action ever been taken by Congress looking to its survey as public land.

Much of it is held by four nations—the Choctaw, Chickasaw, Cherokee, and Creek—to whom patents have issued in accordance with the requirements of laws and treaties, and who exercise within their respective boundaries full control, subject only to such supervisory power by the United States Government as may be deemed necessary for the public peace, and all attempts to induce Congress to erect it into a Territory of the United States have heretofore failed.

This statement of the condition of the land is, I think, sufficient to show that, even had the act of July 25, 1866, made a grant to the Atlantic and Pacific Railroad Company of lands in the Indian Territory, the department would be powerless to carry it into effect without further legislation, and for that reason the company's demand could not be complied with.

But, in addition, I think the demand cannot be complied with, for the reason that the company has no grant of lands in the Indian Territory; that, without entering upon the question of the intent of Congress to make a present grant of such lands—which I do not understand the company to claim—an ultimate grant, even, was not conferred by the act, except as such grant might be acquired from the Indians by the company.

I have arrived at this conclusion after careful consideration of the law making the grant to the company.

The first section of the act creates the Atlantic and Pacific Railroad Company, and authorizes it to locate and construct "a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary-line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian River; thence to the town of Albuquerque, on the river Del Norte, and thence by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito; and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific. The said company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly along the most suitable route, as selected, to a point in the western boundary-line of Arkansas, at or near the town of Van Buren."

The second section grants the right of way through the public lands, and exempts such right of way from taxation within the Territories of the United States.

The final clause of this section further provides that "the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act, and acquired in the donation to the road named in the act."

The third section grants to the company every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office," with indemnity within ten miles farther for lands lost to the grant.

The fourth section enacts, "That whenever the said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated" [and when such section has been reported upon by commissioners as constructed in accordance with law] "patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, * * * * then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

The sixth section prescribes, "That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad." * * * *

The eighth section says, "That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight."

By the ninth section it is further enacted, "That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

Under the seventeenth section "the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted by any * * * * Indian tribe or nation through whose reservation the road herein provided for may pass: * * * * *Provided*, That any such grant or donation, power,

aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States."

The company duly filed its acceptance of the terms of the act and maps of its general route from Springfield, Missouri, to the Pacific coast. It has purchased and completed the construction of a road from Pacific City, near Saint Louis, to Springfield, and has constructed one hundred and twenty-five miles of its road, beginning at Springfield, Missouri, and ending at Venita, in the Indian Territory.

The last fifty miles of constructed road, of which thirty-three are in the Indian Territory, were accepted and approved by the President, December 6, 1871, since which time this office has no knowledge of further construction or work upon the line.

The demand of the company for survey and patenting of the lands in the Indian Territory, east of Venita, is based upon the fourth and sixth sections of the act.

If these sections could be detached from the remainder of the act, and considered by themselves or in connection only with the last clause of the second section, if there were no limitations to the grant as made by the third section, and if the seventeenth section was not part of the law, there might be plausibility in the claim that the requirements of the fourth and sixth sections were mandatory, and that, despite the character of the lands and the failure of Congress to provide in the usual manner for their survey, they should have been surveyed and patented to the company as fast as the road was constructed. But, on considering the law as it was enacted and approved, as a whole, it seems to me that the claim is without foundation or warrant.

On consideration of the third section, it will be seen that land to pass under the grant must be in the following condition :

It must be public land, situated in a Territory or State of the United States, to which the United States possesses full title, and which is not reserved, or been sold, granted, or otherwise appropriated at the time the map of the company's line of route is filed in this office.

It may be stated as a fact, without argument, that lands in the Indian Territory are not public lands in the usual meaning of the term, and are not situated in a State or Territory of the United States; that the United States does not, certainly so far as lands within the boundaries of the Choctaw, Chickasaw, Cherokee, and Seminole (Creek) Nations are concerned, possess full title to them, and that they are and have been, for a period commencing anterior to the year 1866, set apart and reserved by the United States for the sole use and occupancy of various Indian nations and tribes.

And this statement disposes of the claim that the lands in question were included, or will be hereafter, *in any grant of the United States*, under the third section of the act.

I am further led to the conclusion that no grant of lands in the Indian Territory was contemplated by the act except such as might be acquired by the company from the Indian holders and occupants, by the terms of the seventeenth section: "That the said company is authorized to accept to its own use any grant, * * * by any Indian tribe or nation through whose reservation the road herein provided for may pass, * * * *Provided*, That any such grant * * * from any Indian tribe or nation shall be subject to the approval of the President of the United States" is the privilege conferred by the law, and it is in the event of such a grant being made to the company by any of the Indian nations or tribes having the power to do so, that, in my opinion, the last clause of the second section becomes applicable, and,

"The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act."

That the company at the outset acted upon this construction of the law is fully shown on examination of the files of the department, for I find therein a communication from Lewis Downing, principal chief of the Cherokee Nation, with which, under date of 6th December, 1869, he transmitted to your predecessor an official copy of a resolution adopted by the national council of the Cherokee Nation, November 29, 1869, declining to comply with the requests of the Atlantic and Pacific Railroad Company, formerly presented in a memorial, "for a grant of land aid and assistance in money, to facilitate the building of said railroad."

There is also a letter from Francis B. Hayes, esq., president of the company, to Secretary Delano, dated November 29, 1870, in which he says:

"Under its treaty with the Cherokee Indians, the right of way is given to this company, representing the east and west road, through the Cherokee reservation, but the United States, though giving this company, by its charter, a right of way for the entire length of its road, has not secured for the company the right of way from the small tribes occupying that portion of the Indian Territory lying between Grand River and the State of Missouri, being a distance of about eight and one-half miles within the Indian Territory, and immediately east of the Cherokee reservation. * * * Having been permitted by the Secretary of the Interior to open negotiations with the small tribes of Indians occupying the land between Seneca, in Missouri, and the Grand River, in view of obtaining the right of way and other lands and privileges for railroad purposes, as authorized by its charter, this company finds a friendly disposition manifested by the Shawnees and Wyandottes to allow the company what is desired.

"I now have the honor to respectfully ask, in behalf of the Atlantic and Pacific Railroad Company * * * permission to continue negotiations with the Indian tribes for the right of way, depot lands, and other privileges for railroad purposes, subject to your approval."

And further, the company filed a bond conditioned for the protection of the rights of the several Indian tribes through whose territory the line of the road was designed to pass, which bond was approved March 16, 1871.

It also entered into contract with the Shawnee and Wyandotte Indians for right of way through their reserves, and gave similar bond, both contract and bond being approved by President Grant, March 16, 1871.

These facts show that the right of way through the Indian Territory is guaranteed to the company by the treaties of 1866 with the Cherokees, Creeks, and Seminoles, and by the contract of 1871 between the company and the Shawnees and Wyandottes.

In neither the treaties nor the contracts, however, was a grant of lands made by any of these nations or tribes, nor, until now, has the company ever claimed that it had a grant of lands in the Indian Territory. On the contrary, its entire action heretofore has been in consonance with the construction of the law by which the United States is held to have agreed to confirm (within certain limits) such grant of lands as the Indian nations or tribes might make to the company, and to thereupon extinguish the Indian title to the lands so granted.

The company not having received any such grant, occasion for the extinguishment of the Indian title has not arisen, and consequently there is no reason for the survey of the lands in question, much less the issue of patents therefor to the company.

For a particular statement regarding the right of railroads to pass through the Indian Territory, I beg leave to call attention to your predecessor's letter of May 21, 1870, to the President, a copy of which I herewith inclose.

Although he says therein, page 4, "It was admitted by all parties that the acts of Congress of July 25, 26, and 27, 1866, granting lands and privileges to the Kansas and Neosho road, the Southern Branch Union Pacific road, and the Atlantic and Pacific road respectively, and the several Indian treaties referred to, were all essentially parts of the same transaction, and were to be taken and construed together for the purpose of determining the scheme which was intended to be legalized by Congress," you will note that the sole question under consideration was which or how many of those companies *had the right of way* through the Indian Territory, and he did not intend to assert or decide that the Atlantic and Pacific Company had a grant of *lands* through the Territory.

Examination of the acts making grants to these companies shows that not only were the Kansas and Neosho Valley and the Union Pacific Railway Southern Branch companies allowed to acquire lands in the Indian Territory from the Indian tribes or nations, but that there is a distinct section in each law, as follows:

"SEC. 9. That the same grants of lands through said Indian Territory are hereby made as provided for in the first section of this act whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands become a part of the public lands of the United States." This shows that Congress intended to make an ultimate grant to the company of lands in the Indian Territory, if such lands became public lands of the United States, whether the companies succeeded in obtaining a grant from the Indian nations and tribes or not.

But no such language is found or intent displayed in the grant to the Atlantic and Pacific Railroad. All there was there given, in addition to the right of way, which was provided for in the treaties already executed or then being negotiated, was the privilege of procuring a grant from the Indian tribes or nations, and, in the event of such a grant, the Indian title to the granted lands was to be extinguished.

Nor can it be successfully claimed that the intent of Congress to grant lands held by Indians is as clearly manifested in the Atlantic and Pacific act as it was in the Union Pacific and Northern Pacific acts.

The second section of the act of July 1, 1862, 12 Statutes, 491, making a grant to the Union Pacific Railroad Company, says:

"The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act, and required for the said right of way and grants hereinafter made," whilst by the second section of the Northern Pacific act the United States is required to "extinguish as rapidly as may be *consistent with public policy and the welfare of the said Indians*, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the (road) named in this bill."

The italicized language shows wherein the Northern Pacific differs from the Union Pacific act, in respect to extinguishment of Indian title, and that its operation is circumscribed and restricted by considerations

of public policy and the welfare of the Indians claiming and holding the lands.

Neither of these companies, however, was authorized to negotiate with the Indians for any purpose. Their roads were designed to run through that portion of the country claimed and held by roving tribes of Indians, and the government bound itself to extinguish the Indian title to such lands.

Yet neither of these companies has ever set up the claim that any lands were granted them within the limits of an Indian reservation, made by law, treaty, or executive order.

The second section of the Atlantic and Pacific act differs materially from those before referred to. It says: "The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, *and only by their voluntary cession*, the Indian title to all lands falling under the operation of this act, and acquired in the donation to the road named in the act." Its triple requirements are first, consideration of public policy; second, due regard to the welfare of the Indians; and third, their voluntary cession of the lands.

As none of the lands in question have ever been ceded or granted by the Indian nations or tribes holding and occupying them, it is clear to my mind that the company has not the shadow of a claim therefor under the act of 1866. Further discussion of the question is, I think, unnecessary. I therefore return the letter of Mr. Coffin, with this as my report on the subject.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. CARL SCHURZ,
Secretary of the Interior.

(Capp's Land Owner, Vol. 4, No. 8, November, 1877.)

WASHINGTON, November 18, 1871.

SIR: I inclose three mortgages, executed by the Atlantic and Pacific Railroad Company upon a portion of its road and land-grant, and respectfully request that they be filed for record in your department, in accordance with the provisions of the act of April 20, 1871 (17 Stats., 19), in reference to the same.

Very respectfully, your obedient servant,

C. J. HILLYER,
Attorney for Atlantic and Pacific Railroad Company.

Hon. COLUMBUS DELANO,
Secretary of the Interior.

[Endorsement.]

Atlantic and Pacific.

Received 18 November, 1871.

Dated " " " "

From C. J. Hillyer, att'y of co., Washington, D. C.

Subject.

Incloses three mortgages executed by the Atlantic and Pacific Railroad Company, and asks that they be filed and recorded in accordance with act of 20th April, 1871 (17 Stats., 19).

Action.

Acknowledged 1 December, 1871. Recording commenced same day in land grant, vol. 2, p. 141.

Registered one, 365.

Filed.

One more mortgage, received subsequently, filed with others.

[5-cent internal revenue stamp.]

At a meeting of the stockholders of the Atlantic and Pacific Railroad Company held at the office of the company in Boston, October 19, 1871, the following resolutions were adopted:

Resolved, That this company issue a series of bonds not exceeding thirty thousand dollars for each mile of the central division of its railroad, extending from the western boundary of the State of Missouri to the River Rio Grande, and all branches thereof, to bear date November 1, A. D. 1871, the principal and interest whereof shall be payable in gold coin of the United States, and to consist partly of bonds for one thousand dollars each and partly of bonds for five hundred dollars each; that the said bonds be payable on November 1, 1891, and bear interest at the rate of 6 per cent. per annum, payable semi-annually in gold coin, free from United States tax, at the agency of the company in the city of New York, and that said bonds be of like tenor except as to the numbers and amounts thereof.

Resolved, That in order to secure the payment of said bonds and all interest thereon, this company execute, acknowledge, and deliver to Oliver Ames and Charles F. Choate, as trustees, or to such other trustee or trustees as the directors may select, a mortgage or deed of trust, in and by which this company shall mortgage to said trustees that part of its railroad constructed, and to be constructed, which is located between the western boundary line of Missouri and Arkansas and the River Rio Grande, designated as the central division of said railroad, and all branches thereof, with all the rights, franchises, privileges, and appurtenances thereof, with all the rolling-stock and equipments belonging or appurtenant to said central division, and all the right, title and interests which this company now has, or shall hereafter acquire, of, in, and to, all and singular the lands, included within ten alternate sections of land lying on each side of and nearest to the said central division of its railroad and the branches thereof, for each mile thereof, being part of the lands granted or intended to be granted by the United States under the provisions of section three of its charter to aid in the construction of its railroad, including any land to which the said company may be or become entitled to under said section three, in order to make up any deficiency of said alternate section, which deed of mortgage shall provide that the net proceeds of the sale of the lands included therein, or such surplus thereof as shall semi-annually remain after the payment of the interest on said bonds, if such interest shall not be otherwise paid, shall be applied to the purchase of said bonds, upon terms and conditions to be set forth in said mortgage or trust deed, and that said bonds shall be receivable at par in payment for any lands mortgaged to secure the same, which shall be sold by this company.

Resolved, That the form of bonds to be issued under the preceding resolution now submitted to this meeting be, and the same is hereby, approved, and that the president or vice-president and treasurer of this

company be, and they are hereby, authorized and empowered to execute on behalf of this company, and as the act and deed thereof, the said bonds, and that the mortgage or deed of trust to secure the said bonds conform to the statements in said form of bond now submitted, and be in such form as the directors shall approve, and that said president or vice-president and treasurer affix to said bonds and such mortgage or deed of trust the corporate seal of this company, and acknowledge the execution of said mortgage or deed of trust, and cause the same to be duly stamped and recorded.

A true copy.

Attest :

[SEAL.]

WM. A. HAYES, *Secretary.*

At a meeting of the directors of the Atlantic and Pacific Railroad Company, held at the office of the company in Boston, October 19th, 1871, the following resolution was adopted :

Resolved, That the form of bond submitted to the board for the first-mortgage railroad and land-grant bonds of the Central Division, with the form of mortgage to secure the same, be approved, and that the president or vice-president and treasurer be, and they are hereby, authorized to execute, acknowledge, and deliver the same to the trustees named therein.

A true copy.

Attest :

[SEAL.]

WM. A. HAYES, *Secretary.*

THIS INDENTURE, made the first day of November, in the year of our Lord one thousand eight hundred and seventy-one, between the Atlantic and Pacific Railroad Company, a corporation duly formed and organized under an act of the Congress of the United States, party of the first part, and Oliver Ames and Charles F. Choate, both of the city of Boston and commonwealth of Massachusetts, parties of the second part :

Whereas the said Atlantic and Pacific Railroad Company is a corporation duly formed and organized under an act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866:

And whereas in and by said act of Congress certain lands were granted to the said party of the first part to aid in the construction of such railroad and telegraph line from Missouri and Arkansas to the Pacific coast, it being therein provided as follows, to wit :

"SECTION 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile

on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the Railroad Company receiving the previous grant of land may assign their interest to said Atlantic and Pacific Railroad Company, or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad."

And whereas by an act of the Congress of the United States, entitled "An act to enable the Atlantic and Pacific Railroad Company to mortgage its road," approved April 20, 1871, it was enacted as follows, to wit:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Atlantic and Pacific Railroad Company, organized under act of Congress of July 27, 1866, is hereby authorized to make and issue its bonds, in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms as its directors may deem advisable; and to secure said bonds the said company may mortgage its road, equipment, lands, franchises, privileges, and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: *Provided*, That, if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company, to the lands granted to it by said act, shall extend only to so much thereof as shall be coterminous with, or appertain to, that part of said road which shall have been constructed at the time of the foreclosure of said mortgage."

And whereas the said party of the first part, for the purpose of obtaining means to continue the construction and equipment of the said railroad and telegraph line, and for its other lawful purposes, has re-

solved to make, issue, and negotiate its bonds from time to time to an amount not exceeding thirty thousand dollars for each mile of that part of its railroad and the branches thereof which are located between the western boundary of the States of Missouri and Arkansas, and the river Rio Grande, and to consist of a series of bonds for one thousand dollars each, numbered consecutively from No. 1 (one) upwards, and of a series of bonds for five hundred dollars each, also numbered consecutively from No. 1 (one) upwards, and which bonds are to bear even date herewith, and, except as to the numbers and amounts thereof, to be of the same tenor and in the form following, that is to say :

No.

UNITED STATES OF AMERICA.

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ATLANTIC AND PACIFIC RAILROAD COMPANY, CENTRAL
DIVISION.

First mortgage railroad and land grant bond, principal and interest payable in gold.

Know all men by these presents that the Atlantic and Pacific Railroad Company is indebted to Oliver Ames and Charles F. Choate, both of Boston, Massachusetts, or bearer, in the sum of dollars, in gold coin of the United States of America, which the said Atlantic and Pacific Railroad Company hereby promises to pay to the said Oliver Ames and Charles F. Choate, or to the bearer hereof, in the gold coin aforesaid, on the first day of November, one thousand eight hundred and ninety-one, at the agency of said railroad company, in the city of New York, with interest thereon from the first day of November, one thousand eight hundred and seventy-one, at the rate of six per centum per annum, payable semi-annually in like gold coin of the United States of America, at the said agency, on the first days of May and November in each year, on the presentation and surrender of the annexed coupons, as they severally become due, and so to pay such interest free from, and without any deduction for, any income or other tax, which now is, or hereafter may be imposed upon the same by the Government of the United States; the said company hereby agreeing to assume and pay any such tax.

And it is hereby expressly declared and agreed, that in case default shall be made in the payment of any semi-annual installment of interest on this bond, when such interest shall become payable and be demanded, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, the principal of this bond shall become due and payable, in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned.

This bond is one of an issue of bonds not exceeding thirty thousand dollars, for each mile of that part of the company's railroad and the branches thereof which are located between the western boundary of the States of Missouri and Arkansas and the river Rio Grande, consisting of a series of bonds for one thousand dollars each, numbered consecutively from number 1 (one) upwards, and of a series of bonds for five hundred dollars each, numbered consecutively from number 1 (one) upwards, which bonds are of like date and of like tenor, except as to the numbers and amounts thereof, and the payment whereof is equally secured by a certain deed of trust or mortgage bearing even date herewith, to the said Oliver Ames and Charles F. Choate as trustees, duly executed and delivered by the said Atlantic and Pacific Railroad Com-

pany, whereby the said company mortgages to said trustees all of that part of its railroad and telegraph line, constructed and to be constructed, and the branches thereof, which are located within said limits, together with the equipments and appurtenances of that part of the said railroad, and all the rights, franchises, and privileges thereto belonging, and all the right, title, and interest which the said railroad company now has, or shall hereafter acquire, of, in, and to ten alternate sections of land, on each side of said railroad for each mile thereof, lying nearest to said railroad, between the western boundary of the States of Missouri and Arkansas and said river Rio Grande, being so much of the land which was granted or intended to be granted, to said railroad company by a certain act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866.

It is provided in the said deed of trust or mortgage that the net proceeds of the sale of any of the lands included therein, which shall be sold by the said railroad company, shall be paid to the trustees under said deed, to be applied semi-annually, first, to the payment of the interest on said bonds, and secondly to the purchase and cancellation of said bonds, in the manner and upon the terms expressed in said deed; and it is further provided in said deed that said bonds shall be receivable at par in payment for any and all such lands which shall be sold as aforesaid, and this bond is entitled to the benefit of such provisions.

This bond shall pass by delivery, or by transfer upon the books of the said railroad company at the option of the holder thereof.

After a registration of ownership, certified hereon by the treasurer or transfer agent of said company, no transfer, except upon the books of the said railroad company, shall be valid, unless the preceding transfer shall have been to bearer, and transferability by delivery thereby restored; but this bond shall continue susceptible of successive registrations and transfers to bearer, as aforesaid, at the option of the holder.

This bond shall not become valid or obligatory until it shall have been authenticated by a certificate indorsed hereon and duly signed by the trustees, or the successors of said trustees, in the trust created by said deed.

In witness whereof the said Atlantic and Pacific Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer, and has also caused the coupons hereto annexed to be signed by its treasurer this first day of November, A. D. 1871.

President.
Treasurer.

And whereas each of the said bonds is to have attached to it coupons for each semi-annual installment of interest to accrue thereon, payable when they respectively become due in the gold coin of the United States, at the agency of the said company in the city of New York, and each of the said bonds is also to be stamped with the requisite amount of stamps required by the internal-revenue laws of the United States, and for the purpose, among other things, of identifying the said bonds as those which are entitled to the benefit of the security afforded by these presents, each of them is to have indorsed upon it a certificate signed by the said parties of the second part, or by their successors, in the trusts hereby created, in the following words, that is to say: "We

hereby certify that this is one of the issue of bonds mentioned in the mortgage executed by the Atlantic and Pacific Railroad Company to us, within mentioned, dated November 1, 1871, and intended to be secured thereby."

And whereas the said party of the first part, being about to issue and negotiate the said bonds for the purpose aforesaid, have also resolved to secure the principal and interest of all of the same, or of such of them as may be, from time to time, issued or negotiated, by a mortgage of the premises hereinafter described and conveyed to the said parties of the second part, in trust for the equal benefit of all of the persons and corporations who may at any time become the holders of any of the said bonds, without any preference to the holder of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiating of the same :

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the premises, and of the sum of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order the better to secure the payment of the principal of the said bonds and all interest thereon as the same shall become payable, according to the tenor of said bonds and the terms of the coupons thereto annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of the said parties of the second part, and to the heirs and assigns of such survivor, all and singular, all the central division of the railroad and telegraph line of the said party of the first part, being all that part of the railroad and telegraph line of the said party of the first part, and the branches thereof now constructed and hereafter to be constructed, which is located and to be located between the western boundary of the States of Missouri and Arkansas and the river Rio Grande, together with the equipments and appurtenances of that part of the said railroad and telegraph line, and the rights, privileges, and franchises thereunto appertaining ; including the road-bed and the superstructure, and all the rights of way, and all the depot grounds and other lands, and all the tracks, bridges, viaducts, culverts, fences, and other structures, and all the depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses and other buildings, and all the machine-shops and other shops now held or owned, or which shall be hereafter held or acquired by the said party of the first part, its successors or assigns, for use in connection with the said central division of said railroad, or with any part or branch thereof, or with the business of the same, and also all locomotives, tenders, cars, and other rolling-stock, or equipments, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said central division of said railroad, or any part or branch thereof, or any of the equipments or appurtenances of the said central division of said railroad, or any part or branch thereof, and also all franchises connected with or relating to the said central division of said railroad, or the branches thereof, or the construction, maintenance, or use thereof, as fully and completely, to all intents and purposes, as if the said central division of said railroad, and the branches thereof, were, at the date hereof, fully constructed, completed, and equipped.

And all of the right, title, and interest which the said party of the first part, by reason, or for, or in respect of the construction of said central division of said railroad and telegraph line, or any part or

branch thereof, now has, or shall or may hereafter acquire, of, in, and to so much and such portions of the lands granted in and by said act of Congress, approved July 27, 1866, as shall be coterminous with the said central division of said railroad and its branches, and as shall be situated within twenty miles on each side thereof, being ten of the alternate sections granted by the said act on each side of every mile of that part of said railroad and its branches which are or shall be situated nearest to the same. And also all of the right, title, and interest of the said party of the first part, of, in, and to any and all lands wherever situated, which, under and by virtue of the provisions of the said above recited third section of the said act of Congress, the said party of the first part is authorized to select, under the direction of the Secretary of the Interior, in lieu of any of the lands hereinbefore described or referred to, of which the said party of the first part has been or may be deprived by reason of the same having been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of as provided in the said third section of the said act; and also all the property, franchises, rights, and things, of whatever name or nature, now held or hereafter to be acquired by the said party of the first part, its successors or assigns, in connection with or relating to the said central division of said railroad, or any part or branch thereof, or the construction, maintenance, or use of the same, together with all and singular the tenements, hereditaments, and appurtenances to the said central division of said railroad, and said lands and premises, or either thereof, belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances.

To have and to hold the said central division of said railroad, and its branches and the said lands and premises, unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivor of the said parties of the second part, his heirs and assigns, in trust for the security and benefit of all and every the person or persons or bodies corporate who shall be or at any time become the holder or holders of the said bonds or of such of them as shall be issued and negotiated by the said party of the first part, without preference to the holder of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiating of the same, upon the trusts and to and for the uses and purposes hereinafter expressed, that is to say:

ARTICLE FIRST. Until default shall be made, by the said party of the first part, its successors or assigns, in the payment of the principal or interest, or some part thereof, of the said bonds, or some one of them, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said central division of said railroad, with its branches, equipments, and appurtenances, and all and singular the lands, property, and franchises hereinbefore described, and to receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof.

ARTICLE SECOND. In case default shall be made in the payment of any semi-annual instalment of interest to accrue on any of said bonds, when such interest shall become payable and be demanded according to the tenor of such bond or the terms of any coupon thereto annexed, and such interest shall remain unpaid and in arrear for the period of

one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of said bonds, or any of them, when the same shall become due and be demanded, then, and in either and every such case, it shall be lawful for the said parties of the second part, or for the survivor of the said parties of the second part, or for the successors or successor of the said parties of the second part, or of the survivor of them, in the trust hereby created, personally, or by attorneys or agents, to enter into and upon all and singular the said portions of said railroad hereby mortgaged, and the lands and premises aforesaid, and to take actual possession of the same, and from thenceforth to have, hold, and use the same, operating the said portions of said railroad, and conducting the business thereof, by such superintendents, managers, receivers, and servants, or other attorneys or agents, as the said trustees or trustee so entering shall deem proper, and making from time to time such repairs and replacements, and such useful alterations, additions, and improvements to the said portions of said railroad and premises as the said trustees or trustee shall deem expedient. And it shall be lawful for the said trustees or trustee, after entry as aforesaid upon the said railroad and premises, or any part thereof, to collect and receive all tolls, fares, freights, rents, revenues, issues, and profits of the said portions of said railroad and premises, and of every part thereof, and to deduct therefrom the expenses of such entry and the expense of holding, operating, and managing the said portions of said railroad, and conducting the business of the same, including the expenses of such repairs, replacements, alterations, additions, and improvements as may be made by them or him, as aforesaid, and all payments which may be made or may be due for taxes and assessments; and, after making the deductions aforesaid, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply, semi-annually, all tolls, incomes, rents, revenues, issues, and profits of the said railroad to the payment of the interest on said first-mortgage railroad and land-grant bonds, hereby secured in the order in which such interest shall have become or shall become due, and to pay the same to the persons holding the bonds and coupons evidencing the right to such interest ratably, and without discrimination or preference between them on account of the time of the actual issue of said bonds; and if, after payment of all interest on said bonds, a surplus of said moneys shall remain, to pay over the same to the said party of the first part, its successors or assigns.

ARTICLE THIRD. In case default shall be made in the payment of any interest to accrue on any of said bonds, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded as aforesaid, or in case default shall be made in the payment of the principal, or any part thereof, of the said bonds, or any of them, it shall be lawful for the said parties of the second part, being the trustees under these presents, or for the survivor of them, or for the successors or successor of the said parties of the second part or of the survivor of them, in the trust hereby created, to enter into and upon all and singular the said central division of said railroad, and its branches and the lands and premises aforesaid, and after such entry, or after other entry, or without entry, personally, or by their or his attorneys or agents, to sell and dispose of the said portions of said railroad, with their equipments and appurtenances, and all and singular the lands and other property, rights, and franchises hereinbefore conveyed, or intended so to be, at public auction in the city of Boston, or in the city of New York, or at such place within the State of Missouri

as the said trustees or trustee shall designate, and at such time as they or he shall appoint, provided that the said trustees or trustee shall first give notice of the time and place of such sale by advertisement, published not less than three times in each week for six weeks in one or more newspapers in each of the cities of Boston, New York, and St. Louis; and after such advertisement, it shall be lawful for the said trustees or trustee to make such sale at the time and place mentioned in such advertisement, or to adjourn such sale from time to time, and if so adjourning, to make the same without further notice, at the time to which the same may be so adjourned, and at the place mentioned in said advertisement of sale; and to make and deliver to the purchaser or purchasers of the said portions of said railroad, lands, and premises, or of any part thereof, a good and sufficient deed or deeds in the law for the same, in fee-simple; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns. And after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said portions of said railroad, or in managing the business thereof, while in their or his possession, or in arranging for and completing the sale aforesaid, and all payments which may have been made by them or him for taxes or assessments, as well as reasonable compensation for their or his own services, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply the proceeds of such sale to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not such principal shall have, by the terms of said bonds, previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference as between principal and accrued and unpaid interest, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and to the persons holding the bonds and coupons, respectively, evidencing the right to such principal and interest, without discrimination or preference between them; and if, after payment of said bonds and all interest thereon in full, a surplus shall remain, to pay over such surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall order.

And it is hereby declared and agreed, that the receipt or receipts of the said trustees or trustee shall be a sufficient discharge to the purchaser or purchasers of the premises which shall be sold as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplication, or non-application of such purchase-money, or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE FOURTH. At any sale of the railroad and property aforesaid, or of any part thereof, whether such sale be made by virtue of the power hereinbefore granted or by judicial authority, the trustees hereunder may bid for and purchase, or cause to be bid for and purchased

the property so sold, or any part thereof, in behalf of all the holders of bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price if but a portion of said property shall be sold, and, if the entire railroad and property hereby mortgaged shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale.

ARTICLE FIFTH. In case default shall be made in the payment of any semi-annual instalment of interest on any of the said bonds, when such interest shall become payable according to the tenor of said bond or of any coupon thereto annexed, the said coupon having been presented, and payment of the interest therein specified having been demanded, and such instalment of interest shall remain unpaid and in arrear for the period of one year after the same shall have become payable and been demanded as aforesaid, the principal of each of the bonds secured hereby shall, at the option of the trustees hereunder, become and be immediately due and payable; but a majority in interest of the holders of all the said bonds then outstanding shall have the power, by an instrument in writing under their hands and seals, to instruct the trustees to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority in interest shall prescribe, or to annul or reverse the declaration of any option by the trustees in the premises: *Provided always*, That no act or omission of the trustees, or of the bondholders, shall extend to or affect any subsequent default, or impair the rights resulting therefrom.

ARTICLE SIXTH. The trustees shall have full power, in their own discretion, upon the written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, to any person designated by the said party of the first part, its successors or assigns, or to release from the lien and operation of these presents, in such manner as such trustees shall be advised, any part of the said premises which, in the judgment of the said trustees, shall not be necessary for use in connection with the said portion of said railroad, and which shall have been acquired or held for stations, depots, shops, or other buildings, or for a supply of fuel, gravel, or other material, and also to convey or release as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with the said central division of said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the railroad company may deem it expedient to disuse or abandon by reason of such change; and to consent to any such change, and to such other changes in the location of the track, or of any depot or other building, as in their judgment shall have become expedient, and to make and deliver the instruments necessary or proper to carry the same into effect: *Provided always*, That any and all lands which shall be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees upon the trusts of these presents. And the trustees shall, also, have full power to allow the said party of the first part, its successors or assigns, from time to time, to dispose, according to its or their discretion, of such portions of the equipment, machinery, and implements which shall be at any time held or acquired for the use of the said central division of said railroad as shall have become unfit or undesirable for such use: *Provided always*, That any new equipment, machinery, or implements, which may be acquired in substitution for any so released, shall become subject to the lien and operation of these presents.

ARTICLE SEVENTH. The trustees shall convey, by way of release or otherwise, to any party or parties designated by the said party of the first part, its successors or assigns, or release from the lien and operation of these presents in such manner as such trustees may be advised, any and all lands granted or conveyed by this indenture, or expressed or intended so to be, not being a part of said railroad, nor required for the convenient use and operation thereof, which shall or may be hereafter sold by the said party of the first part, its successors or assigns, in conformity with the provisions of this instrument: *Provided*, That such lands shall not be sold by the said party of the first part, its successors or assigns, at less than the appraised value thereof, according to the appraisement thereof delivered to said trustees, without the consent in writing of said trustees, and that conveyances and releases shall not be executed by the trustees unless the net proceeds of the sales of the lands so sold shall be paid over to them by the said party of the first part, its successors or assigns, or by the purchaser of such lands, to be by said trustees applied to the payment of interest on said bonds, and the purchase and cancellation thereof, as in article eighth of these presents set forth.

And it is further declared and agreed, that the bonds secured hereby shall be received as cash at their par value, and accrued interest, by the said party of the first part, its successors and assigns, in payment for any of said lands which may be sold by said party of the first part, its successors or assigns.

ARTICLE EIGHTH. The net proceeds of all sales by the said party of the first part, its successors or assigns, of the aforesaid lands hereby mortgaged, shall be paid over by the said party of the first part, its successors or assigns, immediately upon receipt thereof, or within a reasonable time thereafter, to the trustees under these presents; and the same shall be by said trustees applied semi-annually, first, to the payment of the interest on the said bonds, if the same should not be paid from other sources; and, secondly, to the purchase and cancellation of said bonds, if the same can be purchased at not exceeding a premium of ten per cent. upon the par value thereof, with the interest accrued thereon: *Provided*, That, preparatory to such purchases of bonds, the trustees shall advertise once in each week for three weeks in one or more of the daily newspapers published in the cities of New York and Boston, for bonds to be sold, and shall make such purchases of bonds at the lowest price or prices at which the said bonds may be offered, pursuant to such advertisement, or at such lower price or prices as the said trustees may, with reasonable diligence, be able to obtain the same for at public or private sale; and if the said trustees shall not be able to obtain said bonds at not exceeding the rate aforesaid within thirty days after the expiration of such advertisement, the said moneys shall be deposited by the said trustees in some safe depository, approved by the board of directors of said company, in either of the cities of New York or Boston, and thereafter the said moneys, with all accumulations of interest thereon, which may come within the disposal of said trustees, shall be applied, from time to time, to the purchase of said bonds, at not exceeding the rate aforesaid, whenever the same can be obtained at not exceeding such rate: *And provided further*, That the said party of the first part may at any time authorize the said trustees to purchase said bonds at a higher rate than the rate aforesaid, in the discretion of said trustees.

ARTICLE NINTH. The trustees under these presents shall, at all times, be authorized to employ and to appoint such clerks, assistants, agents,

and attorneys as they shall reasonably require to discharge any duty under these presents in relation to the sale of any of the lands aforesaid, and all clerks, assistants, agents, and attorneys so necessarily or properly employed or appointed, shall be paid by the party of the first part, its successors or assigns; and the said trustees shall be fully authorized to constitute and appoint an agent or attorney to execute conveyances, releases, or other instruments necessary and proper to be executed by them to release from the lien and operation of these presents any of the said lands which shall be sold as herein authorized, and to act generally in behalf of said trustees, in respect thereto, which agent may be removed by said trustees, in their discretion, and another appointed in his place; and all instruments executed and acts done by such agent, within the scope of his authority, in respect to said lands, shall be as legal and valid as if executed or done by the said trustees personally.

ARTICLE TENTH. The said party of the first part shall cause the lands aforesaid to be carefully valued and appraised in such divisions or parcels as shall seem to it most expedient for the purpose of selling the same; and in such valuation and appraisement all lands containing, or supposed to contain, minerals, shall be distinguished from those which are valued as agricultural, and true copies of such valuation and appraisement shall be made, one of which copies, certified by the president of the said party of the first part, under the corporate seal thereof, shall be deposited with each of the said trustees; but the said valuation and appraisement may from time to time be changed in regard to the whole or any part of the lands included therein, provided a copy of such new valuation shall be deposited as aforesaid.

And it is hereby declared and agreed, that the said party of the first part, and its successors, shall be entitled to contract for the sale of said lands, or any part or parcel thereof not occupied by the track of said railroad, or necessary to the right of way, or necessary or used for the purposes of depots, stations, station-houses, car-houses, freight-houses, wood-houses, machine-shops or other shops, or any other purpose incident to the operation of said railroad, or necessary for the proper transaction of the business thereof, at the appraised value aforesaid, and may sell the same partly on credit: *Provided always*, That before conveyance of any lands so sold shall be made to the purchaser, any amount of purchase-money remaining unpaid shall be secured by a purchase-money mortgage upon the premises sold, which purchase-money mortgage shall be duly assigned to the trustees under these presents at or before the delivery of such conveyance or release.

ARTICLE ELEVENTH. If the said party of the first part shall well and truly pay the principal of the said bonds, when the same shall become payable, and all interest thereon, as such interest shall mature, according to the tenor of said bonds, respectively, and the terms of the coupons thereto annexed, then, and in that case, all the estate, right, title, and interest of the said parties of the second part, and of the survivor of them, and of their and his successors and successor in the trust by these presents created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

ARTICLE TWELFTH. In case default shall be made in the payment of any interest to accrue on any of the said bonds, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of any of the said bonds, it shall be the duty of the trustees under these presents, upon a requisition made upon them in writing, signed by holders of a majority in interest of the said bonds,

and upon adequate indemnity against all costs, expenses, and liabilities to be by said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the powers granted by articles second and third of these presents, or by a suit or suits in equity or at law, in aid of the execution of such powers, or otherwise, as the said trustees, being advised by counsel learned in the law, shall deem most effectual for the purpose of enforcing such rights.

ARTICLE THIRTEENTH. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee under these presents for the time being, whether such trustees or trustee be the parties of the second part, or any successors or successor of the said parties of the second part, or either of them, in said trust; and whenever a vacancy shall exist, to mean the surviving or continuing trustee. And it is further mutually agreed, that the said trustees shall be entitled to just compensation for all services hereafter to be rendered by them in this trust, which compensation shall be paid by the said party of the first part, its successors or assigns; that the said trustees shall not be responsible for the default or misconduct of each other, or of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care; that the said trustees, or either of them, may resign, and be discharged from the trust created by these presents, by giving notice in writing to the party of the first part, or its successors, three months before such resignation shall take effect, or such shorter notice as the said party of the first part, or its successors, may accept; that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing signed by such majority in interest, provided, that such removal shall be subject to the approval of, and shall not take effect until approved by, the board of directors of the said party of the first part; that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided, or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the other of the parties of the second part, or by the remaining trustee at the time being, by an instrument in writing under his hand and seal, and so, from time to time, in case of the death, resignation, removal, or unfitness to act of either of the trustees at the time being, his place may be filled in like manner by the remaining trustee. But in case of neglect to appoint such new trustee at any time when a vacancy shall occur, the party of the first part may, by an instrument in writing, authorized by its board of directors, and duly executed under its corporate seal, make such appointment; and it is hereby covenanted and agreed that any new trustee appointed as aforesaid shall immediately, upon his appointment, and without any further act, deed, or conveyance, become and be vested with all of the estate, trust, rights, powers, and duties of the trustee in whose place he shall have been appointed; but, nevertheless, the respective parties hereto, and their respective successors and assigns, shall and will, upon request, make, execute, and deliver all such releases, conveyances, and assurances as shall be appropriate to vest in and confirm and assure to such new trustee such estate, trust, rights, powers, and duties, according to the intent above expressed.

And the said party of the first part, for itself, its successors and assigns, hereby, for the consideration aforesaid, further covenants, promises, and agrees to and with the said parties of the second part, and the

survivor of them, and their and his successors in the trust by these presents created, that the said party of the first part, its successors or assigns, shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds, the principal and interest thereof as such principal and interest shall become payable, according to the tenor of said bonds, respectively, and the terms of the coupons thereto annexed.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any lands granted by the said act of Congress to aid in the construction of the said division of said railroad and branches, or any other property, rights, or franchises connected with said division of said railroad and branches, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same, and every part and parcel thereof, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part, or the survivor of them, or their or his successors in the trust by these presents created.

And the said party of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that the said party of the first part, its successors and assigns, shall and will from time to time, and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto such trustees, upon the trusts herein expressed, all and singular the said division of said railroad and the branches thereof, and the lands and premises aforesaid, as by the said trustees, or by their counsel learned in the law, shall be reasonably advised or required.

In witness whereof the said Atlantic and Pacific Railroad Company, party of the first part, has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer; and the said Oliver Ames and Charles F. Choate have hereunto set their hands and seals to evidence the acceptance of the trust hereby created, the day and year first above written.

	ATLANTIC AND PACIFIC RAILROAD COMPANY,	
[SEAL.]	By URIEL CROCKER, <i>President.</i>	
	WM. A. HAYES, <i>Treasurer.</i>	
	OLIVER AMES.	[SEAL.]
	CHARLES F. CHOATE.	[SEAL.]

Sealed and delivered in the presence of—
 HORATIO ADAMS.
 SAML. JENNISON.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

I, Samuel Jennison, a notary public in and for said county of Suffolk, duly commissioned and sworn, and residing in the city of Boston, do certify that in said Boston, on this 11th day of November, in the year of our Lord one thousand eight hundred and seventy-one, personally

appeared before me Uriel Crocker, president, and William A. Hayes, treasurer, of the Atlantic and Pacific Railroad Company, the corporation described in the foregoing instrument, and Oliver Ames and Charles F. Choate, all personally known to me to be the same persons who have executed said instrument, the said Uriel Crocker and William A. Hayes on behalf of said Atlantic and Pacific Railroad Company, a party, and said Oliver Ames and Charles F. Choate as parties thereto, and they severally acknowledged to me that they executed the same, and that the same was their free and voluntary act and deed, and said Uriel Crocker and William A. Hayes that the same was the free and voluntary act and deed of said company, executed by them respectively for the consideration, uses, and purposes therein set forth.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 11th day of November, A. D. 1871.

SAMUEL JENNISON,
Notary Public in and for Suffolk County.

STAMP AGENCY, INTERNAL REVENUE BUREAU,
WITH AMERICAN PHOTOTYPE COMPANY,
New York, 24 Vesey street, November 24, 1871.

SIR: This certifies that on the 23d instant two thousand five hundred bonds of one thousand bonds of five hundred dollars each of the Atlantic and Pacific Railroad second-mortgage railroad and land-grant bonds were each imprinted with the necessary amount of internal stamps required by law. The above-specified bonds were stamped at the office of the American Phototype Company, New York, under my personal supervision.

ARCHD. S. CHAVE,
Stamp Agent.

Filed in Department of the Interior, December 1, 1871.

At a meeting of the stockholders of the Atlantic and Pacific Railroad Company, held at the office of the company, in Boston, October 19, 1871, the following resolutions were adopted:

Resolved, That this company issue a series of bonds amounting in the aggregate to three millions of dollars, to bear date November 1, 1871, the principle & interest whereof shall be payable in gold coin of the United States, and to consist of two thousand five hundred bonds for one thousand dollars each, numbered consecutively from No. 1 to No. 2500, inclusive, and of one thousand bond of five hundred dollars each, to be numbered consecutively from No. 2501 to 3500, inclusive; that the said bonds be payable on November 1, 1891, and bear interest at the rate of six per cent. per annum, payable semi-annually on the first days of May & November, free from United States tax, at the agency of the company, in the city of New York, and that said bonds be of like tenor except as to the number and amounts thereof; and further

Resolved, That in order to secure the payment of said bonds and all interest thereon the company execute, acknowledge, and deliver to Oliver Ames & Charles F. Choate, trustees, or to such other trustee or

trustees as the directors shall select, a deed of trust or mortgage, in and by which this company shall grant and convey, subject to existing mortgages, and to the confirmatory mortgage mentioned in the preceding resolutions, that part of the railroad of this company which is located in the State of Missouri, and all the rights, privileges, franchises, and appurtenances thereof, and all the rolling stock and equipment thereof, together with all the right, title, and interest of this company in and to all the lands granted or intended to be granted to the South Pacific Railroad Company by the State of Missouri, to aid in the construction of its railroad, and all the right, title, and interest of this company in any lands granted or intended to be granted to this company by the United States by reason of the construction of that part of its railroad which is located in the State of Missouri. Said mortgage shall also additionally secure equally with said series of bonds the land-mortgage bonds heretofore issued by this company.

Resolved, That the form of bonds to be issued under the last preceding resolution now submitted to this meeting be, and the same is hereby, approved, and that the president or vice-president and treasurer of this company be, and the same are hereby, authorized and empowered to execute, on behalf of this company, and as the act and deed thereof, the said bonds; and that the mortgage or deed of trust to secure the said bonds and said land-mortgage bonds conform to the statements in said form of bond now submitted, and be in such form as the directors shall approve; and that the said president or vice-president and treasurer affix to said bonds so to be issued and said mortgage or deed of trust the corporate seal of this company, and acknowledge the execution of said mortgage or deed of trust, and cause the same to be duly stamped & recorded.

A true copy.—Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

At a meeting of the directors of the Atlantic & Pacific Railroad Company held at the office of the company in Boston, October 19th, 1871, the following resolution was adopted:

Resolved, That the form of bond submitted to the board for the Missouri division second-mortgage railroad and land-grant bond, with form of mortgage to secure the same, be approved; and that the president or vice-president and treasurer be, and they are hereby, authorized to execute, acknowledge, and deliver the same to the trustees named therein.

A true copy.—Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

THIS INDENTURE, made the first day of November, in the year of our Lord one thousand eight hundred and seventy-one, between the Atlantic and Pacific Railroad Company, a corporation duly formed and organized under an act of the Congress of the United States, party of the first part, and Oliver Ames and Charles F. Choate, both of the city of Boston and commonwealth of Massachusetts, parties of the second part:

Whereas the said Atlantic and Pacific Railroad Company is a corporation duly formed and organized under an act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866:

And whereas in and by said act of Congress, certain lands were granted to the said party of the first part to aid in the construction of such railroad and telegraph line from Missouri and Arkansas to the Pacific coast, it being therein provided as follows, to wit:

"SECTION 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land-Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said Atlantic and Pacific Railroad Company, or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad."

And whereas, by another act of the Congress of the United States, entitled "An act to enable the Atlantic and Pacific Railroad Company to mortgage its road," approved April 20, 1871, it was enacted as follows, to wit:

"*Be it enacted by the Senate and House of Representatives of the Uni-*

ted States of America in Congress assembled, That the Atlantic and Pacific Railroad Company, organized under act of Congress of July 27, 1866, is hereby authorized to make and issue its bonds, in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms as its directors may deem advisable, and, to secure said bonds, the said company may mortgage its road, equipment, lands, franchises, privileges, and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: *Provided*, That if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with, or appertain to, that part of said road which shall have been constructed at the time of the foreclosure of said mortgage."

And whereas the South Pacific Railroad Company, a corporation duly organized under and by virtue of an act of the general assembly of the State of Missouri, entitled "An act to dispose of the Southwest Pacific Railroad, and other property belonging thereto, and to secure the early completion of said road," approved March 17, 1868, did, by a certain mortgage or deed of trust, bearing date July 1, 1868, for the purpose of securing the payment of certain bonds, known as the "first-mortgage railroad land-grant construction bonds," of the said South Pacific Railroad Company in the said mortgage or deed of trust described, and amounting altogether to the sum of seven millions two hundred and fifty thousand dollars, mortgage to George Tyler Bigelow and John James Dixwell, as trustees, all of its railroad from the town of Pacific, in the State of Missouri, to the western boundary of that State near the town of Neosho, together with the equipments and appurtenances thereof, and the rights, privileges, and franchises thereunto appertaining, and also all of the right, title, and interest of the said South Pacific Railroad Company, which it then had, or might thereafter, by reason of the construction of said railroad, or any part thereof, acquire of, in, and to any and all lands granted in the said act of the general assembly of the State of Missouri, and which were granted to that State by a certain act of Congress entitled "An act granting the right of way to the State of Missouri, and a portion of the public lands to aid in the construction of certain railroads in said State," approved June 10, 1852.

And whereas afterwards, and by a certain deed, dated October 21, 1870, the said South Pacific Railroad Company sold and conveyed all of its said railroad, situated in the State of Missouri, and all of its privileges, rights, franchises, real estate, and other property of every kind and description, whatsoever and wheresoever the same might be, including all of the lands remaining unsold, or to which it was or should be entitled under and by virtue of the said act of Congress, approved June 10, 1852, and all other its property, assets, and effects and rights and interests of every nature and character whatsoever or wheresoever the same might be, to the party hereto of the first part, its successors and assigns forever: *Subject, however*, to the said above-recited mortgage or deed of trust to the said George Tyler Bigelow and John James Dixwell, trustees, to secure the payment of the said seven millions two hundred and fifty thousand dollars of said bonds.

And whereas by a certain other mortgage or deed of trust, bearing date July 1, 1868, the party hereto of the first part, did, for the purpose of securing the payment of certain of its bonds, known as its "land-mortgage bonds," and amounting in the aggregate to three millions of dollars, mortgage to the said George Tyler Bigelow and John James Dixwell, as trustees, all of the lands situated within the limits of the State of Missouri which were granted, or intended to be granted, to it by the said act of Congress, approved July 27, 1866, to aid in the construction of its railroad and telegraph line as mentioned in said act.

And whereas afterwards, and by a certain other indenture, bearing date on 19th October, 1871, the said party hereto of the first part ratified and confirmed the said last-mentioned mortgage or deed of trust, and extended the lien and operation of the same over certain other lands referred to and described in the said indenture, dated 19th October, 1871.

And whereas the said party of the first part, for the purpose of obtaining additional means to continue the construction and equipment of its railroad and telegraph line, and to apply to its other lawful purposes, has resolved to make, issue, and negotiate another series of bonds to be known as its "second-mortgage railroad and land-grant bonds," amounting in the aggregate to three millions of dollars, consisting of two thousand five hundred bonds for one thousand dollars each, numbered consecutively from number 1 to number 2,500, inclusive, and of one thousand bonds for five hundred dollars each, numbered consecutively from number 2501 to number 3500, inclusive, all of which bonds bear even date herewith, and, except as to the numbers and amounts thereof, are of the same tenor, and of the following form, that is to say:

No. .] UNITED STATES OF AMERICA, STATE OF MISSOURI. [\$.

ATLANTIC AND PACIFIC RAILROAD COMPANY.

Second-mortgage railroad and land-grant bond, principal and interest payable in gold.

Know all men by these presents, that the Atlantic and Pacific Railroad Company is indebted to Oliver Ames and Charles F. Choate, both of Boston, Massachusetts, or bearer, in the sum of dollars, in gold coin of the United States of America, which the said Atlantic and Pacific Railroad Company hereby promises to pay to the said Oliver Ames and Charles F. Choate, or to the bearer hereof, in the gold coin aforesaid, on the first day of November, one thousand eight hundred and ninety-one, at the agency of said railroad company, in the city of New York, with interest thereon, from the first day of November, one thousand eight hundred and seventy-one, at the rate of six per centum per annum, payable semi-annually in like gold coin of the United States of America, at the said agency, on the first days of May and November in each year, on the presentation and surrender of the annexed coupons as they severally become due, and so to pay such interest free from and without any deduction for any income or other tax which now is, or hereafter may be, imposed upon the same by the government of the United States, the said company hereby agreeing to assume and pay any such tax.

And it is hereby expressly declared and agreed, that in case default shall be made in the payment of any semi-annual instalment of interest on this bond, when such interest shall become payable and be demanded,

and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, the principal of this bond shall become due and payable in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned.

This bond is one of a series of bonds amounting in the aggregate to three millions of dollars, and consisting of two thousand five hundred bonds for one thousand dollars each, numbered consecutively from 1 to 2500 inclusively, and one thousand bonds for five hundred dollars each, numbered consecutively from 2501 to 3500 inclusively, all of which bonds are of like date and of like tenor (except as to the numbers and amounts thereof), and the payment whereof and also of certain "land mortgage bonds," amounting to three millions of dollars, heretofore issued by the said Atlantic and Pacific Railroad Company, are equally secured by a certain deed of trust or mortgage, bearing even date herewith, duly executed and delivered by the said railroad company to the said Oliver Ames and Charles F. Choate as trustees, whereby the said railroad company mortgages to the said trustees (subject to the prior mortgages recited in the said mortgage or deed of trust) all of that part of the railroad of the said Atlantic and Pacific Railroad Company which is located between the town of Pacific, in the State of Missouri, and the western bounds of that State, together with the equipments and appurtenances of that part of said railroad, and the rights, privileges, and franchises thereunto appertaining, and mortgaging, also, all the right, title, and interest of the said railroad company, of, in, and to all of the lands granted to the South Pacific Railroad Company by the State of Missouri, by the act under which that company was incorporated, and which were heretofore granted to the said State by the Congress of the United States, and also all of the right, title, and interest which the said Atlantic and Pacific Railroad Company now has, or which it may hereafter acquire, of, in, and to all of those portions of the lands which, by the act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866, were granted, or intended to be granted, to the said Atlantic and Pacific Railroad Company, for or in respect of the construction of that part of its railroad and telegraph line which is situated within the State of Missouri.

It is provided in the said deed of trust or mortgage, that the net proceeds of the sale of any of the lands included therein, which shall be sold by the said railroad company after the prior mortgages thereon shall have been satisfied, shall be paid to the trustees under said deed, to be applied, semi-annually, first, to the payment of the interest on said bonds, and, secondly, to the purchase and cancellation of said bonds, in the manner and upon the terms expressed in said deed; and it is further provided in said deed that said bonds, after the prior mortgages thereon shall have been satisfied, shall be receivable at par, in payment for any and all such lands which shall be sold as aforesaid, and this bond is entitled to the benefit of such provisions.

This bond shall pass by delivery, or by transfer upon the books of the said railroad company, at the option of the holder thereof.

After a registration of ownership, certified hereon by the treasurer or transfer agent of said company, no transfer except upon the books of the said railroad company shall be valid, unless the preceding transfer shall have been to bearer, and transferability by delivery thereby restored; but this bond shall continue susceptible of successive registrations and transfers to bearer, as aforesaid, at the option of its holder.

This bond shall not become valid or obligatory until it shall have been authenticated by a certificate indorsed hereon and duly signed by the trustees, or the successors of said trustees, in the trust created by said deed.

In witness whereof the said Atlantic and Pacific Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer, and has also caused the coupons hereto annexed to be signed by its treasurer, this first day of November, A. D. 1871.

President.

Treasurer.

And whereas each of the said last-mentioned bonds has attached to it coupons for each semi-annual instalment of interest to accrue thereon, payable, when they respectively become due, in the gold coin of the United States at the agency of the said company in the city of New York, and each of the said bonds has also affixed to it the requisite amount of stamps required by the internal-revenue laws of the United States; and for the purpose, among other things, of identifying the said bonds as those which are entitled to the benefit of the security afforded by these presents, each of them has indorsed upon it a certificate signed by the said parties of the second part in the following words, that is to say: "We hereby certify that this is one of the issue of bonds mentioned in the mortgage executed by the Atlantic and Pacific Railroad Company to us within mentioned, dated November 1, 1871, and intended to be secured thereby."

And whereas the said party of the first part, being about to issue and negotiate the said bonds for the purpose aforesaid, has also resolved to secure the principal and interest of all of the same, and also to additionally secure the principal and interest of those certain bonds known as "land mortgage bonds," dated July 1, 1868, amounting in the aggregate to three millions of dollars, heretofore issued and negotiated by the party of the first part, and secured by the said above-recited mortgage or deed of trust executed by it to the said George Tyler Bigelow and John James Dixwell as trustees, by a mortgage of the premises hereinafter described and conveyed to the parties of the second part, in trust for the equal benefit of all of the persons and bodies corporate who shall at any time become the holders of any of the said "second mortgage railroad and land-grant bonds" hereinbefore described, or who have heretofore or may hereafter become the holders of any of the said three millions of dollars of "land mortgage bonds" heretofore issued, without preference to the holder of any of the said bonds, of either issue, over any of the others by reason of priority in the time of the issuing or negotiating of the same:

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the premises, and of the sum of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order the better to secure the payment as well of the principal and interest of the said "second mortgage railroad and land-grant bonds" hereinbefore described as of the said "land mortgage bonds" heretofore issued by the party of the first part, as the same shall become payable, according to the tenor of the said bonds and the terms of the coupons thereto annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of

the said parties of the second part, and to the heirs and assigns of such survivor, (first,) all and singular that part of the railroad of the said party of the first part, as the same is now constructed, from the junction with the Missouri Pacific Railroad in the town of Pacific, or Franklin, in the State of Missouri, to the western boundary of that State, near the town of Seneca, being a distance of three hundred miles, more or less, and including as well the portion of said part of said railroad which was constructed by the said party of the first part, as the portion thereof which was acquired by the said party of the first part, under and by virtue of the said deed from the South Pacific Railroad Company, dated 26th October, 1870, and hereinbefore recited, together with the equipments and appurtenances of the said part of said railroad, and the rights, privileges, and franchises thereunto appertaining, including the road-bed and the superstructure and all the rights of way, and all the depot-grounds and other lands, and all the tracks, bridges, viaducts, culverts, fences, and other structures, and all the depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings, and all the machine-shops, and other shops, now held or owned, or which shall be hereafter constructed, held, or acquired by the said party of the first part, its successors or assigns in the State of Missouri, for use in connection with the said part of said railroad, and also all locomotives, tenders, cars, and other rolling-stock or equipments, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said part of said railroad, or any of the equipments or appurtenances of the said part of said railroad, and also all franchises connected with or relating to the said part of said railroad, or the construction, maintenance, or use thereof. (Secondly.) Also all the right, title, and interest which the said party of the first part now has, or shall or may hereafter acquire, of, in, and to any and all lands granted to said South Pacific Railroad Company, in and by said act of the general assembly of the State of Missouri, approved March 17, 1868, and which were granted to said State by said act of Congress, entitled "An act granting the right of way to the State of Missouri, and a portion of the public lands, to aid in the construction of certain railroads in said State," approved June 10, 1852. (Thirdly.) And also all the right, title, and interest which the said party of the first part now has, or shall or may hereafter acquire, of, in, and to any and all and singular the lands situate within the limits of the State of Missouri, or of the State of Arkansas, which, in and by the said act of Congress, approved July 27, 1866, were granted, or intended to be granted, to the said party of the first part, for or in respect of the construction of that portion of its railroad and telegraph line which is located in the said State of Missouri, between Springfield and the western boundary of that State. (Fourthly) And also of, in, and to any and all lands, wherever situated, which, under and by virtue of the third section of the said act of Congress, the said party of the first part, for or in respect of the construction of said portion of its railroad and telegraph line, is authorized to select, under the direction of the Secretary of the Interior, in lieu of any of the lands thirdly above described, of which the said party of the first part has been or may be deprived, by reason of the same having been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, as provided in the third section of the said act of Congress (meaning and intending to embrace within the descriptions thirdly and fourthly above set forth all of the lands granted or intended to be granted by the said act of Congress, to which the said party of the first part, for or in respect of the construction of

that portion of its railroad and telegraph line which is between said Springfield and the western boundary of the State of Missouri, is or may be entitled, but not to embrace any of the lands granted by the said act, to which the said party of the first part, for or in respect of the construction of any other portion of its railroad and telegraph line, is or may be entitled); together with all and singular the tenements, hereditaments, and appurtenances to the said part of said railroad, and said lands and premises, or either thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances.

To have and to hold the said part of said railroad and said lands and premises, unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of the said parties of the second part, his heirs and assigns (subject, nevertheless, as to the said premises firstly and secondly above described, to the said mortgage or deed of trust, dated July 1, 1868, hereinbefore recited, made by the said South Pacific Railroad Company to the said George Tyler Bigelow and John James Dixwell, as trustees to secure the said "first-mortgage railroad land grant construction bonds," amounting to seven millions two hundred and fifty thousand dollars, and to all of the trusts, rights, and powers in the said mortgage or deed of trust expressed, and subject as to the said premises thirdly and fourthly above described, to the said mortgage or deed of trust, dated July 1, 1868, hereinbefore also recited, executed by the said party of the first part to the said George Tyler Bigelow and John James Dixwell as trustees to secure the said "land mortgage bonds," amounting to three millions of dollars, and to the said indenture dated October 19, 1871, and executed by and between the same parties, confirming and extending the said last-mentioned mortgage or deed of trust, and to all of the trusts, rights, and powers expressed in the said last-mentioned mortgage or deed of trust, and in the said indenture confirming the same), in trust for the equal benefit of all of the persons and bodies corporate who shall at any time become the holders of any of the said "second-mortgage railroad and land-grant bonds" hereinbefore described, or who have heretofore, or may hereafter, become the holders of any of the said three millions of dollars of "land mortgage bonds" heretofore issued, without preference to the holder of any of the said bonds, of either issue, over any of the others by reason of priority in the time of the issuing or negotiating of the same, upon the trusts and to and for the uses and purposes herein-after expressed, that is to say:

ARTICLE FIRST. Until default shall be made, by the said party of the first part, its successors or assigns, in the payment of the principal or interest, or some part thereof, of the said bonds hereby secured or intended to be secured, or some one of them, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said part of said railroad, with its equipments and appurtenances, and all and singular the lands, property, and franchises hereinbefore described, and to receive, take, and use the tolls, revenues, rents, issues, and profits thereof. And until the payment and satisfaction in full of the respective issues of bonds which are secured or intended to be secured by the respective mortgages or deeds of trust, subject to which these presents are made, the party of the

first part, in connection with the trustees named in the said respective mortgages or deeds of trust, or their successors respectively, shall continue to have full power, as set forth in the said mortgages or deeds of trust respectively to sell, convey, and release all and singular the lands mortgaged or intended to be mortgaged in and by the said mortgages or deeds of trust respectively, and to dispose of the proceeds of all such sales as therein respectively provided, and so to sell, convey, and release the said lands, and dispose of the proceeds thereof in like manner and with like effect as if these presents had not been made. And it is hereby declared and agreed that all lands which shall be sold in accordance with the provisions of the said mortgages or deeds of trust respectively, and released from the operation of the same, by the said trustees respectively, shall vest in the purchaser or purchasers thereof, by a good and valid title free and discharged of all lien or encumbrance, claim, or demand under or by virtue of these presents. And that these presents and everything herein contained are subject to the provisions of this article.

ARTICLE SECOND. In case default shall be made in the payment of any semi annual instalment of interest to accrue on any of said bonds hereby secured, when such interest shall become payable and be demanded according to the tenor of such bond or the terms of any coupon thereto annexed, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of said bonds, hereby secured, or any of them, when the same shall become due and be demanded, then, and in either and every such case, it shall be lawful for the said parties of the second part, or for the survivor of the said parties of the second part, or for the successors or successor of the said parties of the second part, or of the survivor of them, in the trust hereby created, personally, or by attorneys or agents, to enter into and upon all and singular the part of said railroad aforesaid, and to take actual possession of the same, subject to the rights of said prior mortgages, and from thenceforth to have, hold, and use the same, operating the said part of said railroad, and conducting the business thereof, by such superintendents, managers, receivers, and servants, or other attorneys or agents, as the said trustees or trustee so entering shall deem proper, and making from time to time such repairs and replacements, and such useful alterations, additions, and improvements to the said part of said railroad, as the said trustees or trustee shall deem expedient. And it shall be lawful for the said trustees or trustee, after entry as aforesaid upon the said part of said railroad, to collect and receive all tolls, fares, freights, rents, revenues, issues, and profits of the said part of said railroad, and to deduct therefrom the expenses of such entry, and the expense of holding, operating, and managing the said part of said railroad, and conducting the business of the same, including the expenses of such repairs, replacements, alterations, additions, and improvements as may be made by them or him, as aforesaid, and all payments which may be made or may be due for taxes and assessments, and all interest which shall have accrued, or which shall at any time during such possession accrue upon the said "first-mortgage railroad land-grant construction bonds," issued by the said South Pacific Railroad Company, or upon such of them as shall at the time being, remain outstanding; and, after making the deductions aforesaid, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply, semi-annually, all tolls, incomes, rents, revenues, issues, and profits of the said part of said railroad to the payment of the interest

on all of the said bonds, the payment of which is secured by these presents, in the order in which such interest shall have become or shall become due, and to pay the same to the persons holding the bonds and coupons evidencing the right to such interest, ratably, and without discrimination or preference between them on account of the time of the actual issue of said bonds; and if, after payment of all interest on said bonds, a surplus of said moneys shall remain, to pay over the same to the said party of the first part, its successors or assigns.

ARTICLE THIRD. In case default shall be made in the payment of any interest to accrue on any of said bonds hereby secured, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded as aforesaid, or in case default shall be made in the payment of the principal, or any part thereof, of the said bonds hereby secured, or any of them, it shall be lawful for the said parties of the second part, being the trustees under these presents, or for the survivor of them, or for the successors or successor of the said parties of the second part, or of the survivor of them, in the trust hereby created, to enter into and upon all and singular the said part of said railroad, and the lands and premises aforesaid, and after such entry, or after other entry, or without entry, personally, or by their or his attorneys or agents, to sell and dispose of the said part of said railroad, with its equipments and appurtenances, and all and singular the lands and other property, rights, and franchises hereinbefore conveyed, or intended so to be (subject, however, to the said respective prior mortgages thereon, so far as they shall then be in force or effect), at public auction in the city of Boston, or in the city of New York, or at such place within the State of Missouri as the said trustees or trustee shall designate, and at such time as they or he shall appoint, provided that the said trustees or trustee shall first give notice of the time and place of such sale by advertisement, published not less than three times in each week for six weeks in one or more newspapers in each of the cities of Boston, New York, and St. Louis; and after such advertisement, it shall be lawful for the said trustees or trustee to make such sale at the time and place mentioned in such advertisement, or to adjourn such sale from time to time, and if so adjourning, to make the same without further notice, at the time to which the same may be so adjourned, and at the place mentioned in said advertisement of sale; and to make and deliver to the purchaser or purchasers of the said part of said railroad, and said lands and premises, or of any part thereof, a good and sufficient deed or deeds in the law for the same, in fee-simple, subject as aforesaid; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns, except said prior mortgages. And after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said part of said railroad, or in managing the business thereof, while in their or his possession, or in arranging for and completing the sale aforesaid, and all payments which may have been made by them or him for taxes or assessments, or for interest upon the said existing bonds, as well as reasonable compensation for their or his own services, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply the proceeds of such sale to the payment of

the principal of such of the said bonds hereby secured, as may be at that time unpaid, whether or not such principal shall have, by the terms of said bonds, previously become due, and of the interest, which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference as between principal and accrued and unpaid interest, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and to the persons holding the bonds hereby secured and coupons, respectively, evidencing the right to such principal and interest, without discrimination or preference between them; and if after payment of said bonds hereby secured, and all interest thereon in full, a surplus shall remain, to pay over such surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall order.

And it is hereby declared and agreed, that the receipt or receipts of the said trustees or trustee shall be a sufficient discharge to the purchaser or purchasers of the premises which shall be sold as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not after payment thereof, and having such receipt, be liable to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplication, or non-application of such purchase-money, or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of for any such sale.

ARTICLE FOURTH. At any sale of the said part of said railroad and said other property aforesaid, or of any part thereof, whether such sale be made by virtue of the power hereinbefore granted or by judicial authority, the trustees hereunder may bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price if but a portion of said property shall be sold, and, if the entire of said part of said railroad and said other property shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale.

ARTICLE FIFTH. In case default shall be made in the payment of any semi-annual instalment of interest on any of the said bonds hereby secured, when such interest shall become payable according to the tenor of said bond or of any coupon thereto annexed, the said coupon having been presented, and payment of the interest therein specified having been demanded, and such instalment of interest shall remain unpaid and in arrears for the period of one year after the same shall have become payable and been demanded as aforesaid, the principal of each of the bonds secured hereby shall, at the option of the trustees hereunder, become and be immediately due and payable; but a majority in interest of the holders of all the said bonds then outstanding shall have the power, by an instrument in writing under their hands and seals, to instruct the trustees to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority in interest shall prescribe, or to annul or reverse the declaration of any option by the trustees in the premises: *Provided always*, That no act or omission of the trustees, or of the bondholders, shall extend to or affect any subsequent default, or impair the rights resulting therefrom.

ARTICLE SIXTH. The trustees shall have full power in their own dis-

cretion, upon the written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, to any person designated by the said party of the first part, its successors or assigns, or to release from the lien and operation of these presents, in such manner as such trustees shall be advised, any part of the said premises which, in the judgment of the said trustees, shall not be necessary for use in connection with the said part of said railroad, and which shall have been acquired or held for stations, depots, shops, or other buildings, or for a supply of fuel, gravel, or other material, and also to convey or release as aforesaid, on like requests, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with the said part of said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said railroad company may deem it expedient to disuse or abandon by reason of such change; and to consent to any such change, and to such other changes in the location of the track, or of any depot or other building, as in their judgment shall have become expedient, and to make and deliver the instruments necessary or proper to carry the same into effect: *Provided always*, That any and all lands which shall be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees upon the trust of these presents. And the trustees shall, also, have full power to allow the said party of the first part, its successors or assigns, from time to time, to dispose, according to its or their discretion, of such portions of the equipment, machinery, and implements which shall be at any time held or acquired for the use of the said part of said railroad as shall have become unfit or undesirable for such use: *Provided always*, That any new equipment, machinery, or implements, which may be acquired in substitution for any so released, shall become subject to the lien and operation of these presents.

ARTICLE SEVENTH. After the existing mortgages or deeds of trust, subject to which these presents are made, shall have been discharged and fully satisfied, the trustees under these presents shall convey, by way of release or otherwise, to any party or parties designated by the said party of the first part, its successors or assigns, or release from the lien and operation of these presents in such manner as such trustees may be advised, any and all lands granted or conveyed by this indenture, or expressed or intended so to be, and remaining unsold under said existing mortgages or deeds of trust (not being a part of said railroad, nor required for the convenient use and operation thereof), which shall or may be hereafter sold by the said party of the first part, its successors or assigns, in conformity with the provisions of this instrument: *Provided*, That such lands shall not be sold by the said party of the first part, its successors or assigns, at less than the appraised value thereof, according to the appraisement thereof delivered to said trustees, without the consent in writing of said trustees, and that conveyances and releases shall not be executed by the trustees under these presents, unless the net proceeds of the sales of the lands so sold shall be paid over to them by the said party of the first part, its successors or assigns, or by the purchaser of such lands, to be by said trustees applied to the payment of interest on said bonds, and the purchase and cancellation thereof, as in article eighth of these presents set forth.

And it is hereby further declared and agreed that (after the payment and satisfaction of the respective issues of bonds which are respectively secured to be paid by the said existing mortgages or deeds of trust

respectively) the bonds secured hereby shall be received as cash at their par value, and accrued interest, by the said party of the first part, its successors and assigns, in payment for any of said lands which, after the satisfaction of said existing mortgages or deeds of trust respectively, may be sold by said party of the first part, its successors or assigns, and released by the said parties of the second part or their successors under these presents.

ARTICLE EIGHTH. The net proceeds of all sales by the said party of the first part, its successors or assigns, of any of the aforesaid lands granted by the State of Missouri, to aid in the construction of said railroad, which shall remain after the payment in full of the said "first-mortgage railroad land-grant construction bonds," issued by the said South Pacific Railroad Company, and the net proceeds of all sales by the party of the first part, its successors and assigns, of any of the aforesaid lands mortgaged by it as aforesaid, to secure the said "land-mortgage bonds," which shall remain after the payment in full of the said "land-mortgage bonds," shall be paid over by the said party of the first part, its successors or assigns, immediately upon receipt thereof, or within a reasonable time thereafter, to the trustees under these presents; and the same shall be by said trustees applied semi-annually, first, to the payment of the interest on the said bonds hereby secured, if the same should not be paid from other sources; and, secondly, to the purchase and cancellation of said bonds, if the same can be purchased at not exceeding a premium of ten per cent. upon the par value thereof, with the interest accrued thereon: *Provided*, That, preparatory to such purchases of bonds, the trustees shall advertise once in each week for three weeks, in one or more of the daily newspapers published in the cities of New York and Boston, for bonds to be sold, and shall make such purchases of bonds at the lowest price or prices at which the said bonds may be offered, pursuant to such advertisement, or at such lower price or prices as the said trustees may, with reasonable diligence, be able to obtain the same for at public or private sale; and if the said trustees shall not be able to obtain the said bonds at not exceeding the rate aforesaid within thirty days after the expiration of such advertisement, the said moneys shall be deposited by the said trustees in some safe depository, approved by the board of directors of said company, in either of the cities of New York or Boston, and thereafter the said moneys, with all accumulations of interest thereon, which may come within the disposal of said trustees, shall be applied, from time to time, to the purchase of said bonds hereby secured, at not exceeding the rate aforesaid, whenever the same can be obtained at not exceeding such rate: *And provided further*, That the said party of the first part may at any time authorize the said trustees to purchase said bonds at a higher rate than the rate aforesaid, in the discretion of said trustees.

ARTICLE NINTH. The trustees under these presents shall, at all times, be authorized to employ and to appoint such clerks, assistants, agents, and attorneys as they shall reasonably require to discharge any duty under these presents in relation to the sale of any of the lands aforesaid, and all clerks, assistants, agents, and attorneys, so necessarily or properly employed or appointed, shall be paid by the party of the first part, its successors or assigns; and the said trustees shall be fully authorized to constitute and appoint an agent or attorney to execute conveyances, releases, or other instruments necessary and proper to be executed by them to release from the lien and operation of these presents any of the said lands which shall be sold as hereinafter authorized, and to act generally in behalf of said trustees, in respect thereto, which agent may

be removed by said trustees, in their discretion, and another appointed in his place; and all instruments executed and acts done by such agent, within the scope of his authority, in respect to said lands, shall be as legal and valid as if executed or done by the said trustees personally.

ARTICLE TENTH. The said party of the first part shall cause the lands aforesaid to be carefully valued and appraised in such divisions or parcels as shall seem to it most expedient for the purpose of selling the same, and in such valuation and appraisement all lands containing, or supposed to contain, minerals shall be distinguished from those which are valued as agricultural, and true copies of such valuation and appraisement shall be made, one of which copies, certified by the president of the said party of the first part, under the corporate seal thereof, shall be deposited with each of the said trustees; but the said valuation and appraisement may from time to time be changed in regard to the whole or any part of the lands included therein, provided a copy of such new valuation shall be deposited as aforesaid.

And it is hereby declared and agreed that whilst the said existing mortgages or deeds of trust remain unsatisfied, the said party of the first part, and the trustees under the said mortgages or deeds of trust respectively, may, as therein respectively provided, sell, convey, and release the lands respectively covered thereby, and that, after the said existing mortgages or deeds of trust shall have been respectively satisfied, the said party of the first part, and its successors, shall be entitled to contract for the sale of any of said lands or any part or parcel thereof remaining unsold and not occupied by the track of said part of said railroad, or necessary to the right of way, or necessary or used for the purposes of depots, stations, station-houses, car-houses, freight-houses, wood-houses, machine-shops or other shops, or any other purpose incident to the operation of said part of said railroad, or necessary for the proper transaction of the business thereof, at the appraised value aforesaid, and may sell the same partly on credit: *Provided always*, That before conveyance of any lands so sold under or by virtue of these presents shall be made to the purchaser, any amount of purchase-money remaining unpaid shall be secured by a purchase-money mortgage upon the premises sold, which purchase-money mortgage shall be duly assigned to the trustees under these presents, at or before the delivery of such conveyance or release.

ARTICLE ELEVENTH. If the said party of the first part shall well and truly pay the principal of the said bonds hereby secured, when the same shall become payable, and all interest thereon, as such interest shall mature, according to the tenor of said bonds respectively, and the terms of the coupons thereto annexed, then, and in that case, all the estate right, title, and interest of the said parties of the second part, and of the survivor of them, and of their and his successors and successor in the trust by these presents created, shall cease, determine, and become void, otherwise the same shall be and remain in full force and virtue.

ARTICLE TWELFTH. In case default shall be made in the payment of any interest to accrue on any of the said bonds hereby secured, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of any of the said bonds, it shall be the duty of the trustees under these presents, upon a requisition made upon them in writing, signed by holders of a majority in interest of the said bonds, and upon adequate indemnity against all costs, expenses, and liabilities to be by said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the

powers granted by articles second and third of these presents, or by a suit or suits in equity or at law, in aid of the execution of such powers, or otherwise, as the said trustees, being advised by counsel learned in the law, shall deem most effectual for the purpose of enforcing such rights.

ARTICLE THIRTEENTH. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee under these presents for the time being, whether such trustees or trustee be the parties of the second part, or any successors or successor of the said parties of the second part, or either of them, in said trust; and, whenever a vacancy shall exist, to mean the surviving or continuing trustee. And it is further mutually agreed, that the said trustees shall be entitled to just compensation for all services hereafter to be rendered by them in this trust, which compensation shall be paid by the said party of the first part, its successors or assigns; that the said trustees shall not be responsible for the default or misconduct of each other or of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care; that the said trustees, or either of them, may resign, and be discharged from the trust created by these presents, by giving notice in writing to the party of the first part, or its successors, three months before such resignation shall take effect, or such shorter notice as the said party of the first part, or its successors, may accept; that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds hereby secured, by an instrument in writing signed by such majority in interest, provided that such removal shall be subject to the approval of, and shall not take effect until approved by the board of directors of the said party of the first part; that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the other of the parties of the second part, or by the remaining trustee at the time being, by an instrument in writing under his hand and seal, and so, from time to time, in case of the death, resignation, removal, or unfitness to act of either of the trustees at the time being, his place may be filled in like manner by the remaining trustee. But in case of neglect to appoint such new trustee at any time when a vacancy shall occur, the party of the first part may, by an instrument in writing, authorized by its board of directors and duly executed under its corporate seal, make such appointment. And it is hereby covenanted and agreed that any new trustee, appointed as aforesaid, shall immediately upon his appointment, and without any further act, deed, or conveyance, become and be vested with all of the estate, trust, rights, powers, and duties of the trustee in whose place he shall have been appointed, but nevertheless the respective parties hereto, and their respective successors and assigns, shall and will, upon request, make, execute, and deliver all such releases, conveyances, and assurances as shall be appropriate to vest in and confirm and assure to such new trustee such estate, trust, rights, powers, and duties, according to the intent above expressed.

And the said party of the first part, for itself, its successors and assigns, hereby, for the consideration aforesaid, further covenants, promises, and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust by these presents created, that the said party of the first part, its successors or assigns, shall and will well and truly pay, or cause to be paid, unto the holder or holders of said bonds hereby secured the principal and inter-

est thereof as such principal and interest shall become payable, according to the tenor of said bonds, respectively, and the terms of the coupons thereto annexed.

And the said party of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that the said party of the first part, its successors and assigns, shall and will from time to time, and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto such trustees, upon the trusts herein expressed, all and singular the said part of said railroad, and the lands and premises aforesaid, as by the said trustees, or by their counsel learned in law, shall be reasonably advised or required.

In witness whereof the said Atlantic and Pacific Railroad Company, party of the first part, has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer; and the said Oliver Ames and Charles F. Choate have hereunto set their hands and seals to evidence the acceptance of the trust hereby created, the day and year first above written.

ATLANTIC & PACIFIC RAILROAD COMPANY,
By URIEL CROCKER, *President*. [SEAL.]
WM. A. HAYES, *Treasurer*.
OLIVER AMES. [SEAL.]
CHARLES F. CHOATE. [SEAL.]

Sealed and delivered in the presence of
HORATIO ADAMS.
SAML. JENNISON.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston:

I, Samuel Jennison, a commissioner residing in the said city of Boston, duly commissioned and qualified by the executive authority and under the laws of the State of Missouri to take the acknowledgment of deeds, &c., to be used or recorded in said State of Missouri, and also a notary public, duly commissioned and sworn, in and for the county of Suffolk aforesaid, do certify that in said Boston, this 11th day of November, in the year of our Lord one thousand eight hundred and seventy-one, personally came before me Uriel Crocker, president, and William A. Hayes, treasurer, respectively, of the Atlantic and Pacific Railroad Company, and Oliver Ames and Charles F. Choate, all personally known to me to be the same persons whose names are subscribed to the foregoing instrument, viz, those of said Uriel Crocker and William A. Hayes, on behalf of the said Atlantic and Pacific Railroad Company, a party, and those of said Oliver Ames and Charles F. Choate as parties thereto, and they severally acknowledged the same to be their voluntary act and deed, and the said Uriel Crocker and William A. Hayes acknowledged the same to be the voluntary act and deed of said railroad company for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official and notarial seal, at said Boston, this 11th day of November, A. D. 1871.

[SEAL.]

SAML JENNISON,
*Commissioner for Missouri in Boston, and
Notary Public in and for Suffolk County.*

STATE OF MASSACHUSETTS,

County of Suffolk, City of Boston, ss :

Be it remembered that on this 11th day of November, in the year of our Lord one thousand eight hundred and seventy-one, before me, the undersigned, Samuel Jennison, a commissioner resident in the city of Boston, duly commissioned and qualified by the executive authority and under the laws of the State of Arkansas, to take the acknowledgment of deeds, &c., to be used or recorded in said State of Arkansas, and also a notary public in and for said county of Suffolk, duly commissioned and sworn, personally appeared in said Boston Uriel Crocker, president, and William A. Hayes, treasurer, of the Atlantic and Pacific Railroad Company, grantor in and to the foregoing instrument, and Oliver Ames and Charles F. Choate, also parties thereto, to me all personally well known to be such, who stated and acknowledged that they voluntarily, and said Uriel Crocker and William A. Hayes that said Atlantic and Pacific Railroad Company by them voluntarily executed and delivered the said foregoing instrument for the uses and purposes and considerations therein expressed, and desired the same to be certified.

In witness whereof I have hereunto set my hand and affixed my official and notarial seals, at said Boston, this 11th day of November, A. D. 1871.

[SEAL.]

SAMUEL JENNISON,

*Commissioner for Arkansas in Boston, and
Notary Public in and for the County of Suffolk.*

At a meeting of the stockholders of the Atlantic and Pacific Railroad Company held at the office of the company in Boston, October 19, 1871, the following resolutions were adopted :

Resolved, That in addition to the bonds mentioned in the preceding resolutions, this company issue a series of bonds not exceeding in amount twenty thousand dollars for each mile of the central division of its railroad extending from the western boundary of the States of Missouri and Arkansas to the river Rio Grande, and any branches thereof, for which, by the terms of its charter, its land-grant is forty alternate sections per mile, said bonds to bear date November 1, 1871, the principal and interest whereof shall be payable in gold coin of the United States, and to consist partly of bonds for one hundred dollars each, and partly of bonds for five hundred dollars each; that the said bonds be payable on November 1, 1901, and bear interest at the rate of six per cent. per annum, payable free of any United States Government tax at the maturity of the bond, or when sooner voted by the directors of this company, at its agency in the city of New York, and that said bonds be of like tenor, except as to the number and amounts thereof.

Resolved, That in order to secure the payment of said last-mentioned bonds, and the interest thereon, this company execute, acknowledge, and deliver to Oliver Ames and Charles F. Choate, or to such other trustee or trustees as the directors shall select, a mortgage or deed of trust, or in and by which this company shall mortgage to said trustees all the right, title, and interest which this company now has or shall hereafter acquire in and to all and singular those portions of the lands granted or intended to be granted in its charter by the United States, to aid in the construction of its railroad and telegraph line, which are situated on each side of said central division of its railroad, or any branches thereof

(where its land-grants amounts to forty alternate sections for each mile), and which are between the distances of twenty and forty miles on each side from the line of said central division, including any land to which the said company may be or become entitled under section 3 of its charter to make up any deficiency in the portions of land above mentioned. Said deed of mortgage shall provide that the net proceeds of the sale of the lands included therein, or such surplus thereof as shall remain after payment of any interest on said bonds, voted by the directors and not otherwise paid, shall be applied to the purchase of said bonds upon the terms and conditions to be set forth in said mortgage, and that said bonds shall be receivable at par in payment for any of said lands mortgaged to secure the same, which shall be sold by this company.

Resolved, That the form of bonds to be issued under the preceding resolution now submitted to this meeting be, and the same is hereby, approved, and that the president or vice-president and treasurer of this company be, and they are hereby, authorized and empowered to execute on behalf of this company, and as the act and deed thereof, the said bonds; and that the mortgage or deed of trust to secure the said bonds conform to the statement in said form of bond and be in such form as the directors shall approve; and that said president or vice-president and treasurer affix to said bonds and mortgage or deed of trust the corporate seal of this company and acknowledge the execution of said mortgage or deed of trust, and cause the same to be duly stamped & recorded.

A true copy.

Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

At a meeting of the directors of the Atlantic and Pacific Railroad Company held at the office of the company in Boston, October 19th, 1871, the following resolution was adopted:

Resolved, That the form of bond submitted to the board for the central division land-grant bond, with the form of mortgage to secure the same, be approved, and that the president or vice-president and treasurer be, and they hereby are, authorized to execute, acknowledge, and deliver the same to the trustees named therein.

A true copy.

Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

This indenture, made the first day of November, in the year of our Lord one thousand eight hundred and seventy-one, between the Atlantic and Pacific Railroad Company, a corporation duly formed and organized under an act of the Congress of the United States, party of the first part, and Oliver Ames and Charles F. Choate, both of the city of Boston and commonwealth of Massachusetts, parties of the second part:

Whereas the said Atlantic and Pacific Railroad Company is a corporation duly formed and organized under an act of the Congress of the United States, entitled "An act granting lands to aid in the con-

struction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866.

And whereas, in and by said act of Congress, certain lands were granted to said party of the first part to aid in the construction of such railroad and telegraph line from Missouri and Arkansas to the Pacific coast, it being therein provided as follows, to wit:

"SECTION 3. *And be it further enacted*, That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said Atlantic and Pacific Railroad Company, or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific Railroad."

And whereas, by an act of the Congress of the United States, entitled "An act to enable the Atlantic and Pacific Railroad Company to mortgage its road," approved April 20, 1871, it was enacted as follows, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled"—

"That the Atlantic and Pacific Railroad Company, organized under act of Congress of July 27, 1866, is hereby authorized to make and issue its bonds, in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them

on such terms, as its directors may deem advisable; and to secure said bonds the said company may mortgage its road, equipment, lands, franchises, privileges, and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: *Provided*, That if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with or appertain to that part of said road which shall have been constructed at the time of the foreclosure of said mortgage."

And whereas the said party of the first part, for the purpose of obtaining means to continue the construction and equipment of the said railroad and telegraph line and for its other lawful purposes, has resolved to make, issue, and negotiate its bonds to an amount not exceeding twenty thousand dollars for each mile of such parts of its railroad and the branches thereof as are located between the western boundaries of the States of Missouri and Arkansas and the eastern boundary of the State of Texas, and between the western boundary of the State of Texas and the river Rio Grande, to consist of a series of bonds, for one thousand dollars each, numbered consecutively from number 1 (one) upwards, and of a series of bonds for five hundred dollars each, also numbered consecutively from number 1 (one) upwards, and which bonds are to bear even date herewith, and, except as to the numbers and amounts thereof, are to be all of the same tenor and in the form following, that is to say:

No.]

UNITED STATES OF AMERICA.

[\$

ATLANTIC AND PACIFIC RAILROAD COMPANY, CENTRAL DIVISION.

Land grant bond, principal and interest payable in gold.

Know all men by these presents, that the Atlantic and Pacific Railroad Company is indebted to Oliver Ames and Charles F. Choate, both of Boston, Massachusetts, or bearer, in the sum of _____ dollars in gold coin of the United States of America, which the said Atlantic and Pacific Railroad Company hereby promises to pay to the said Oliver Ames and Charles F. Choate, or to the bearer hereof, in the gold coin aforesaid, on the first day of November, one thousand nine hundred and one, at the agency of said railroad company in the city of New York, together with interest thereon from the first day of November, one thousand eight hundred and seventy-one, at the rate of six per centum per annum, in like gold coin of the United States of America, payable at the maturity of this bond, or as may hereafter be provided by a resolution of the directors of said company; such interest being free from and without any deduction for any income or other tax, which now is, or hereafter may be, imposed upon the same by the Government of the United States, said company hereby agreeing to assume and pay any such tax.

This bond is one of an issue of bonds not exceeding twenty thousand dollars for each mile of such parts of the said company's railroad, and the branches thereof, as are located between the western boundary of the States of Missouri and Arkansas and the eastern boundary of the

State of Texas, and between the western boundary of said State of Texas and the river Rio Grande, consisting of a series of bonds for one thousand dollars each, numbered consecutively from number 1 (one) upwards, and of a series of bonds for five hundred dollars each, numbered consecutively from number 1 (one) upwards, which bonds are all of even date, and of like tenor, except as to the number and amounts thereof, and the payment whereof is equally secured by a certain deed of trust or mortgage, bearing even date herewith, to the said Oliver Ames and Charles F. Choate, as trustees, duly executed and delivered by the said Atlantic and Pacific Railroad Company, whereby the said company mortgages to said trustees all the right, title, and interest which the said company now has, or may hereafter acquire, of, in, and to all of those portions of the lands coterminous with said parts of said railroad and its branches, and granted or intended to be granted to it by a certain act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866, which are distant twenty miles from the said parts of said railroad and its branches on either side thereof, and extend to the distance of forty miles therefrom on each side thereof.

It is provided in the said deed of trust or mortgage, that the net proceeds of the sale of any of the lands included therein, which shall be sold by the said railroad company, shall be paid to the trustees under said deed, to be applied to the payment of the accrued interest upon the said bonds (if the same shall have been provided to be paid by a resolution of the directors of the said company), or to the purchase and cancellation of the said bonds at the times, in the manner, and upon the terms expressed in said deed; and it is further provided in said deed that said bonds shall be receivable at par in payment for any and all such lands which shall be sold as aforesaid; and this bond is entitled to the benefit of such provisions.

This bond shall pass by delivery, or by transfer upon the books of said railroad company, at the option of the holder.

After a registration of ownership certified hereon by the treasurer or transfer agent of said company, no transfer, except upon the books of the said railroad company, shall be valid, unless the preceding transfer shall have been to bearer, and transferability by delivery thereby restored; but this bond shall continue susceptible of successive registrations and transfers to bearer, as aforesaid, at the option of the holder.

This bond shall not become valid or obligatory until it shall have been authenticated by a certificate indorsed hereon, and duly signed by the trustees, or by the successors of said trustees, in the trust created by said deed.

In witness whereof the said Atlantic and Pacific Railroad Company has caused its corporate seal to be affixed hereto, and the same to be attested by the signatures of its president and treasurer this first day of November, A. D. 1871.

President.
Treasurer.

And whereas, for the purpose, among other things, of identifying the said bonds as those which are entitled to the benefit of the security afforded by these presents, each of them is to have indorsed upon it a certificate signed by the said parties of the second part, or by their successors in the trusts hereby created, in the following words, that is to say: "We hereby certify that this is one of the issue of bonds men-

tioned in the mortgage executed by the Atlantic and Pacific Railroad Company to us, within mentioned, dated November 1st, 1871, and intended to be secured thereby." And each of the said bonds is to have affixed to it the requisite amount of stamps required by the internal-revenue laws of the United States.

And whereas the said party of the first part being about to issue and negotiate some of the said bonds for the purpose aforesaid, have also resolved to secure the principal and interest of all of the same, or of such of them as may be from time to time issued or negotiated, by a mortgage of the premises hereinafter described, and conveyed to the said parties of the second part in trust for the equal benefit of all of the persons and corporations, who may at any time become the holders of any of the said bonds, without any preference to the holder of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiating of the same.

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises and of the sum of one dollar to it in hand duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order the better to secure the payment of the principal and interest of the said bonds, according to the tenor thereof, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of the said parties of the second part, and the heirs and assigns of such survivor, all of the right, title, and interest which the said party of the first part, by reason, or for, or in respect of the construction of those parts of the central division of its railroad and telegraph line, or any part or branch thereof, which are or shall be located between the western boundary of the States of Missouri and Arkansas and the eastern boundary of the State of Texas, and between the western boundary of the said State of Texas and the river Rio Grande, now has, or shall or may hereafter at any time have or acquire of, in, and to all those portions of the lands situated in the Indian Territory or the Territory of New Mexico coterminous with, or appurtenant to, said parts of said central division of said railroad and its branches, and granted, or intended to be granted, to the said party of the first part, as aforesaid, which are or shall be distant twenty miles from the said parts of said railroad and its branches, on each side thereof, and which do or shall extend to the distance of forty miles from said parts of said railroad and its branches, on each side thereof; and also all of the right, title, and interest of the said party of the first part of, in, and to any and all lands, wherever situated, which under and by virtue of the provisions of the said above-recited third section of the said act of Congress the said party of the first part is authorized to select, under the direction of the Secretary of the Interior, in lieu of any of the said lands hereinbefore referred to, of which the said party of the first part has been or may be deprived by reason of the same having been granted, sold, reserved, occupied for homestead settlers or pre-empted, or otherwise disposed of, as provided in the said third section of the said act of Congress, approved July 27, 1866, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part,

of, in, and to the same, and any and every part and parcel thereof, with the appurtenances.

To have and to hold the said lands and premises hereinbefore granted unto the said parties of the second part, as joint tenants, and not as tenants in common, and unto the survivor of the said parties of the second part, his heirs and assigns; in trust for the security and benefit of all and every the person or persons or bodies corporate who shall be, or at any time become, the holder or holders of the said bonds hereby intended to be secured, or of such of them as shall be issued and negotiated by the said party of the first party, without preference to the holder of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiating of the same, upon the trusts and to and for the uses and purposes hereinafter expressed, that is to say:

ARTICLE FIRST. In case default shall be made in the payment of the principal of said bonds, or any of them, or of the interest thereon as therein provided, it shall be lawful for the trustees under these presents personally, or by attorneys or agents, to enter into and upon all and singular the lands and premises aforesaid, and take actual possession of the same; and after such entry, or other entry, or without entry, to sell and dispose of all and singular the said lands and premises, in one or more parcels, as the said trustees shall deem most expedient, and all right, title, interest, benefit, and equity of redemption of the said party of the first part, its successors or assigns therein, at public auction in the city of Boston, or in the city of New York, or in the city of Saint Louis, or in any county or town in which the said lands or any part thereof may be situate: *Provided*, That preparatory to such sale or sales, the said trustees shall give public notice of the time and place thereof, by advertisement, published not less than once in each week, for six successive weeks, in one newspaper of good circulation in each of the cities of Boston, New York, and Saint Louis, and in one newspaper (if any such there shall then be) published in the county in which the said trustees shall make such sale. And the said trustees shall be and are hereby fully authorized and empowered, after such publication, to make such sale or sales, at the time and place mentioned in such advertisement, or to adjourn the same from time to time in their discretion, and, if so adjourning, to make the same, without further notice, at the time to which the same may be so adjourned, and at the place mentioned in the advertisement of sale; and as the attorneys of the party of the first part hereto, for that purpose by these presents duly authorized, constituted, and appointed, or otherwise, to execute and deliver to the purchaser or purchasers at any such sale, or to his or their assigns, a good and sufficient deed or deeds of conveyance in the law for the lands which shall be sold as aforesaid to such purchaser or purchasers, whereby the same shall be granted and assured in fee-simple to such purchaser or purchasers, or to his or their heirs or assigns; and any sale made as aforesaid shall be a perpetual bar, both in law and equity, against the said party of the first part hereto, its successors and assigns, and against any and all persons claiming or to claim the premises thus sold, or any part thereof, by, from, through, or under the said party of the first part, its successors or assigns.

And it is hereby further declared and agreed, that it shall be lawful for the said trustees to deduct from the proceeds of such sale all expenses connected therewith—including proper compensation for their own services, and the fees and charges of any attorneys and counsel by them employed in the premises, and also any advances or liabilities

properly made or incurred by them (the said trustees) in connection with the said lands and premises, or any part or parcel thereof, while the said lands or premises shall have been in their possession, and also the amount of any taxes and assessments upon the said premises, or any part thereof; and, after making the deductions aforesaid, it shall be lawful for the said trustees, and it shall be their duty, to apply the balance of the said proceeds of sale, together with any other moneys, if any, received by them in connection with said premises, to the payment of the principal of said bonds, and of the interest accrued thereon, ratably, and without discrimination or preference as between principal and interest, and without regard to the time of the actual issue of said bonds; and if, after paying in full the principal of said bonds, and all interest accrued thereon, a surplus of said moneys shall remain, to pay over such surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall direct.

And it is hereby declared and agreed, that the receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers at any such sale, for the purchase-money of any lands which shall be sold as aforesaid, and that such purchaser or purchasers, after paying such purchase-money and receiving such receipt, shall not be liable to see to the application of such purchase-money, or be in any manner whatsoever answerable for any misapplication or non-application thereof.

ARTICLE SECOND. At any sale of the lands aforesaid, or any part thereof, whether the same be made in virtue of the power herein granted or by judicial authority, if such sale would discharge or impair the lien created by these presents, the said trustees shall be, and they are hereby, authorized and empowered to bid for and purchase, in behalf of all the holders of the bonds secured by this instrument which shall be then outstanding, the property so sold, or any part thereof, in the proportion of the respective interests of such bondholders: *Provided*, That nothing herein contained shall authorize the said trustees to bid on behalf of all the holders of said bonds a sum exceeding the aggregate amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale, for the entire property then held upon the trusts of this indenture, or an amount reasonably proportionate thereto, for any part of the said property.

ARTICLE THIRD. The net proceeds of the sales of any of the lands hereinbefore granted or conveyed, or expressed or intended so to be, which shall at any time hereafter be sold by the said party of the first part, its successors or assigns, while the said bonds, or any thereof, remain outstanding, shall be paid over by the said party of the first part, its successors or assigns, upon the receipt thereof, or within a reasonable time thereafter, to the trustees under this indenture, and the same, together with all interest thereon, which shall come within the disposal of the said trustees, shall be applied, semi-annually, first, to the payment of the accrued interest upon the said bonds (if the same shall have been provided to be paid by a resolution of the directors of the said party of the first part, and shall remain unpaid); and, secondly (or if there shall have been no resolution of the said directors providing for the payment of such interest), to the purchase and cancellation of the then outstanding bonds secured by these presents, if the same can be purchased at not exceeding a premium of ten per cent. upon the par value thereof, with the interest accrued thereon: *Provided*, That, preparatory to such purchases of bonds, the trustees shall advertise, once in each week for three weeks in one or more of the daily newspapers published in the cities of New

York and Boston, for bonds to be sold, and shall make such purchases of bonds at the lowest price or prices at which the said bonds may be offered, pursuant to such advertisement, or at such lower price or prices as the said trustees may, with reasonable diligence, be able to obtain the same for, at public or private sale; and if the said trustees shall not be able to obtain said bonds at not exceeding the rate aforesaid within thirty days after the expiration of such advertisement, the said moneys shall be deposited by the said trustees in some safe depository, approved by the board of directors of said company, in either of the cities of New York or Boston, and thereafter the said moneys, with all accumulations of interest thereon which may come within the disposal of said trustees, shall be applied, from time to time, to the purchase of said bonds, at not exceeding the rate aforesaid, whenever the same can be obtained at not exceeding such rate. The said party of the first part may at any time authorize the purchase of said bonds at a higher rate than the rate aforesaid, but the purchase thereof at such higher rate shall be within the discretion of said trustees notwithstanding such authorization.

ARTICLE FOURTH. The trustees under these presents shall, at all times, be authorized to employ and appoint such clerks, assistants, agents, and attorneys as they shall reasonably require, to discharge any duty under these presents in relation to the lands aforesaid, and all clerks, assistants, agents, and attorneys so necessarily or properly employed or appointed, shall be paid by the party of the first part, its successors or assigns, from the proceeds of the sales of said lands; and the said trustees shall be fully authorized to constitute and appoint an agent or attorney to execute conveyances, releases, or other instruments necessary and proper to be executed by them to release from the lien and operation of these presents any of the said lands which shall be sold as hereinafter authorized, and to act generally in behalf of said trustees, in respect thereto, which agent may be removed by said trustees, in their discretion, and another appointed in his place; and all instruments executed and acts done by such agent, within the scope of his authority, in respect to said lands, shall be as legal and valid as if executed or done by the said trustees personally.

The said party of the first part shall cause the lands aforesaid to be carefully valued and appraised in such divisions or parcels as shall seem to it most expedient for the purpose of selling the same, and in such valuation and appraisement all lands containing, or supposed to contain, coal or iron, shall be distinguished from those which are valued as agricultural, and true copies of such valuation and appraisement shall be made, one of which copies, certified by the president of the said party of the first part, under the corporate seal thereof, shall be deposited with each of the said trustees, but the said valuation and appraisement may, from time to time, be changed in regard to the whole or any part of the lands included therein, provided a copy of such new valuation shall be deposited as aforesaid.

And it is hereby declared and decreed that the said party of the first part, and its successors, shall be entitled to contract for the sale of said lands, or any part or parcel thereof, at the appraised value aforesaid, and may sell the same partly on credit: *Provided*, That before conveyance of any lands so sold shall be made to the purchaser, any amount of purchase-money remaining unpaid shall be secured by a purchase-money mortgage upon the premises sold, which purchase-money mortgage shall be duly assigned to the trustees under these presents, at or before the delivery of such conveyance or release.

ARTICLE FIFTH. The trustees shall convey, by way of release or

otherwise, to any party or parties designated by the said party of the first part, its successors or assigns, or release from the lien and operation of these presents in such manner as such trustees may be advised, any and all lands granted or conveyed by this indenture, or expressed or intended so to be, which shall or may be hereafter sold by the said party of the first part, its successors or assigns: *Provided*, That such lands shall not be sold by the said party of the first part, its successors or assigns, at less than the appraised value thereof, according to the appraisement theretofore delivered to said trustees, without the consent in writing of said trustees, and that conveyances and releases shall not be executed by the trustees unless the net proceeds of the sales of the lands so sold shall be paid over to them by the said party of the first part, its successors or assigns, or by the purchaser of such land, to be by said trustees applied as in article third of these presents is set forth.

And it is hereby further declared and agreed that the bonds secured hereby shall be received as cash at their par value, and accrued interest by the said party of the first part, its successors and assigns, in payment for any of said lands hereby mortgaged which may be sold by said party of the first part, its successors or assigns.

ARTICLE SIXTH. If the said party of the first part shall well and truly pay the principal of each of the said bonds when the same shall become payable, and all interest thereon, as such interest shall mature, according to the tenor of such bond, then and in that case, that is to say, after the payment of said bonds and all interest thereon in full, all the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust by these presents created, shall cease, determine, and become void, otherwise the same shall be and remain in full force and virtue.

ARTICLE SEVENTH. It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee under these presents for the time being, whether such trustees or trustee be the parties of the second part, or the survivor of them, or any successors or successor of the said parties of the second part, or either of them, in said trust; and whenever a vacancy in the trust shall exist, the said word "trustees," as used herein, shall be construed to mean the surviving or continuing trustee. And it is further mutually agreed, that the said trustees shall be entitled to just compensation for all services hereafter to be rendered by them in this trust, which compensation shall be paid by the said party of the first part, its successors or assigns, from the proceeds of the sales of the lands hereby mortgaged; that the said trustees shall not be responsible for the default or misconduct of each other or of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care; that the said trustees, or either of them, may resign, and be discharged of the trust created by these presents, by giving notice in writing to the party of the first part, or its successors, three months before such resignation shall take effect, or such shorter notice as the said party of the first part, or its successors, may accept; that the said trustees, or either of them, may be removed by the holders of a majority in interest, of the whole amount of said bonds, by an instrument in writing, signed by such majority in interest: *Provided*, That such removal shall be subject to the approval of, and shall not take effect until approved by the board of directors of the said party of the first part; that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or

unfit to act in said trust, a successor to such trustee shall be appointed by the other of the parties of the second part, or by the remaining trustee, at the time being, by an instrument in writing under his hand and seal, and so, from time to time, in case of the death, resignation, removal, or unfitness to act of either of the trustees, at the time being, his place may be filled in like manner by the remaining trustee. But in case of neglect to appoint such new trustee at any time when a vacancy shall occur, the party of the first part may by an instrument in writing, authorized by its board of directors, and duly executed under its corporate seal, make such appointment, and it is hereby covenanted and agreed that any new trustee appointed as aforesaid shall immediately, upon his appointment, and without any further act, deed, or conveyance, become, and be vested with all of the estate, trust, rights, powers, and duties of the trustee in whose place he shall have been appointed; but, nevertheless, the respective parties hereto, and their respective successors and assigns, shall, and will upon request, make, execute, and deliver all such releases, conveyances, and assurances as shall be appropriate to vest in and confirm and assure to such new trustee such estate, trust, rights, powers, and duties according to the intent above expressed.

And the said party of the first part, for itself, its successors and assigns, hereby, for the consideration aforesaid, further covenants, promises, and agrees, to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust by these presents created, that the said party of the first part, its successors or assigns, shall and will well and truly pay unto the holder or holders of said bonds the principal and interest thereof, as such principal and interest shall become payable, according to the tenor of said bonds respectively.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any of the said lands intended to be mortgaged by these presents, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same, and every part and parcel thereof, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part, or the survivor of them, or their or his successors in the trust by these presents created.

And the said party of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that the said party of the first part, its successors and assigns, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the said parties of the second part, or the survivor of them, or their or his successors in the trust hereby created, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto the said parties of the second part, or the survivor of them, or their or his successors in said trust, upon the trusts herein expressed, all and singular the lands hereinbefore mentioned or described, as by them or him, or by their or his counsel learned in the law, shall be reasonably advised, devised, or required.

In witness whereof the said Atlantic and Pacific Railroad Company, party of the first part, has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer; and the said Oliver Ames and Charles F. Choate have hereunto set their hands and seals to evidence the acceptance of the trust hereby created, the day and year first above written.

ATLANTIC AND PACIFIC RAILROAD COMPANY,
 [SEAL.] By URIEL CROCKER, *President*.
 WM. A. HAYES, *Treasurer*.
 OLIVER AMES. [SEAL.]
 CHARLES F. CHOATE. [SEAL.]

Sealed and delivered in the presence of—

HORATIO ADAMS.
 SAM'L JENNISON.

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss :

I, Samuel Jennison, a notary public in and for said county of Suffolk, duly commissioned and sworn, and residing in the city of Boston, do certify that in said Boston, on this 11th day of November, in the year of our Lord one thousand eight hundred and seventy-one, personally appeared before me, Uriel Crocker, president, and Wm. A. Hayes, treasurer of the Atlantic and Pacific Railroad Company, the corporation described in the foregoing instrument, and Oliver Ames and Charles F. Choate, all personally well known to me to be the same persons who have executed said instrument, the said Uriel Crocker and Wm. A. Hayes on behalf of said Atlantic and Pacific Railroad Company, a party, and said Oliver Ames and Charles F. Choate, as parties thereto, and they severally acknowledged to me that they executed the same, and that the same was their free and voluntary act and deed, and said Uriel Crocker and Wm. A. Hayes that the same was the free and voluntary act and deed of said company, executed by them, respectively, for the consideration, uses, and purposes therein set forth.

In witness whereof I have hereunto set my hand and notarial seal this 11th day of November, A. D. 1871.

[SEAL.] SAMUEL JENNISON,
Notary Public in and for Suffolk County.

[Stamp.]

At a meeting of the stockholders of the Atlantic and Pacific Railroad Company, held at the office of the company in Boston, October 19, 1871, the following resolutions were adopted:

Resolved, That this company execute, acknowledge, and deliver to George Tyler Bigelow and John James Dixwell, as trustees, a confirmatory mortgage or deed of trust, confirming to said trustees the indenture made by this company under date of July 1, 1868, by which the company conveyed to said trustees all the lands to which the company was entitled in the State of Missouri, to secure the payment of \$3,000,000 of land mortgage bonds, and extending the lien created by said deed to all lands to which the company has any right, title, interest, claim, or demand by reason of the construction of that section of its railroad which is located in the State of Missouri.

Resolved, That the form of said deed of trust now submitted be, and the same is hereby, approved, and that the president or vice-president and treasurer of the company be, and they are hereby, authorized and empowered to execute on behalf of this company, and as the act and deed thereof, the said deed of trust in such form or in such modified and corrected form as the directors shall approve, and that said president or vice-president and treasurer affix to said deed the corporate seal of this company, and acknowledge the execution of said deed, and cause the same to be duly stamped and recorded.

A true copy.

Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

[Stamp.]

At a meeting of the directors of the Atlantic and Pacific Railroad Company, held at the office of the company, in Boston, October 19th, 1871, the following resolution was adopted:

Resolved, That the form of mortgage submitted to the board for a confirmatory mortgage to George Tyler Bigelow and John James Dixwell be approved, and that the president or vice-president and treasurer be, and they hereby are, authorized to execute, acknowledge, and deliver the same to the trustees named therein.

A true copy.

Attest:

[SEAL.]

WM. A. HAYES,
Secretary.

The Atlantic and Pacific Railroad Company to George Tyler Bigelow and John James Dixwell.

CONFIRMATORY MORTGAGE.

(Endorsement:) Land grant record, vol. 2, p. 212. Recorded November 18, 1871.

This indenture, made the first day of July, in the year of our Lord one thousand eight hundred and sixty-eight, between the Atlantic and Pacific Railroad Company, a corporation duly formed and organized under an act of the Congress of the United States, party of the first part, and George Tyler Bigelow and John James Dixwell, both of the city of Boston, and commonwealth of Massachusetts, parties of the second part:

Whereas the said Atlantic and Pacific Railroad company is a corporation duly formed and organized under an act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866.

And whereas in and by said act of Congress certain lands were granted to the said party of the first part to aid in the construction of such railroad and telegraph line from Missouri and Arkansas to the Pacific coast, it being therein provided as follows, to wit:

"SECTION 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors

and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'

And whereas the said party of the first part has resolved, for the purpose of obtaining means to construct and equip the said railroad and telegraph line, to issue a series of bonds, amounting in the aggregate to three millions of dollars, payable in twenty years from the date hereof, in gold coin of the United States of America, and bearing interest at the rate of six per centum per annum, payable semi-annually, in said gold coin, and to secure the payment of said bonds and all interest thereon by a deed of trust or mortgage upon all and singular the lands granted by said act of Congress, which are situate within the limits of the State of Missouri; which said series of bonds consists of two thousand bonds of one thousand dollars each, numbered consecutively from 1 to 2,000, inclusively, and two thousand bonds, of five hundred dollars each, numbered consecutively from 2,001 to 4,000, inclusively, all of which are of like tenor (except as to the numbers and amounts thereof), and in the form following:

No. .] UNITED STATES OF AMERICA, STATE OF MISSOURI. [\$.

ATLANTIC AND PACIFIC RAILROAD COMPANY.

Land-mortgage bond.—Principal and interest payable in gold.

Know all men by these presents that the Atlantic and Pacific Railroad Company is indebted to George Tyler Bigelow and John James Dixwell, both of Boston, Massachusetts, or bearer, in the sum of dollars, in gold coin of the United States of America, which the said Atlantic and Pacific Railroad Company hereby promises to pay to the said George Tyler Bigelow and John James Dixwell, or to the bearer hereof, in the gold coin aforesaid, on the first day of July, one thousand eight hundred and eighty-eight, at the agency of said railroad company in the city of New York, with interest thereon from the first day of July, one thousand eight hundred and sixty-eight, at the rate of six per centum per annum, payable semi-annually in gold coin of the United States of America, at the said agency, on the first days of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due.

And it is hereby expressly declared and agreed that, in case default shall be made in the payment of any semi-annual instalment of interest on this bond, when such interest shall become payable and be demanded, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, the principal of this bond shall become due and payable in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned.

This bond is one of a series of bonds, amounting in the aggregate to three millions of dollars, and consisting of two thousand bonds of one thousand dollars each, numbered consecutively from 1 to 2,000, inclusively, and two thousand bonds of five hundred dollars each, numbered consecutively from 2,001 to 4,000, inclusively; all of which bonds are of like tenor and date (except as to the numbers and amounts), and the payment whereof is equally secured by a certain deed of trust or mortgage bearing even date herewith, duly executed and delivered by the said Atlantic and Pacific Railroad Company to the said George Tyler Bigelow and John James Dixwell, as trustees, whereby the said railroad company conveys to the said trustees all the right, title, and interest which the said railroad company now has, or shall hereafter acquire, of, in, and to all lands situate within the State of Missouri, which were granted to the said railroad company by a certain act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific coast," approved July 27th, 1866; the extent and aggregate area of the lands included in said deed being estimated at about one million of acres.

It is provided in the said deed of trust or mortgage that net proceeds of the sale of any of the lands included therein which shall be sold by the said railroad company, shall be paid to the trustees under said deed, to be applied, semi-annually, first, to the payment of the interest on said bonds, and, secondly, to the purchase and cancellation of said bonds in the manner and upon the terms expressed in said deed; and it is further provided in said deed that said bonds shall be receivable at par in payment for any and all such lands which shall be sold as aforesaid; and this bond is entitled to the benefit of such provisions.

This bond shall pass by delivery, or by transfer upon the books of the said railroad company at the office of the treasurer thereof.

After a registration of ownership, certified hereon by the treasurer or transfer agent of said company, no transfer except upon the books of the said railroad company shall be valid, unless the last transfer shall have been to bearer, and transferability by delivery thereby restored; but this bond shall continue susceptible of successive registrations and transfers to bearer, as aforesaid, at the option of the holder.

This bond shall not become valid or obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the trustees or the successors of said trustees, in the trust created by said deed.

In witness whereof the said Atlantic and Pacific Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer, and has also caused the coupons hereto annexed to be signed by its treasurer, this first day of July, A. D. 1868.

President.
Treasurer.

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises and of the sum of one dollar to it in hand duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and in order the better to secure the payment of the principal and interest of the said bonds, according to the tenor thereof and the terms of the coupons thereto annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivor of the said party of the second part, and the heirs and assigns of such survivor, all and singular the lands situate within the limits of the State of Missouri, which are granted or intended to be granted by said act of Congress to the said party of the first part, to aid in the construction of the railroad and telegraph line mentioned in said act, the extent and aggregate area of the lands situate within the said State of Missouri, which are granted by said act and which are conveyed or intended to be conveyed hereby to the said party of the second part, being estimated at about one million of acres; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part and parcel thereof, with the appurtenances, excepting and reserving always from the operation of this instrument any and all lands granted or intended to be granted to the South Pacific Railroad Company, a corporation of the State of Missouri, by a certain act of the general assembly of the said State of Missouri, entitled "An act to dispose of the Southwest Pacific Railroad, and other property belonging thereto, and to secure the early completion of said road," approved March 17th, 1868; it being hereby expressly provided that none of the lands granted to the said South Pacific Railroad Company shall be deemed or taken to be included herein; and excepting and reserving also from the lien and operation of these presents, any and all lands or premises that may be necessary and proper for the construction and working of the Atlantic and Pacific Railroad and the South Pacific

Railroad, or either of said roads, to the extent of one hundred feet in width on each side of the line of said Atlantic and Pacific Railroad and the line of said South Pacific Railroad, and such greater width (if any) as may be required for the purpose of excavation or embankment; and excepting, also, any lands or premises that may be necessary and proper for turnouts, standing-places for cars, depots, station-houses, or any other structures required in the construction and working of said Atlantic and Pacific Railroad or said South Pacific Railroad, or any part of either thereof.

To have and to hold the said lands and premises hereinbefore granted unto the said parties of the second part, as joint tenants and not as tenants in common, and unto the survivor of the said parties of the second part, his heirs and assigns; but in trust, nevertheless, to and for the uses and purposes and upon the trusts hereinafter expressed, that is to say :

ARTICLE FIRST. In case default shall be made in the payment of any semi-annual installment of interest on the said bonds, or any of them, when such interest shall become payable according to the tenor of such bond or the terms of any coupon thereto annexed, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of said bonds, or any of them, it shall be lawful for the trustees under these presents personally, or by attorneys or agents, to enter into and upon all and singular the lands and premises aforesaid, and take actual possession of the same; and after such entry, or other entry, or without entry, to sell and dispose of all and singular the said lands and premises, in one or more parcels, as the said trustees shall deem most expedient, and all right, title, interest, benefit, and equity of redemption of the said party of the first part, its successors or assigns therein, at public auction in the city of Boston or in the city of New York, or in any of the counties in the State of Missouri in which the said lands, or any part thereof, may be situate : *Provided*, That preparatory to such sale or sales, the said trustees shall give public notice of the time and place thereof, by advertisement, published not less than once in each week for six successive weeks, in one newspaper of good circulation in each of the cities of Boston, New York, and St. Louis, and in one newspaper (if any such there shall then be) published in the county in which the said trustees shall make such sale. And the said trustees shall be, and are hereby, fully authorized and empowered, after such publication, to make such sale or sales, at the time and place mentioned in such advertisement, or to adjourn the same from time to time in their discretion, and if so adjourning, to make the same, without further notice, at the time to which the same may be so adjourned, and at the place mentioned in the advertisement of sale; and as the attorneys of the party of the first part hereto, for that purpose by these presents duly authorized, constituted, and appointed, or otherwise, to execute and deliver to the purchaser or purchasers at any such sale, or to his or their assigns, a good and sufficient deed or deeds of conveyance in the law for the lands which shall be sold as aforesaid to such purchaser or purchasers, whereby the same shall be granted and assured in fee simple to such purchaser or purchasers, or to his or their heirs or assigns; and any sale made as aforesaid shall be a perpetual bar, both in law and equity, against the said party of the first part hereto, its successors and assigns, and against any and all persons claiming or to claim the premises thus sold, or any part thereof, by, from, through, or under the said party of the first part, its successors or assigns.

And it is hereby further declared and agreed that it shall be lawful for the said trustees to deduct from the proceeds of such sale all expenses connected therewith, including proper compensation for their own services, and the fees and charges of any attorneys and counsel by them employed in the premises, and also any advances or liabilities properly made or incurred by them (the said trustees) in connection with the said lands and premises, or any part or parcel thereof, while the said lands or premises shall have been in their possession, and also the amount of any taxes and assessments upon the said premises, or any part thereof; and after making the deductions aforesaid, it shall be lawful for the said trustees, and it shall be their duty, to apply the balance of the said proceeds of sale, together with any other moneys, if any, received by them in connection with said premises, to the payment of the principal of said bonds, and of the interest accrued thereon, ratably, and without discrimination or preference as between principal and interest, or as between the bonds and coupons representing the same, whether or not the said principal shall have, by the terms of said bonds, or of these presents, previously become due, and without regard to the time of the actual issue of said bonds; and if, after paying in full the principal of said bonds, and all interest accrued thereon, a surplus of said moneys shall remain, to pay over such surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall direct.

And it is hereby declared and agreed, that the receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers at any such sale, for the purchase-money of any lands which shall be sold as aforesaid, and that such purchaser or purchasers, after paying such purchase-money and receiving such receipt, shall not be liable to see to the application of such purchase-money, or be in any manner whatsoever answerable for any misapplication or non-application thereof.

ARTICLE SECOND. At any sale of the lands aforesaid, or any part thereof, whether the same be made in virtue of the power herein granted or by judicial authority, if such sale would discharge or impair the lien created by these presents, the said trustees shall be, and they are hereby, authorized and empowered to bid for and purchase, in behalf of all the holders of the bonds secured by this instrument which shall be then outstanding, the property so sold, or any part thereof, in the proportion of the respective interests of such bondholders: *Provided*, That nothing herein contained shall authorize the said trustees to bid on behalf of all the holders of said bonds a sum exceeding the aggregate amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale, for the entire property then held upon the trusts of this indenture, or an amount reasonably proportionate thereto, for any part of the said property.

ARTICLE THIRD. In case default shall be made in the payment of any half-yearly installment of interest on said bonds, or any of them, when such interest shall become payable according to the tenor of said bond or of any coupon thereto annexed, and such installment of interest shall remain unpaid and in arrear for a period of one year after the same shall have been demanded and become payable as aforesaid, then and from thenceforth the principal sum of each of the bonds aforesaid shall, at the option of the trustees hereunder, become and be immediately due and payable, notwithstanding that the time limited in the said bonds for the payment thereof may not then have elapsed; but a majority in interest of the holders of all the bonds aforesaid, which shall

be then outstanding, shall have the power, by an instrument in writing under their hands and seals, at any time before the actual payment and acceptance of the interest in arrear, to instruct the trustees to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority in interest shall prescribe; and such majority in interest may, by such instrument in writing, annul or reverse any declaration of the trustees as to whether the said bonds shall or not become immediately payable: *Provided always*, That no act or omission either of the trustees or the bondholders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default.

ARTICLE FOURTH. The net proceeds of the sales of any of the lands hereinbefore granted or conveyed, or expressed or intended so to be, which shall at any time hereafter be sold by the said party of the first part, its successors or assigns, while the said bonds or any thereof remain outstanding, shall be paid over by the said party of the first part, its successors or assigns, upon the receipt thereof, or within a reasonable time thereafter, to the trustees under this indenture, and the same, together with all interest thereon, which shall come within the disposal of the said trustees, shall be applied, semi-annually, first, to the payment of the interest on the said bonds, and, secondly, to the purchase and cancellation of the then outstanding bonds secured by these presents, if the same can be purchased at not exceeding a premium of ten per cent. upon the par value thereof, with the interest accrued thereon: *Provided*, That, preparatory to such purchases of bonds, the trustees shall advertise once in each week for three weeks in one or more of the daily newspapers published in the cities of New York and Boston, for bonds to be sold, and shall make such purchases of bonds at the lowest price or prices at which the said bonds may be offered, pursuant to such advertisement, or at such lower price or prices as the said trustees may, with reasonable diligence, be able to obtain the same at public or private sale; and if the said trustees shall not be able to obtain said bonds at not exceeding the rate aforesaid within thirty days after the expiration of such advertisement, the said moneys shall be deposited by the said trustees in some safe depository, approved by the board of directors of said company, in either of the cities of New York or Boston, and thereafter the said moneys, with all accumulations of interest thereon which may come within the disposal of said trustees, shall be applied, from time to time, to the purchase of said bonds, at not exceeding the rate aforesaid, whenever the same can be obtained at not exceeding such rate. The said party of the first part may at any time authorize the purchase of said bonds at a higher rate than the rate aforesaid, but the purchase thereof at such higher rate shall be within the discretion of said trustees, notwithstanding such authorization.

ARTICLE FIFTH. The trustees under these presents shall at all times be authorized to employ and appoint such clerks, assistants, agents, and attorneys as they shall reasonably require, to discharge any duty under these presents in relation to the lands aforesaid, and all clerks, assistants, agents, and attorneys so necessarily or properly employed or appointed shall be paid by the party of the first part, its successors or assigns, from the proceeds of the sales of said lands; and the said trustees shall be fully authorized to constitute and appoint an agent or attorney to execute conveyances, releases, or other instruments necessary and proper to be executed by them to release from the lien and operation of these presents any of the said lands which shall be sold as hereinafter authorized, and to act generally in behalf of said trustees

in respect thereto, which agent may be removed by said trustees in their discretion, and another appointed in his place; and all instruments executed and acts done by such agent, within the scope of his authority, in respect to said lands, shall be as legal and valid as if executed or done by the said trustees personally.

The said party of the first part shall cause the lands aforesaid to be carefully valued and appraised in such divisions or parcels as shall seem to it most expedient for the purpose of selling the same, and in such valuation and appraisal all lands containing, or supposed to contain, coal or iron shall be distinguished from those which are valued as agricultural, and true copies of such valuation and appraisal shall be made, one of which copies, certified by the president of the said party of the first part, under the corporate seal thereof, shall be deposited with each of the said trustees, but the said valuation and appraisal may from time to time be changed in regard to the whole or any part of the lands included therein, provided a copy of such new valuation shall be deposited as aforesaid.

And it is hereby declared and agreed, that the said party of the first part, and its successors, shall be entitled to contract for the sale of said lands, or any part or parcel thereof, at the appraised value aforesaid, and may sell the same partly on credit: *Provided always*, That no division or parcel of said lands shall be sold at less than three dollars per acre, except with the consent and approval in writing of the said trustees: *And provided further*, That before conveyance of any lands so sold shall be made to the purchaser, any amount of purchase-money remaining unpaid shall be secured by a purchase-money mortgage upon the premises sold, which purchase-money mortgage shall be duly assigned to the trustees under these presents, at or before the delivery of such conveyance or release.

ARTICLE SIXTH. The trustees shall convey, by way of release or otherwise, to any party or parties designated by the said party of the first part, its successors or assigns, or release from the lien and operation of these presents in such manner as such trustees may be advised, any and all lands granted or conveyed by this indenture, or expressed or intended so to be, which shall or may be hereafter sold by the said party of the first part, its successors or assigns: *Provided*, That such lands shall not be sold by the said party of the first part, its successors or assigns, at less than the appraised value thereof, according to the appraisal theretofore delivered to said trustees, nor at less than three dollars per acre, without the consent in writing of said trustees, and that conveyances and releases shall not be executed by the trustees unless the nett proceeds of the sales of the lands so sold shall be paid over to them by the said party of the first part, its successors or assigns, or by the purchaser of such land, to be by said trustees applied to the payment of interest on said bonds, and the purchase and cancellation thereof, as in article fourth of these presents set forth.

And it is hereby further declared and agreed, that the bonds secured hereby shall be received as cash at their par value, and accrued interest, by the said party of the first part, its successors and assigns, in payment for any of said lands which may be sold by said party of the first part, its successors or assigns.

ARTICLE SEVENTH. It is hereby declared and agreed, that in case default shall be made in the payment of interest on any of said bonds, and such interest shall remain unpaid and in arrear for the period of one year after the same shall have been demanded, or in case default shall be made in the payment of the principal of said bonds, or any of

them, it shall be the duty of the trustees under these presents, to exercise the powers of entry and sale hereinbefore granted, or to proceed by suit or suits, or other proceedings in equity or at law, to enforce the rights of the bondholders under these presents, upon a requisition being made in writing to said trustees, duly executed by not less than a majority in interest of the holders of said bonds then outstanding, under their hands and seals, provided that adequate indemnity shall be given said trustees against all costs and expenses of the proceedings which they shall be required to take by such requisition.

ARTICLE EIGHTH. If the said party of the first part shall well and truly pay the principal of each of the said bonds when the same shall become payable, and all interest thereon, as such interest shall mature, according to the tenor of such bond, and the terms of the coupons thereto annexed, then and in that case, that is to say, after the payment of said bonds and all interest thereon in full, all the estate, right, title and interest of the said parties of the second part, and of their successors in the trust by these presents created, shall cease, determine, and become void, otherwise the same shall be and remain in full force and virtue.

ARTICLE NINTH. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee under these presents for the time being, whether such trustees or trustee be the parties of the second part, or the survivor of them, or any successors or successor of the said parties of the second part, or either of them, in said trust; and whenever a vacancy in the trust shall exist, the said word trustees, as used herein, shall be construed to mean the surviving or continuing trustee. And it is further mutually agreed, that the said trustees shall be entitled to just compensation for all services hereafter to be rendered by them in this trust, which compensation shall be paid by the said party of the first part, its successors or assigns, from the proceeds of the sales of the lands hereby mortgaged; that the said trustees shall not be responsible for the default or misconduct of each other or of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care; that the said trustees, or either of them, may resign, and be discharged of the trust created by these presents, by giving notice in writing to the party of the first part, or its successors, three months before such resignation shall take effect, or such shorter notice as the said party of the first part, or its successors, may accept; that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing, signed by such majority in interest; provided, that such removal shall be subject to the approval of, and shall not take effect until approved by the board of directors of the said party of the first part; that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the said party of the first part, with the consent and approval in writing of the holders of one-fourth the total amount of said bonds then outstanding. And it is hereby further declared and agreed that, upon the death, resignation, or removal of any trustee, and the appointment of another trustee in his place, all the powers and authorities, under or by virtue of this indenture, of the trustee so dying, resigning, or being removed, shall become vested in the new trustee or new trustees so appointed, without any further assurance or conveyance; but the trustees

so resigning, or being removed, shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance, to vest in such new trustee, jointly with the continuing trustee, if there be such, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trusts: *Provided, nevertheless*, and it is hereby agreed and declared, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint a trustee or trustees hereunder in the manner hereinbefore provided, and that any vacancy in said trust shall remain unfilled for the space of sixty days after the death, resignation, or removal of any trustee, application in behalf of all the holders of the bonds secured hereby may be made, on due notice to said party of the first part, by the surviving or continuing trustee, or by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any court of competent jurisdiction, for the appointment of a new trustee or new trustees.

And the said party of the first part, for itself, its successors and assigns, hereby, for the consideration aforesaid, further covenants, promises and agrees, to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust by these presents created, that the said party of the first part, its successors or assigns, shall and will well and truly pay unto the holder or holders of said bonds the principal and interest thereof, as such principal and interest shall become payable, according to the tenor of said bonds respectively, and the terms of the coupons thereto annexed.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, hereby covenants and agrees to to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any lands, within the State of Missouri, which were granted by the said act of Congress to aid in the construction of the said railroad, the said party of the first part, its successors and assigns, shall and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part, or the survivor of them, or their or his successors in the trust by these presents created.

And the said party of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their and his successors in the trust created by these presents, that the said party of the first part, its successors and assigns, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the said parties of the second part, or the survivor of them, or their or his successors in the trust hereby created, execute, deliver and acknowledge all such further deeds, conveyances and assurances in the law for the better assuring unto the said parties of the second part, or the survivor of them, or their or his successors in said trust, upon the trusts herein expressed, all and singular the lands hereinbefore mentioned or described, as by them or him, or by their or his counsel learned in the law, shall be reasonably advised, devised, or required.

In witness whereof the said Atlantic and Pacific Railroad Company, party of the first part, has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treas-

urer; and the said George Tyler Bigelow and John James Dixwell have hereunto set their hands and seals to evidence the acceptance of the trust hereby created, the day and year first above written.

[SEAL.] ATLANTIC AND PACIFIC RAILROAD COMPANY,
By FRANCIS B. HAYES, *President*.
W'M A. HAYES, *Treasurer*.
GEORGE TYLER BIGELOW. [SEAL.]
J. J. DIXWELL. [SEAL.]

Sealed and delivered in the presence of—

CHARLES F. CHOATE.

GEORGE T. ANGELL.

This indenture, made this nineteenth day of October, in the year of our Lord one thousand eight hundred and seventy-one, by and between the Atlantic and Pacific Railroad Company, a corporation duly formed and organized under an act of the Congress of the United States, party of the first part, and George Tyler Bigelow and John James Dixwell, both of the city of Boston and commonwealth of Massachusetts, parties of the second part, witnesseth:

Whereas the party of the first part did, by an indenture bearing date July 1, 1868, a copy of which is hereto annexed, convey to the parties of the second part, as mortgage trustees, certain land in the State of Missouri, estimated to be one million of acres, to secure the payment of certain bonds described in said indenture, amounting in the aggregate to three millions of dollars, which said indenture contained a covenant by the party of the first part that said party of the first part would from time to time execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law, for the better assuring unto said parties of the second part, upon the trusts therein expressed, all and singular the lands in said indenture mentioned or described as might be reasonably advised or required; and whereas, by the location finally adopted of its railroad by the party of the first part, a portion of the lands granted by the provisions of its charter are within the limits of the State of Arkansas; and whereas it has been found that the lands in the State of Missouri received by the party of the first part, and conveyed to the parties of the second part by said indenture, by reason of pre-emptions and otherwise, amounted to less than one million of acres; and by the act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27, 1866, by and under which the said party of the first part was incorporated, it was by the third section thereof provided that whenever, prior to the time therein referred to, any of the sections or parts of sections of land thereby granted, or intended to be granted, should have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands should be selected by the said party of the first part, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of the alternate sections thereby granted or intended to be granted, and not including the reserved numbers;

And whereas the party of the first part, since said first day of July, A. D. 1868, been expressly authorized by act of the Congress of he

United States, approved April 20, 1871, to mortgage its road, equipments, lands, franchises, privileges, and other rights and property, and which is as follows, to wit:

"AN ACT to enable the Atlantic and Pacific Railroad Company to mortgage its road.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atlantic and Pacific Railroad Company, organized under act of Congress of July 27, 1866, is hereby authorized to make and issue its bonds in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms, as its directors may deem advisable; and to secure said bonds, the said company may mortgage its road, equipment, lands, franchises, and privileges, and other rights and property, subject to such terms, conditions, and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior: Provided, That if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mortgage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with and appertain to that part of said road which shall have been constructed at the time of the foreclosure of said mortgage":

Now, therefore, in order to more fully to secure the payment of said bonds and all interest thereon, as the same shall become payable, according to the tenor of said bonds, and the coupons thereto annexed, and the intent and meaning of said indenture of July 1, 1868, the party of the first part, in consideration of the premises, and of one dollar to it paid by the parties of the second part, the receipt of which is hereby acknowledged, doth hereby ratify, approve, and confirm the aforesaid indenture of July 1, 1868.

And further, to secure the payment of said bonds, and the interest thereon, according to the tenor thereof, and the intent and meaning of said indenture of July 1, 1868, and in consideration of the premises, and of one dollar to it paid by said parties of the second part, the receipt of which is hereby acknowledged, the said party of the first part has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer, unto the parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of the said parties of the second part, and the heirs and assigns of such survivor.

(First) all of the estate, right, title, interest, claim, and demand whatsoever, in law and equity, which the said party of the first part now has, or may at any time hereafter acquire, or become in any way entitled to, of, in, and to any and all lands situate in the States of Missouri and Arkansas, which, by and under the provisions of the said third section of the said act of Congress approved July 27, 1866, were granted or intended to be granted to the said party of the first part, for or in respect of the construction of that portion of its railroad and telegraph line which is located in the said State of Missouri, between Springfield and the western boundary of that State, and also of, in, and to (secondly) any and all lands wherever situated, which under and by virtue of the said above recited provision of the said third section of the said act of Congress, the said party of the first part, for or in respect of the construction of said portions of its railroad and telegraph line, which is

located in the said State of Missouri, is authorized to select, under the direction of the Secretary of the Interior, in lieu of any of the lands firstly above described, but of which the said party of the first part has been or may be deprived by reason of the same having been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, as provided in the said act of Congress (meaning and intending thereby to embrace all of the lands granted, or intended to be granted, by said act, to which the said party of the first part, for or in respect of the construction of that portion of its railroad and telegraph line which is located in the State of Missouri, is or may be entitled, but not to embrace any and to exclude all the lands granted by the said act to which the said party of the first part, for and in respect of the construction of any other portion of its railroad and telegraph line, is or may be entitled.)

Together with all and singular the tenements, hereditaments, and appurtenances of the aforesaid lands belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; excepting and reserving always from the operation of this instrument any and all lands granted or intended to be granted to the South Pacific Railroad Company, a corporation organized under the laws of said State of Missouri, and created under and by virtue of an act of the general assembly of said State, entitled "An act to dispose of the Southwest Pacific Railroad, and other property belonging thereto, and to secure the early completion of said road," approved March 17, 1868; it being expressly provided that none of the lands granted to the said South Pacific Railroad Company shall be deemed or taken to be included herein; and excepting and reserving also from the lien and operation of these presents any and all lands or premises that may be necessary and proper for the construction and working of the Atlantic and Pacific Railroad and the South Pacific Railroad, or either of said roads, to the extent of one hundred feet in width on each side of the line of said Atlantic and Pacific Railroad, and the line of said South Pacific Railroad, and such greater width (if any) as may be required for the purpose of excavation or embankment; and excepting also any lands or premises that may be necessary and proper for turnouts, standing-places for cars, depots, station-houses, or any other structures required in the construction and working of said Atlantic and Pacific Railroad, or said South Pacific Railroad, or any part of either thereof.

To have and to hold the said lands and premises hereinbefore granted, or intended so to be, unto the said parties of the second part, as joint-tenants, and not as tenants in common, and unto the survivor of said parties of the second part, his heirs and assigns; but in trust, nevertheless, and to and for the uses and purposes, and upon the trusts, and with all the rights, privileges, duties, and powers, and subject to all the conditions, limitations, reservations, and restrictions set forth in said indenture of July 1, 1868.

In witness whereof the said Atlantic and Pacific Railroad Company, party of the first part, has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its vice-president and treasurer; and the said George Tyler Bigelow and John James Dixwell have hereunto set their hands and seals, to evidence their ac-

ceptance of the trust hereby created, the day and year first above written.

[SEAL.] ATLANTIC AND PACIFIC RAILROAD COMPANY,
By URIEL CROCKER, *Vice-President.*
WILLIAM A. HAYES, *Treasurer.*
GEORGE TYLER BIGELOW. [SEAL.]
J. J. DIXWELL. [SEAL.]

Sealed and delivered in the presence of—
CHARLES F. CHOATE.
SAM'L A. JENNISON.

[Internal revenue stamps to the value of 60 cents.]

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss :

Be it remembered that on the tenth day of November, in the year of our Lord one thousand eight hundred and seventy-one, before me, the undersigned, Samuel Jennison, a commissioner, resident in the city of Boston, duly commissioned and qualified by the executive authority and under the laws of the State of Missouri to take the acknowledgment of deeds, &c., to be used or recorded therein, and also a notary public in and for the county of Suffolk, duly commissioned and sworn, personally appeared in said Boston, at ten and a half o'clock in the forenoon of said day, Uriel Crocker, vice-president, and William A. Hayes, treasurer, respectively, of the Atlantic and Pacific Railroad Company, the corporation described in the annexed instrument; and, afterwards, on the same day, in said Boston, George Tyler Bigelow, and on this eleventh day of November, at eleven o'clock in the forenoon, in said Boston, John James Dixwell, all personally well known to me to be the same persons whose names are subscribed to the annexed instrument, viz, those of the said Uriel Crocker and William A. Hayes, on behalf of said Atlantic and Pacific Railroad Company, as party, and those of said George Tyler Bigelow and John James Dixwell, as parties thereto, and they severally acknowledged the same to be their voluntary act and deed, and the said Uriel Crocker and William A. Hayes acknowledged the same to be the voluntary act and deed of said railroad company for the purpose therein mentioned.

In testimony whereof I have hereto set my hand and affixed my official and notarial seals the day and year last aforesaid.

[SEALS.] SAMUEL JENNISON,
*Commissioner for Missouri, also Notary Public in
and for Suffolk County, at Boston.*

STATE OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss :

Be it remembered that on the tenth day of November, in the year of our Lord one thousand eight hundred and seventy-one, before me, the undersigned, Samuel Jennison, a commissioner resident in the city of Boston, duly commissioned and qualified by the executive authority, and under the laws of the State of Arkansas, to take acknowledgment of deeds, &c., to be used or recorded in said State, and also a no-

tary public in and for said county of Suffolk, duly commissioned and sworn, personally appeared in said Boston, at ten and a half o'clock in the forenoon of said day, Uriel Crocker, vice-president, and Wm. A. Hayes, treasurer of the Atlantic and Pacific Railroad Company, grantor in and to the foregoing instrument, and afterwards, on the same day, George Tyler Bigelow, and on this eleventh day of November, at eleven o'clock in the forenoon, John James Dixwell, also parties thereto, to me all personally well known to be such, who stated and acknowledged that they voluntarily, and said Uriel Crocker and Wm. A. Hayes that said Atlantic and Pacific Railroad Company by them voluntarily executed and delivered the said foregoing instrument for the uses, purposes, and considerations therein expressed, and delivered the same to be certified.

In witness whereof I have hereunto set my official and notarial seals, at said Boston, this 11th day of November, A. D. 1871.

[SEALS.]

SAMUEL JENNISON,
*Commissioner for Arkansas in Boston, and Notary
Public in and for the County of Suffolk.*

APPENDIX B.

CONSTITUTION AND LAWS OF THE CHEROKEE NATION.

[Published by authority of the National Council.]

PROCLAMATION.

The national council of the Cherokee Nation, the 19th day of November, 1874, passed an act authorizing the principal chief to appoint three commissioners "to revise, amend, and codify the existing laws, and prepare such other new laws as the advanced condition of the Cherokee Nation demands." Messrs. William P. Boudinot, D. H. Ross, and Joseph A. Scales were accordingly appointed, and submitted the result of their labors to the national council at its annual session, the first Monday in November, 1874. After careful consideration, the national council accepted and enacted, with the approval of the principal chief, so much thereof as may be found embraced in this volume, and which, in accordance with authority, is published and proclaimed as the code of laws in force in the Cherokee Nation from and after the 1st day of November, 1875, and until amended or repealed by proper authority.

The act of union, the constitution and amendments thereto, have been carefully compared with authorized copies, and are believed to be strictly correct.

[SEAL.]

WILL. P. ROSS,
Principal Chief.

Dated at Fort Gibson, June 21, 1875.

Act of union between the Eastern and Western Cherokees.

Whereas our fathers have existed as a separate and distinct nation, in the possession and exercise of the essential and appropriate attributes of sovereignty, from a period extending into antiquity beyond the records and memory of man; and whereas these attributes, with the rights and franchises which they involve, remain still in full force and virtue, as do also the national and social relations of the Cherokee people to each other and to the body politic, excepting in those particulars which have grown out of the provisions of the treaties of 1817 and 1819 between the United States and the Cherokee Nation, under which a portion of our people removed to this country and became a separate community; but the force of circumstances have recently compelled the body of the Eastern Cherokees to remove to this country, thus bringing together again the two branches of the ancient Cherokee family, it has become essential to the general welfare that a union should be formed and a system of government matured adapted to their present condition, and providing equally for the protection of each individual in the enjoyment of his rights: Therefore,

We, the people composing the Eastern and Western Cherokee Nation,

in national convention assembled, by virtue of our original and unalienable rights, do hereby solemnly and mutually agree to form ourselves into one body politic, under the style and title of the Cherokee Nation.

In view of the union now formed, and for purposes of making satisfactory adjustments of all unsettled business which may have arisen before the consummation of this union, we agree that such business shall be settled according to the provisions of the respective laws under which it originated, and the courts of the Cherokee Nation shall be governed in their decisions accordingly. Also, that the delegation authorized by the Eastern Cherokees to make arrangements with Major-General Scott for their removal to this country shall continue in charge of that business, with their present power, until it shall be finally closed. And, also, that all rights and titles to public Cherokee lands on the east or west of the river Mississippi, with all other public interests which may have vested in either branch of the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee Nation as constituted by this union.

Given under our hands at Iltenoir Camp Ground this 12th day of July, 1838.

By order of the National Convention.

GEORGE LOWERY,
President of the Eastern Cherokees.
GEORGE GUESS, his x mark,
President of the Western Cherokees.

EASTERN CHEROKEES.

R. Taylor, V. P.
James Brown, V. P.
Te-ke-chu-las-kee, V. P.
George Hicks.
John Benge.
Thomas Foreman.

Archibald Campbell.
Jesse Bushyhead.
Lewis Ross.
Edward Gunter.
Stephen Foreman.
Daniel McCoy.

By order of the National Convention.

JOHN ROSS,
Principal Chief Eastern Cherokees.
GOING SNAKE,
Speaker of Council.

WESTERN CHEROKEES.

Tobacco Will, V. P.
David Melton, V. P.
John Drew, V. P.
George Brewer.
Thomas Candy.
Moses Parris.
James Campbell.
Looney Riley.

Charles Gourd,
Lewis Melton.
Young Wolfe.
Charles Coody.
Ah-sto-la-ta.
Jack Spears.
Looney Price.

By order of the National Convention, August 23, 1839.

JOHN LOONEY, his x mark,
Acting Principal Chief Western Cherokees.

The foregoing instrument was read, considered, and approved by us this 23d day of August, 1839.

Aaron Price.
Major Pullum.
Young Elders.
Deer Track.
Young Puppy.

Turtle Fields.
July.
The Eagle.
The Crying Buffalo.

And a great number of respectable old settlers and late emigrants too numerous to be copied.

CONSTITUTION AND AMENDMENTS OF THE CHEROKEE NATION.

The Eastern and Western Cherokees having again reunited and become one body politic, under the style and title of the Cherokee Nation: Therefore,

We, the people of the Cherokee Nation, in National Convention assembled, in order to establish justice, insure tranquillity, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment, do ordain and establish this constitution for the government of the Cherokee Nation.

ARTICLE I.

SECTION 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833 between the United States and the Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business of the United States.

SEC. 2. The lands of the Cherokee Nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the nation, are exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them: *Provided*, That the citizens of the nations possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that whenever any citizen shall remove with his effects out of the limits of this nation and become a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit by law to all the rights of citizenship any such person or persons who may at any time desire to return to the nation, on memorializing the national council for such readmission.

Moreover, the national council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with a view of speculation.

ARTICLE II.

SECTION 1. The power of this government shall be divided into three distinct departments, the legislative, the executive, and the judicial.

SEC. 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereafter expressly directed or permitted.

ARTICLE III.

SECTION 1. The legislative power shall be vested in two distinct branches: a national committee and council; and the style of their acts shall be: *Be it enacted by the national council.*

SEC. 2. The national council shall make provision by law for laying off the Cherokee Nation into eight districts; and, if subsequently it should be deemed expedient, one or two may be added thereto.

SEC. 3. The national committee shall consist of two members from each district, and the council shall consist of three members from each district, to be chosen by the qualified electors in their respective districts every two years, at such time and places as may be directed by law. The national council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the national council, or, in case of emergency, by the principal chief.

SEC. 4. Before the districts shall be laid off, any election which may take place shall be by general vote of the electors throughout the nation for all officers to be elected. The first election for all the officers of the government—chiefs, executive council, members of the national council, judges, and sheriffs—shall be held at Tahlequah before the rising of this convention, and the term of service of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SEC. 5. No person shall be eligible to a seat in the national council but a free Cherokee male citizen, who shall have attained the age of twenty-five years. The descendants of Cherokee men by all free women, except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father's or the mother's side, shall be eligible to hold any office of profit, honor, or trust under this government.

SEC. 6. The electors and members of the national council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national council, in going to and returning.

SEC. 7. In all elections by the people, the electors shall vote *viva voce*. All free male citizens who shall have attained to the age of eighteen years, shall be equally entitled to vote at public elections.

SEC. 8. Each branch of the national council shall judge of the qualifications and returns of its own members, and determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but not a second time for the same offense.

SEC. 9. Each branch of the national council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalty as each branch may prescribe.

SEC. 10. The members of the national committee shall each receive from the public treasury a compensation for their services, which shall be three dollars per day during their attendance at the national council, and the members of the council shall each receive three dollars per day for their services during their attendance at the national council: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made.

SEC. 11. The national council shall regulate by law, by whom and in what manner writs of elections shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 12. Each member of the national council, before he takes his seat, shall take the following oath or affirmation: "I, A. B., do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, threats, or any undue and unlawful means used by myself or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of ———, and that on all questions and measures which may come before me I will so give my vote and so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of this nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support, and defend the constitution thereof."

SEC. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit, or trust within this nation.

SEC. 14. The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution.

SEC. 15. It shall be the duty of the national council to pass such laws as may be necessary and proper; to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 16. No power of suspending the laws of this nation shall be exercised, unless by the national council or its authority.

SEC. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SEC. 18. The national council shall have power to make laws for laying and collecting taxes for the purposes of raising revenue.

SEC. 19. All bills making appropriations shall originate in the national committee, but the council may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

SEC. 20. All acknowledged treaties shall be the supreme law of the land; and the national council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 21. The council shall have the sole power of impeaching. All impeachments shall be tried by the national committee. When sitting for that purpose, the members shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 22. The principal chief, assistant principal chief, and all civil officers, shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the government of this nation. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE IV.

SECTION 1. The supreme executive power of this nation shall be vested in a principal chief, who shall be styled "the principal chief of the Cherokee Nation." The principal chief shall hold his office for the term of four years, and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members of the national council. The returns of the election for principal chief shall be sealed up and directed to the president of the national committee, who shall open and publish them in the presence of the national council assembled. The person having the highest number of votes shall be principal chief; but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the council. The manner of determining contested elections shall be directed by law.

SEC. 2. No person, except a natural-born citizen, shall be eligible to the office of principal chief; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time, by the qualified electors in the same manner for four years, an assistant principal chief, who shall have attained the age of thirty-five years.

SEC. 4. In case of the removal of the principal chief from office, or of his death or resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal chief, until the disability be removed or the vacancy filled by the national council.

SEC. 5. The national council may, by law, provide for the case of removal, death, resignation, or disability of both the principal and assistant principal chief, declaring what officer shall then act as principal chief until the disability be removed or a principal chief shall be elected.

SEC. 6. The principal and assistant principal chief shall at stated times receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive within that period any other emolument from the Cherokee Nation or any other government.

SEC. 7. Before the principal chief enters on the execution of his office he shall take the following oath or affirmation: I do solemnly swear (or affirm) that I will faithfully execute the duties of principal chief of the Cherokee Nation, and will to the best of my ability preserve, protect, and defend the constitution of the Cherokee Nation.

SEC. 8. He may, on extraordinary occasions, convene the national council at the seat of government.

SEC. 9. He shall, from time to time, give to the national council information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit different districts at least once in two years to inform himself of the general condition of the country.

SEC. 12. The assistant principal chief shall, by virtue of his office, aid and advise the principal chief in the administration of the government at all times during his continuance in office.

SEC. 13. Vacancies that may occur in offices, the appointment of which is vested in the national council, shall be filled by the principal chief during the recess of the national council by granting commissions which shall expire at the end of the next session thereof.

SEC. 14. Every bill which shall pass both branches of the national

council shall, before it becomes a law, be presented to the principal chief; if he approve he shall sign it, but if not he shall return it with his objections to that branch in which it may have originated, who shall enter the objections at large on their journals and proceed to reconsider it. If after such reconsideration two-thirds of that branch shall agree to pass the bill, it shall be sent together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch it shall become a law. If any bill shall not be returned by the principal chief within five days (Sundays excepted) after the same has been presented to him, it shall become a law in like manner as if he had signed it, unless the national council by their adjournment prevent its return, in which case it shall be a law unless sent back within three days after their next meeting.

SEC. 15. Members of the national council and all officers, executive and judicial, shall be bound by oath to support the constitution of this nation and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two branches of the national council with respect to the time of adjournment, the principal chief shall have power to adjourn the same to such a time as he may deem proper: *Provided*, It be not a period beyond the next constitutional meeting thereof.

SEC. 17. The principal chief shall, during the session of the national council, attend at the seat of government.

SEC. 18. There shall be a council, composed of five persons, to be appointed by the national council, whom the principal chief shall have full power at his discretion to assemble; he, together with the assistant principal chief and the counselors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the nation according to law: *Provided*, the national council shall have power to reduce the number, if deemed expedient, after the first term of service to a number less than three.

SEC. 19. The members of the executive council shall be chosen for the term of two years.

SEC. 20. The resolutions and advice of the council shall be recorded in a register and signed by the members agreeing thereto, which may be called for by either branch of the national council, and any counselor may enter his dissent to the majority.

SEC. 21. The treasurer of the Cherokee Nation shall be chosen by a joint vote of both branches of the national council for the term of four years.

SEC. 22. The treasurer shall, before entering on the duties of his office, give bond to the nation, with sureties, to the satisfaction of the national council, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the treasury but by warrant from the principal chief and in consequence of appropriation by law.

SEC. 24. It shall be the duty of the treasurer to receive all public moneys and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the national council.

ARTICLE V.

SECTION 1. The judicial powers shall be vested in a supreme court and such circuit and inferior courts as the national council may from time to time ordain and establish.

SEC. 2. The judges of the supreme and circuit courts shall hold their commissions for the term of four years; but any of them may be removed

from office on the address of two-thirds of each branch of the national council to the principal chief for that purpose.

SEC. 3. The judges of the supreme and circuit courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this nation or any other power.

SEC. 4. No person shall be appointed a judge of any of the courts until he shall have attained the age of thirty years.

SEC. 5. The judges of the supreme and circuit courts shall be elected by the national council, and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the public good, whose powers, duties, and duration in office shall be clearly designated by law.

SEC. 6. The judges of the supreme court and of the circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. 7. No judge shall sit on trial of any cause when the parties are connected (with him) by affinity or consanguinity, except by consent of the parties. In case all the judges of the supreme court shall be interested in the issue of any cause, or related to all or either of the parties, the national council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the principal chief.

SEC. 8. All writs and other process shall run "in the name of the Cherokee Nation," and bear test and be signed by the respective clerks.

SEC. 9. Indictments shall conclude "against the peace and dignity of the Cherokee Nation."

SEC. 10. The supreme court shall, after the present year, hold its session annually, at the seat of government, to be convened on the first Monday of October in each year.

SEC. 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process of obtaining witnesses in his or their favor; and in prosecutions by indictment or information a speedy public trial, by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

SEC. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrants to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.

SEC. 13. All persons shall be bailable by sufficient securities unless for capital offenses, where the proof is evident or presumption great.

ARTICLE VI.

SECTION 1. No person who denies the being of a God, or a future state of reward and punishment, shall hold any office in the civil department in this nation.

SEC. 2. The free exercise of religious worship and serving God without distinction shall forever be enjoyed within the limits of this nation: *Provided*, That this liberty of conscience shall not be so construed as to

excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this nation.

SEC. 3. When the national council shall determine the expediency of appointing delegates or other public agents for the purpose of transacting business with the Government of the United States, the principal chief shall recommend and, by the advice and consent of the national committee appoint and commission such delegates or public agents accordingly. On all matters of interest touching the rights of the citizens of this nation which may require the attention of the United States Government, the principal chief shall keep up a friendly correspondence with that government through the medium of its proper officers.

SEC. 4. All commissions shall be "in the name and by the authority of the Cherokee Nation," and be sealed with the seal of the nation, and signed by the principal chief. The principal chief shall make use of his private seal until a national seal be provided.

SEC. 5. A sheriff shall be elected in each district by the qualified electors, who shall hold his office two years unless sooner removed. Should a vacancy occur subsequent to an election, it shall be filled by the principal chief as in other cases, and the person so appointed shall continue in office until the next regular election.

SEC. 6. No person shall, for the same offense, be twice put in jeopardy of life or limb, nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the national council to lay and collect taxes.

SEC. 7. The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation shall have remedy by due course of law.

SEC. 8. The appointment of all officers not otherwise directed by this constitution shall be vested in the national council.

SEC. 9. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall forever be encouraged in this nation.

SEC. 10. The national council may propose such amendments to this constitution as two-thirds of each branch may deem expedient, and the principal chief shall issue a proclamation directing all civil officers of the several districts to promulgate the same extensively as possible within their respective districts at least six months previous to the next general election. And if at the first session of the national council after such general election two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch as well when the same are proposed as when they are ratified.

Done in convention at Tahlequah, Cherokee Nation, this 6th day of September, 1839.

GEORGE LOWRY,
President of the National Convention.

Hair Conrad,	his X mark.	Jos. Martin Lynch.	
John Benge,	his X mark.	Sal-la-tee-skee Watts,	his X mark.
Archibald Campbell,	his X mark.	George Brewer,	his X mark.
Thomas Candy.		Joshua Buffington.	
John Drew.		Jesse Bushyhead.	
Walter Scott Adair.		Jesse Russell.	
Young Elders,	his X mark.	John Fletcher Boot,	his X mark.
Will Shorey Coodey.		Crying Buffalo,	his X mark.
Thomas Foreman.		Bark Flute,	his X mark.
Richard Taylor.		Oo-la-yo-a,	his X mark.
Thomas Fox Taylor.		Soft Shell Turtle,	his X mark.
O-kan-sto-tah Logan,	his X mark.	Edward Gunter.	
James Spears,	his X mark.	Daniel Colston,	his X mark.
John Spears.		Lewis Ross.	
Stephen Foreman.		George Hicks.	
Young Glass,	his X mark.	Turtle Fields,	his X mark.
Looney Price.		Elijah Hicks.	
Tobacco Will,	his X mark.	Tah-lah-see-me,	his X mark.
Major Pullum,	his X mark.	James Brown.	
Moses Parris.		Charles Coodey.	
George Washington Gunter.		Riley Keys.	
Kench Logan,	his X mark.	Daniel McCoy.	
Young Wolf.		Lewis Melton.	

Proclamation and amendments to the constitution.

[Adopted November 26, 1866.]

PROCLAMATION BY THE PRINCIPAL CHIEF.

Whereas the national council adopted certain amendments to the constitution of the Cherokee Nation, and submitted the same to a general convention of the people of the Cherokee Nation, called at Tahlequah on the 26th day of November, A. D. 1866, and which said amendments, with the preamble thereto attached, were in the following words, to wit:

Whereas by the treaty executed at Washington on the 19th day of July, A. D. 1866, between the United States and the Cherokee Nation, through its delegation, ratified by the Senate and officially promulgated by the President of the United States August 11, 1866, certain things were agreed to between the parties to said treaty, involving changes in the constitution of the Cherokee Nation, which changes cannot be accomplished by the usual mode; and

Whereas it is the desire of the people and government of the Cherokee Nation to carry out in good faith all of its obligations, to the end that law and order be preserved, and the institutions of their government maintained: Therefore,

Be it resolved by the national council, That the following amendments to the constitution of the Cherokee Nation be submitted to a convention of the Cherokee people to assemble at Tahlequah on the twenty-sixth

(26th) day of November, A. D. 1866, under the proclamation of the principal chief; and should said amendments, hereunto annexed, be ratified by said convention, then they shall be officially published, and declared by the principal chief to be, and shall constitute, a part or parts of the constitution of the Cherokee Nation.

AMENDMENTS.

Amendments to Article I.

SECTION 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833, between the United States and the Western Cherokees, subject to such modifications as may be made necessary by the 17th article of the treaty concluded at Washington City on the 19th day of July, 1866, between the United States and the Cherokee Nation.

SEC. 2. The lands of the Cherokee Nation shall remain common property until the national council shall request the survey and allotment of the same, in accordance with the provisions of article 20 of the treaty of 19th July, 1866, between the United States and the Cherokee Nation.

Amendments to Article II.

SECTION 1. The upper house of the national council, known as the national committee, shall be hereafter known and styled the senate of the Cherokee Nation, and shall consist of two senators for every district in the Cherokee Nation.

SEC. 2. The council shall consist of two members from each district, and when a district shall have to exceed two hundred voters it shall have an additional member; and for every additional two hundred voters in said district upwards of four hundred it shall have an additional member: *Provided*, That when any district shall have less than one hundred voters according to the census, it shall still be entitled to one representative.

SEC. 3. In order to ascertain and fix the representation to the council provided for by the preceding section, the national council shall cause to be taken as soon as practicable a census of the population of the Cherokee Nation according to districts. A second census shall be taken in like manner in the year 1870, and each ten years thereafter, and the national council shall regularly apportion representation among the several districts as provided in the preceding section agreeably to such census. The first apportionment provided for above shall be made before the 1st day of June, and shall govern the election to be held on the first Monday in August, 1867.

SEC. 4. The national council shall, after the present year, be held annually, to be convened on the first Monday in November, at such place as may be designated by the national council, or, in case of emergency, by the principal chief.

SEC. 5. No person shall be eligible to a seat in the national council but a male citizen of the Cherokee Nation, who shall have attained to the age of twenty-five years, and who shall have been a *bona-fide* resident of the district in which he may be elected at least six months immediately preceding such election. All native-born Cherokees, all Indians, and whites legally members of the nation by adoption, and all freed-men who have been liberated by voluntary act of their former owners or by law, as well as free colored persons who were in the country at

the commencement of the rebellion, and are now residents therein, or who may return within six months from the 19th day of July, 1866, and their descendants who reside within the limits of the Cherokee Nation, shall be taken and deemed to be citizens of the Cherokee Nation.

SEC. 6. The members of the national council shall each receive from the public treasury a compensation for their services which shall be three dollars per day, during their attendance at the national council upon any regular session, not exceeding thirty days: *Provided*, That the per-diem allowance may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the national council by whom such alteration may have been made

SEC. 7. All male citizens who have attained the age of eighteen years shall be deemed qualified electors of the Cherokee Nation, and there shall be no restrictions by law, save such as are required for persons convicted of crime, or for such limit as to residence, not exceeding six months in the district where the vote is offered, as may be required by census or registration.

Amendments to Article V.

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the national council, and whose duties, jurisdiction, and compensation shall be defined by law in the manner prescribed by the constitution. The national council, at its annual session in 1867, shall elect one of the supreme judges for three years, one for two years, and one for one year, and at each annual session of the national council thereafter shall elect one supreme judge, whose official term shall be three years.

SEC. 2. The judges of the circuit court shall hereafter be elected by the people for the term of four years, and shall have the same jurisdiction, discharge the same duties, and be compensated in the same manner as is now provided for by the constitution. There shall be elected, in like manner, in and for each district, as many judges as it may be deemed expedient for the public good, whose powers, duties, and duration in office shall be clearly designated by law.

Article VII.

SECTION 1. Neither slavery nor involuntary servitude shall ever hereafter exist in the Cherokee Nation, otherwise than in the punishment of crime whereof the party shall have been duly convicted, and any provision of the constitution of the Cherokee Nation conflicting with the foregoing section is hereby annulled.

SEC. 2. The persons now holding office shall continue therein, except as may be otherwise expressly provided by law for Canadian district, until their successors be commissioned in November, 1867.

Tahlequah, Cherokee Nation, November 29, 1866.

SMITH CHRISTIE,
President of the National Committee.

Concurred :

WRITER,
Speaker of Council.

Approved :

WILL P. ROSS.

At a general convention of the people of the Cherokee Nation, held at Tahlequah, Cherokee Nation, on the 28th day of November, A. D. 1866,

for the purpose of taking into consideration the foregoing amendments to the constitution of the Cherokee Nation, and whereof Riley Keys, chief justice of the supreme court, was chosen president, and Budd Gritts secretary, the said amendments to the constitution of the Cherokee Nation were read, considered, and severally approved and adopted by the Cherokee people.

In testimony whereof the president and secretary of said convention have subscribed the same at Tahlequah, Cherokee Nation, on this the 28th day of November, A. D. 1866.

RILEY KEYS,
President of the Convention.
BUDD GRITTS,
Secretary.

And whereas the said foregoing amendments to the constitution were duly submitted to the said general convention of the Cherokee people, and were severally read, considered, and adopted on the 28th day of November, A. D. 1866: Now, therefore,

Be it known, That I, William P. Ross, principal chief of the Cherokee Nation, do issue this my proclamation, declaring said amendments to be a part of the constitution of the Cherokee Nation.

In testimony whereof I have hereunto subscribed my name this 7th day of December, A. D. 1866.

WILL. P. ROSS,
Principal Chief.

AN ACT adopting the new code of laws.

Be it enacted by the national council as follows, to wit: That the revised code of laws as prepared by Messrs. William P. Boudinot, D. H. Ross, and J. A. Scales, commissioners appointed under the provisions of an act entitled "An act providing for the revision of the laws," approved November 19, 1873, and as amended by the joint committee of the national council, and consisting of the following chapters and articles, to wit:

CHAPTER I.

AN ACT relating to duties of officers.

Article.

- I. Duties of principal chief.
- II. Duties of treasurer.
- III. Duties of auditor.
- IV. Duties of sheriffs.

Article.

- V. Duties of district clerks.
- VI. Duties of executive council.
- VII. Duties of solicitor-general.

CHAPTER II.

AN ACT for the organization of the national council.

CHAPTER III.

AN ACT relating to the judiciary.

Article.

- I. General provisions.
- II. Supreme court.
- III. Circuit court.
- IV. District court.
- V. Juries.
- VI. Grand juries.
- VII. Criminal trials.
- VIII. Solicitors.
- IX. Testimony and rules relating thereto.

Article.

- X. Witnesses and subpoenas.
- XI. Executions.
- XII. Limitations of actions.
- XIII. Garnishment.
- XIV. Attachment.
- XV. Possession of property.
- XVI. General rules.
- XVII. Places of holding courts.
- XVIII. Interpreters.
- XIX. Bonds.

CHAPTER IV.

AN ACT relating to crimes.

Article.	Article.
I. Treason and conspiracy.	XVIII. Houses of ill-fame.
II. Murder and manslaughter.	XIX. Gambling.
III. Excusable and justifiable homicide.	XX. Marking and branding stock.
IV. Assault with intent to kill.	XXI. Offenses against health.
V. Burglary, robbery, and larceny.	XXII. Disturbing public assemblies.
VI. Rape.	XXIII. Malicious trespassing.
VII. Mayhem.	XXIV. False pretense.
VIII. Arson.	XXV. Burning prairies or woods.
IX. Perjury.	XXVI. Weights and measures.
X. Poisoning.	XXVII. Betting on elections.
XI. Bribery.	XXVIII. Obstructing public roads.
XII. Embezzlement.	XXIX. Destroying pecan and other trees.
XIII. Forgery and counterfeiting.	XXX. Principals and accessories.
XIV. Escape of prisoners.	XXXI. Damages.
XV. Guards.	XXXII. Sundays.
XVI. Abortion	XXXIII. Slander and libel.
XVII. Introducing and vending liquors.	

CHAPTER V.

AN ACT relating to criminal executions.

CHAPTER VI.

AN ACT relating to national prison.

CHAPTER VII.

AN ACT relating to districts and representation in national and general council.

Article.	Article.
I. Relating to districts.	VII. Tahlequah district.
II. Sequoyah district.	VIII. Saline district.
III. Illinois district.	IX. Coo-wee-skoo-wee district.
IV. Canadian district.	X. Delaware district.
V. Going Snake district.	XI. Representation in national council.]
VI. Flint district.	XII. Representation in general council.]

CHAPTER VIII.

AN ACT relating to elections.

Article.	Article.
I. Elections.	III. Frauds at elections.
II. Manner of contesting elections.	

CHAPTER IX.

AN ACT relating to administrations.

Article.	Article.
I. Letters of administration, executors and guardians.	III. Relating to wills.
II. Relating to minors.	IV. Descent of property.

CHAPTER X.

AN ACT relating to education.

CHAPTER XI.

AN ACT relating to asylum for blind, insane, and others.

Article.

- I. Organization.
- II. Duties of trustees.
- III. Duties of steward.

Article.

- IV. Admission of persons.
- V. Miscellaneous provisions.

CHAPTER XII.

MISCELLANEOUS ACTS.

Article.

- I. Drovers' tax.
- II. Trade and intercourse.
- III. Incorporating the town of Fort Gibson.
- IV. Regulating interest on notes.
- V. Establishing the seat of government.
- VI. Recovery of stolen property.
- VII. Fixing compensation of officers and other persons.
- VIII. Fixing places for holding courts.
- IX. Attorneys.
- X. Vacancy in office.
- XI. National newspaper.
- XII. Military and agency reserve.
- XIII. Publication of penal laws.

Article.

- XIV. Permits to hire citizens of the United States.
- XV. Intermarriage of white men and foreigners.
- XVI. Arbitration of civil causes.
- XVII. Minerals.
- XVIII. Dangerous weapons.
- XIX. Marriage and divorce.
- XX. Lawful fences.
- XXI. Prohibiting sale and restricting lease of real estate.
- XXII. Grist mills.
- XXIII. Stray property.
- XXIV. Licensed traders.
- XXV. Intruders.
- XXVI. Liability of the Cherokee Nation to her own citizens.

CHAPTER XIII.

Rules for construing this code.

CHAPTER XIV.

Relating to acts inconsistent with this code. Be, and the same are hereby, to be the laws of the Cherokee Nation; and shall take effect and be in operation from and after the first day of November, A. D. 1875.

JOHN R. DUVAL,
Speaker of Council.
WILLIAM WILSON,
President of Senate.

Approved, December 5, 1874.

WILL P. ROSS,
Principal Chief.

AN ACT authorizing the appointment of a joint committee to review the code.

Be it enacted by the general council: That a joint committee to consist of five members of the council, to be appointed by the speaker of the council, and three members of the senate, to be appointed by the president of the senate, be appointed for the purpose of examining and considering the new code of laws as prepared and submitted by the committee authorized by act of the national council of November, 1873, and that said joint committee, after careful consideration of said code, report to the national council such amendments, if any, as they may deem expedient, for the action of the national council; and that said code, so examined and returned by said joint committee and acted upon

by the national council, as above provided for, be accepted by the national council as the code of laws of the Cherokee Nation; to take effect on the first day of November, 1875.

Be it further enacted, That the principal chief be, and is hereby, authorized, after the adoption of the code by the national council, to take immediate steps for having the same translated into Cherokee, and published in both the Cherokee and English languages in the best possible form for reference, and furnish copies thereof gratuitously to any officer or other citizen of the nation applying for the same; and he is hereby authorized to draw his warrant on the general fund to carry out the provisions of this act.

CHAS. THOMPSON,
President pro tem. of Senate.
JOHN R. DUVALL,
Speaker of Council.

Approved, November 30, 1874.

WILL P. ROSS,
Principal Chief.

REVISED CODE.

CHAPTER I.

AN ACT relating to the duties of officers.

Article.

- I. Duties of principal chief.
- II. Duties of treasurer.
- III. Duties of auditor of accounts.
- IV. Duties of sheriffs.

Article.

- V. Duties of district clerks.
- VI. Duties of executive council.
- VII. Duties of solicitor-general.

ARTICLE I.

Duties of principal chief.

SECTION 1. Immediately after the meeting of the first annual session of the national council after a general election, and the organization of the two branches thereof, the president of the senate shall (after having received the election returns) cause notice thereof to be given to the council; and that he will proceed to open and count the same at a certain hour, and requesting the presence of that body at that time for that purpose; and at the time designated he shall proceed, with the assistance of the chief clerk of the senate and the speaker and chief clerk of the council, beginning with the returns for the chieftaincy, if any, to open and examine the returns from each district, one at a time, in the presence of the two houses, and carefully compute and publish the result, and have a faithful record thereof made upon the journal of the senate.

SEC. 2. Whenever an election for principal and assistant principal chiefs shall have been held, and the result ascertained as by law provided, it shall be the duty of the president of the senate to appoint a special committee of three members of the senate to wait upon and notify the principal and assistant principal chiefs elect of the same. He shall also notify, in like manner, the speaker of the council, for the information of the members thereof; and as soon as may be thereafter, the two branches of the national council shall meet in joint session, for the purpose of inducting into office the said principal and assistant principal chiefs elect.

SEC. 3. The constitutional oath (or affirmation) of office shall, in the presence of the members of both branches of the national council assembled, be administered, first to the principal and then to the assistant principal chief elect, by the chief justice, or one of the associate justices of the supreme court, or by any other judge or officer duly authorized to administer oaths, a record of which shall be made and retained in the proceedings of the senate; and such principal and assistant principal chiefs shall thereupon be qualified to enter upon the discharge of their duties: *Provided, however,* That the principal chief and assistant principal chief elect, or either of them, as the case may be, may be installed and qualified by any officer authorized to administer oaths, by taking the constitutional oath at any place or in any manner most convenient or satisfactory, according to the circumstances of the case, or the emergency of the occasion.

SEC. 4. The principal chief shall have control of the national seal, and in all cases where necessary may direct the proper application, use, and preservation of the same.

SEC. 5. The principal chief may, in his discretion, appoint in his office a secretary, and, when necessary, one or more assistant secretaries, who shall receive the compensation provided by law.

SEC. 6. The principal chief may require information, in writing or otherwise, from the various commissioned officers of the nation on any subject pertaining to their duties; and from time to time give such and other information to the national council concerning the condition and interests of the nation, and recommend to their consideration such measures as he may deem expedient, so as to enable them to fully understand the condition of public affairs, the conduct of public officers in the discharge of their duties, the condition and wants of the several national institutions, with the condition of the people, and the industrial, educational, and religious interests and prosperity of the nation generally.

SEC. 7. The principal chief may at any time, in person or otherwise, inspect the books, vouchers, and other official papers in or belonging to the offices of the treasurer of the nation and auditor of accounts, and count the money in the treasury; and if he shall at any time discover, or have reason to believe, that either of said officers have been guilty of embezzlement, peculation, defalcation, or fraud in his office, he shall forthwith suspend said officer from his said office, and shall cause legal proceedings to be instituted against him, and shall make a temporary appointment to fill such office until the case be disposed of according to law.

SEC. 8. The principal chief shall, to the best of his ability, see that the constitution of the nation and all laws of the national council are well and uniformly observed and enforced throughout the nation, to which end he may, in his discretion, suspend from office and report for impeachment any commissioned officer who may be guilty or accused of any willful violation of his official duties, and fill the vacancy so created for the time being by special appointment.

SEC. 9. If the national council shall impeach and convict any officer suspended by the principal chief, the incumbent holding by virtue of appointment by the principal chief shall hold and continue (unless removed) in the discharge of the duties of the office for the unexpired term of the person removed, or until a successor is elected and duly qualified. But if such officer so suspended shall be for any cause reinstated by the principal chief, or by the national council, the principal chief shall indorse upon the back of the commission of the officer so

suspended and reinstated the date of both the suspension and reinstatement, and make official record of the same; and said officer shall not draw pay for the *interim* while not in actual service, neither shall the temporary incumbent draw pay, except for the time of actual service.

SEC. 10. The principal chief shall encourage friendly relations between the Cherokees and other nations and tribes of Indians, and the adoption of such measures as he may deem necessary for their mutual safety and prosperity. He shall also encourage amicable intercourse between the Cherokees and people of the United States, and may, in his wisdom, confer with the officers of the Federal and State governments upon all matters of mutual public interest.

SEC. 11. The principal chief may, whenever he deems it expedient, appoint one or more persons to act as commissioners, for the purpose of meeting and conferring with a like commission of any other nation or tribe of Indians upon matters of mutual interest.

SEC. 12. Whenever a vacancy shall occur in the office of treasurer of the Cherokee Nation, the principal chief shall appoint and commission a suitable person to perform the duties of said office until such vacancy shall be regularly supplied by the national council; and the treasurer so appointed by the principal chief shall, before he enters upon the duties of the office, enter into such reasonable bond as may be required by the principal chief, and qualify in the same manner as required by law of the treasurer in whose stead he shall be appointed.

SEC. 13. In case of the death of the treasurer the principal chief shall, as soon as may be, in the presence of the assistant treasurer, if any, and one or more of the sureties of the deceased treasurer, or any one or more officers of the nation, or other trustworthy citizen or citizens thereof, proceed and take possession of the office, books, papers, moneys, and other property belonging to said office. He shall take, or cause to be taken, in the presence of one or more of the persons aforesaid, a full and correct schedule of the moneys, books, papers, furniture, and other effects or property belonging to said office, and thereupon close, lock, and seal, or otherwise safely secure the said books, moneys, and other property of said office, until the vacancy can be filled as provided by law.

SEC. 14. It shall be the duty of the principal chief to communicate to the national council, at the commencement, or as soon thereafter as may be, of each annual session thereof, the annual reports of all officers required by law to report to him.

SEC. 15. The principal chief shall, at least forty days before any general election, and not less than ten days before a special election, to fill a vacancy, promulgate the same by proclamation or writ of election, addressed to the clerks of the several districts, or to any one or more of them, as the case may be. He shall state distinctly the day on which the election will occur, the offices to be filled, and the length of the time of service.

SEC. 16. The principal chief shall, from time to time, adopt such means as he may deem necessary to secure uniformity in the conducting of elections, for which purpose he may furnish or cause to be furnished blank rolls, envelopes, and other necessary stationery to the district clerk of the several districts for distribution to the superintendents and clerks of the various precincts, and no others shall be used unless unavoidable.

SEC. 17. The principal chief shall have authority upon the perpetration or attempt to perpetrate any act against the peace and dignity of this nation, by two or more persons conspiring or combining for such

purpose in any district, and he shall have good cause to believe that the sheriff of such district is unable to maintain the supremacy of the law, or to suppress or resist such combination, to call upon any of the other sheriffs of the nation to aid with such civil force as may be thought necessary under the circumstances.

SEC. 18. The principal chief shall have authority to grant (by and with the advice and consent of the executive council) pardons to persons convicted of the crime of murder, manslaughter, or other high crimes, or he may commute the punishment of persons convicted of murder, manslaughter, or other high crimes to imprisonment for life, or for any term of years, upon such conditions and restrictions as he may think proper.

SEC. 19. All applications made to the principal chief for the pardon or commutation of sentence of any person convicted of murder, manslaughter, or other high crimes, shall be accompanied with a recommendation of credible persons, that the convict is a proper subject for executive clemency; and shall also be accompanied by the evidence in the case or a certified copy thereof, if accessible, and a full statement of the facts in the case and the grounds of application. The principal chief shall, if the reasons set forth seem to warrant, grant, if necessary, an additional respite for a given period until he can assemble the executive council, who shall, with him, carefully consider the evidence, the circumstances, and facts in the case and decide and order accordingly.

SEC. 20. The principal chief shall, in conformity with law, receive such election returns as shall be made through his office to the national council. The returns for principal and assistant principal chiefs and members of the national council he shall receive, carefully preserve, and transmit to the national council unopened, as soon as may be, after the organization of the senate. The returns for members of the general council of the Indian Territory, and for all other officers requiring commissions, he shall open and, no lawful objections appearing, proceed to commission such persons as shall appear to have been duly elected. The term of all offices, the incumbents of which are commissioned by the principal chief, shall begin on the third Monday in November, and expire as provided by the constitution or by law, and the officers shall be commissioned accordingly.

SEC. 21. Whenever in his opinion the public good requires it, the principal chief may offer, and pay from the treasury of the nation, a suitable reward, not exceeding five hundred dollars in any one case, to any person who shall, in consequence of such offer, apprehend, secure, and safely deliver to the proper authority any person who shall be guilty or accused of any capital or other high crime, when the person accused cannot be arrested and secured in the common course of proceeding, or when such person escapes beyond the jurisdiction of the Cherokee Nation. He may also pay such reasonable sum as his judgment may approve, not exceeding three hundred dollars, to any person who shall arrest, in advance of the offering a reward by the chief or issuance of legal process of arrest, and safely deliver to the proper authority any person who shall be charged with the commission of murder or other high crime, after the conviction of such person.

SEC. 22. Whenever it shall appear to the satisfaction of the principal chief that any person charged with a capital or other criminal offense has fled beyond the jurisdiction of the Cherokee Nation and taken refuge in any other country, he shall make requisition upon the executive authority of such country for the arrest and rendition to the lawful authorities of the Cherokee Nation of the person so accused.

SEC. 23. The principal chief shall, when requisition is made upon him by the executive of any other nation or government for the arrest and rendition of any person charged with a criminal offense, such person being amenable to the laws of such nation or government, and who shall have taken refuge in the Cherokee Nation, if satisfied that such demand is conformable to law, and ought to be complied with, issue his proclamation, requiring the proper officers of this nation to proceed at once to make the arrest and delivery to the authority making the demand.

SEC. 24. The principal chief shall cause to be transmitted to the executive of each, or of any, or more of the States of the United States, and to the Library of Congress, copies of the laws of the Cherokee Nation, and such other public documents as he may deem proper, and shall receive such books and publications as may be transmitted in return, and cause the same to be deposited in the national library.

SEC. 25. The principal chief shall have and exercise the appointing power, as provided in the constitution and laws of the Cherokee Nation. He shall also fill, by special appointment, all vacancies in offices subject to such appointment under the laws and constitution of the nation.

SEC. 26. The principal chief shall require all bonds to be approved by him, to be verified by the oath or affirmation of the sureties that they are worth, free from incumbrance, the penalty of such bond: *Provided*, That such bond shall be adjudged sufficient, if the aggregate amount for which each surety justifies, covers the full penalty of the bond.

SEC. 27. The principal chief, when he deems that the public interest demands it, may convene the national council in extra or special session; and the national council so convened shall legislate upon such subjects only as may be recommended or sanctioned by the principal chief.

SEC. 28. In case of disagreement between the senate and council as to the time of adjourning, the principal chief shall fix the time and adjourn such session as the law directs. He may, if satisfied that the public interests demand it, adjourn a special session at any time: *Provided, however*, That he shall have no authority to adjourn a session for the purpose of defeating or delaying investigation by the national council of any of his official acts.

SEC. 29. The principal chief shall draw warrants upon the treasury of the Cherokee Nation for all money payable out of the treasury, in pursuance of law. Warrants for the services of members of the national council shall be ready for delivery upon the adjournment of each annual session of council, or as soon as may be thereafter; and the principal chief shall instruct the treasurer to be in attendance and ready to pay the same, immediately after the adjournment, if there are appropriate funds in the treasury for that purpose.

SEC. 30. The national council, or either branch thereof, may inquire of the principal chief, in writing, concerning all proper public subjects of inquiry; and the principal chief shall, within six days after receiving the request, if by him deemed proper and expedient, furnish the desired information, or state his reasons for declining.

SEC. 31. The principal chief shall, as occasion demands, call upon the authorities of the United States for the prompt removal of all persons not lawfully residing or sojourning in the Cherokee Nation; and he is authorized to order any sheriff of this nation, with such force as may be necessary for that purpose, to co-operate with any authority of the United States for the removal of any person or persons not having the rights of Cherokee citizenship.

ARTICLE II.

Duties of treasurer.

SEC. 32. No person shall be eligible to the office of treasurer of the Cherokee Nation, except a native-born male citizen thereof, who shall have attained the age of twenty-five years.

SEC. 33. The treasurer shall hold his office for the term of four years, or until his successor is qualified and enters upon the duties of the same. He shall, during the session of the national council, keep his office and make disbursements at the seat of government.

SEC. 34. The treasurer shall within twenty days after receiving official notice of his election, and before entering upon the duties of his office, take and subscribe the required oath (or affirmation), and enter into bond in such sum and with such sureties as the national council shall approve, and who shall be citizen property-holders of this nation, conditioned for the faithful discharge of the duties of his office, and for the faithful performance by all persons employed by him in his office, and that he will deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, records, papers, and other articles and effects belonging to said office, which bond shall be executed to the Cherokee Nation, approved by the principal chief and submitted by him, the principal chief, as soon as may be, to the senate for the information and approval of the national council. The bond with the following oath (or affirmation of office), duly subscribed by the treasurer and certified by the officer administering the same attached, shall be put on file for safe keeping, in the executive office, and shall be deemed to extend to the faithful execution of all the duties of the office of treasurer until his successor shall be elected, qualified, and enters upon the duties thereof.

Oath.

I, ———, do solemnly swear (or affirm), that I will faithfully and to the best of my ability, perform the duties of treasurer of the Cherokee Nation; that I will carefully preserve all books, records, papers, moneys, and other property coming into my custody by virtue of the office; that I will disburse the public moneys in conformity with the express provisions of law, and without fear, favor, or partiality to any one; that I will not lend, with or without interest, or otherwise use any of the public money, or other property, for any use whatever not authorized by law; that I will be accountable to the Cherokee Nation for the acts of all subordinates appointed by me and serving in any office under me; that I will make true and correct reports of the condition of the treasury whenever by law required so to do; and that I will turn over, or account for, to my successor in office, or any person lawfully authorized to receive the same, all moneys, securities, records, papers, furniture and other property of the Cherokee Nation that may be or may have come into my possession as treasurer, so help me God.

SEC. 35. Whenever the funds in the treasury shall exceed three-fourths the amount of the treasurer's bond, or whenever the principal chief shall deem such bond insufficient, by reason of the insolvency, death, or removal from the nation of any of the sureties, or from any other cause, he shall require the treasurer to give an additional bond within such time, in such reasonable amount, and with such surety as he shall direct and approve. No surety shall be permitted to withdraw from the

bond of the treasurer during the term for which the bond was executed without the consent of the principal chief and a majority of the other sureties. In case of the death of any surety, the estate of such surety shall continue to be liable for any default or deficit in the treasurer's office that may occur during the life of the surety.

SEC. 36. It shall be the duty of the treasurer to keep, in books provided for that purpose, fair, full, and separate accounts of all moneys received and disbursed by him, from what source derived, and on what account paid. He shall record all appropriation acts under which he makes payments, and correct copies of all official reports made by him, and keep such records as will exhibit the state of the funds on all accounts and the condition of the treasury in regard to the debts and credits to which it is subject. He shall pay no moneys out of the treasury, except in pursuance of a law authorizing the same and upon warrants drawn by the principal chief. He shall pay on demand all warrants, in the order in which they become due, whenever there are appropriate funds in the treasury to pay the same, giving preference to no one. If the funds in the treasury are inadequate to pay all warrants in full in the order in which they are presented or may become due, the treasurer shall *pro rata* the same, giving every creditor the benefit of his proportionate share.

SEC. 37. In every *pro rata* payment he shall record in a book every warrant presented and entitled, to whom issued, the date thereof, by whom presented, the whole amount thereof, the *pro rata* amount then payable, to whom paid, date of payment, and balance due. The indorsement on the back of the warrant shall agree with the record of the treasurer. On final payment, the register of the treasurer shall show to whom paid, and the indorsement on the warrant shall be by the person to whom final payment is made.

SEC. 38. The books, papers, and transactions of the treasurer's office shall at all times be open to the inspection of the executive, legislative, and judicial officers of the nation.

SEC. 39. The treasurer shall have full supervision of the revenue of the nation, from whatever sources derivable. He may adopt such measures as he may deem necessary to increase the income, and to insure the collection thereof, that may be derived therefrom, as provided by law; and for which purpose he may institute and prosecute suits before the courts of this nation, and shall be entitled to, and divide with his assistants, ten per cent. of all internal revenue collected.

SEC. 40. He shall make to the principal chief, for the information of the national council, within twenty days after the end of each fiscal year, a full and detailed statement of all moneys received into and paid out of the treasury during the preceding fiscal year, showing under separate heads from what source received, and for what particular object or service paid out; and also the precise state of the treasury, together with such information and suggestions of a fiscal nature as he may deem useful and proper; which report shall be published with the laws of the session at which the same shall have been made.

SEC. 41. He shall perform such other duties as may be imposed upon him by law.

SEC. 42. The treasurer shall have power in his discretion to appoint in his office, and under his hand and seal, and with the approval of the principal chief, an assistant, who shall be designated assistant treasurer, and who shall continue in office during the term of the treasurer appointing him, unless sooner removed by him.

SEC. 43. The assistant treasurer shall take the same oath prescribed

for the treasurer, which shall be filed with the bond and oath of the treasurer in the office of the principal chief. He shall discharge such duties as the treasurer may impose upon him, and for the faithful performance of whose official duties the treasurer and the sureties in his official bond shall be responsible.

SEC. 44. The assistant treasurer shall receive a salary to be fixed and paid by the treasurer out of his salary and his proportion of ten per cent. upon special revenues collected.

SEC. 45. The "*fiscal year*" of the Cherokee Nation shall begin on the first day of October and close on the thirtieth day of September of each year; and all books and accounts of the treasurer shall be kept, and duties of his office performed, with regard to the beginning and ending of the fiscal year.

SEC. 46. All officers required to render annual, semi-annual, and quarterly accounts to the treasurer shall do so in conformity with the express provisions of law, and with reference to the beginning and ending of the fiscal year; and it is hereby made the imperative duty of the treasurer to promptly report any officers failing so to do.

SEC. 47. No one shall act as assistant treasurer unless eligible to the office of treasurer of the Cherokee Nation.

SEC. 48. The official bond of the treasurer may be prosecuted upon a breach thereof, from time to time, until the whole penalty is collected.

SEC. 49. A joint special committee, consisting of two senators and three members of the council, shall be appointed within five days after the organization of each annual session of the national council, by the presiding officer of each branch, for the purpose of making a settlement with the treasurer. They shall have free access to the books, papers, and effects of the office, count the funds on hand, compare accounts, and report accordingly. The treasurer shall furnish said committee with the necessary information appertaining to the office.

SEC. 50. The settlement thus made being satisfactory to the national council, the committee shall, in presence of the treasurer, proceed to destroy, by burning, all canceled warrants on file in the office. The treasurer shall, from year to year, retain in his office all warrants or vouchers of whatever character paid by him, for the information of said joint committee.

SEC. 51. He shall not, during his term of office, accept of or be elected or appointed to any other office or position of trust or profit, whereby he may be prevented from exercising a uniform and uninterrupted supervision of his office.

ARTICLE III.

Duties of auditor.

SEC. 52. That there be, and is hereby, created the office of auditor of accounts. The auditor shall be elected at the time and in the manner as the solicitor-general is elected, and his term of office shall expire with that of the members of the national council electing him.

SEC. 53. The auditor of accounts shall be required to enter into bond, to be given to and be filed in the office of principal chief, in the sum of three thousand dollars, with at least three sureties, according to law, and shall be required to take the following oath, to wit:

"I, ———, as auditor, do solemnly swear (or affirm) that I will make and keep a correct registry of all certificates of national indebtedness authorized by law to be registered; that I will faithfully and impartially register the same to the persons owning or presenting

them, as required of me by law to do, and that I will, to the best of my skill and ability, perform all the duties required of me by law. So help me God."

SEC. 54. The auditor of accounts shall keep his office at the seat of government; he shall receive and register all certificates for services rendered the nation and authorized by law that may be presented to him by the holders or owners thereof; his registry shall show the case, nature thereof, how disposed of, amount or number of days, to whom, by whom, and for what service issued, and the date of each certificate, with the number thereof.

SEC. 55. All persons holding certificates issued between the 1st day of October and 31st day of March shall be required to present them to the auditor for registry from the 1st day of April to the 20th day thereof, and all certificates issued between the 1st day of April and 30th day of September shall be presented in like manner from the 1st day of October to the 20th day thereof.

SEC. 56. The auditor shall carefully compare each certificate with the report of the clerk issuing the same, and if found to correspond with the report in all the particulars required by law he shall register it, and if found not to so correspond he shall write upon the back "Rejected," with his official signature. All the certificates presented by each person, and registered or rejected, shall be done up in a package with the name of the person presenting them, the amount thereof, and a number corresponding to the number of the claim upon the registry of the auditor indorsed upon the back thereof, and be filed in his office. After the 20th day of April and October, and within ten days, it shall be the duty of the national treasurer and the solicitor-general to inspect the books and accounts of the auditor; they shall carefully examine the same, compare each certificate registered or rejected with the registry of the auditor and the report of the clerk, and if found to be correct the principal chief shall draw warrants, semi-annually, in favor of the persons so having their claims audited, examined, and reported correct. All certificates not corresponding with the report of the clerks and rejected by the auditor shall be returned to the owner, and the clerk who issued such certificates shall be responsible to such owner for the amount of the certificate so rejected, and upon the failure or refusal of any clerk to pay the amount of certificates so rejected the holder of such certificate may institute a suit against such clerk or his sureties and recover double the amount of the ticket so rejected. And any clerk issuing certificates for services not authorized by law to be paid, shall be responsible, as provided above, to the holder of such certificates.

SEC. 57. During each session of the national council there shall be appointed by the president of the senate and speaker of the council a committee, to consist of two members of each house, who shall be required to carefully examine the books and accounts of the auditor, and shall, with the approval of the national council, destroy all the certificates registered by him for the year ending the 30th of September previous.

SEC. 58. The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby annually appropriated out of the general fund, not otherwise appropriated, to defray the contingent expenses of the nation as audited by the auditor, and the principal chief is hereby authorized to draw warrants for the same as provided by the section of this act (sec. 56) requiring the accounts of the auditor to be examined by the solicitor-general and treasurer.

ARTICLE IV.

Duties of sheriffs.

SEC. 59. There shall be one sheriff in each district, who shall enter into bond with surety approved by the principal chief, payable to the people of this nation, to the amount of five thousand dollars, which bond shall be filed in the executive office by the sheriff before he enters upon his duties; the condition of which shall be in the following form, to wit:

"Whereas the above bounden ——— has been elected sheriff of ——— district for the term now ensuing: Now the condition of the above obligation is such, that if the said ——— shall well and faithfully in all things perform and execute the duties of his said office during his continuance therein by virtue of said election, without fraud, deceit, or oppression, and shall pay over all moneys and give possession of all property that may have come into his hands as such sheriff, as directed by law and law and process of court, and shall impartially and promptly execute all lawful writs to him directed, or use his best endeavors to execute the same, and shall deliver to his successor in office all papers, articles, and things pertaining and belonging to his office, then the above obligation shall be void; otherwise to be and remain in force."

SEC. 60. The following oath shall be taken by the sheriff and the fact certified to upon his bond:

"I, A B, having been elected to the office of sheriff of ——— district, do solemnly swear that I will well and truly execute the duties of my said office as defined and required by me by law and my bond to execute, according to the best of my skill and understanding, without fear or partiality: So help me God."

SEC. 61. It shall be the duty of each sheriff to attend upon the courts which may be held in his respective district, to serve all summons and other processes which may be placed in his hands, according to the tenor of the mandates therein contained, and to take all necessary and lawful measures in the execution of the judgment of the courts committed to him to execute, and also to arrest and cause to be tried all persons who may be charged with criminal offenses; for which last purpose, and also to summon witnesses to attend the criminal courts of this nation, the sheriffs are authorized to go out of the limits of their respective districts.

SEC. 62. When an arrest shall be made of a person charged with a felony, it shall be the duty of the sheriff to notify the judge having jurisdiction of the case of such arrest without delay, and after ascertaining the time fixed for trial, to proceed to the office of the district clerk, there to obtain a list of jurors to be summoned, as provided by law. The prisoner shall be securely guarded until convicted or acquitted, and for this purpose the sheriff shall in all cases of manslaughter and those involving the death penalty select and appoint as special guards of each person so charged three citizens of good character, who shall be sworn faithfully to do duty as guard until discharged, and the sheriff shall be authorized to administer such oath. In all criminal cases prosecuted by indictment only, except those above mentioned, the sheriff shall appoint and qualify two guards for each prisoner. And every person accused of felony shall, while under authorized arrest and guarded, be chained, except while present in court; and the sheriff may adopt and practice such other means not enjoined in this section, and not cruel or inhuman, as he may find necessary for the safe-keeping of

any prisoner, at some regular place, until acquitted: *Provided*, That any accused person shall be allowed, within the limits fixed by the constitution, to give bail for his appearance at court at the time set for his trial, by giving bond to the sheriff, with security to his satisfaction, and to the amount to be fixed by the judge presiding in that case. Bondsmen and securities to be qualified in double the amount of the bond.

SEC. 63. In case of resistance, or strong apprehension of resistance, the sheriff may summon such a number of citizens as he shall deem necessary to assist and effect the arrest; and should any prisoner resist, or attempt to escape from the execution of a lawful writ of arrest in a case of felony, and be necessarily killed while in the act of such resistance or attempt to escape, and in order to prevent such escape, such killing shall be deemed and held justifiable.

SEC. 64. No sheriff shall issue any national scrip or certificate, but each sheriff shall keep in his office a book containing a list or register of all persons appointed or summoned by him to do national service pursuant to law specially authorizing him to require such service. Such register shall contain the nature of the service performed, the date of appointment or summons, the number of days served, and between what dates, and case or occasion requiring the service. Each special service required above to be registered by the sheriff shall be registered as soon as the same is performed and accepted and the servitor discharged by the sheriff from that special service, and each entry shall contain the date thereof. The expenses of each case or occasion shall, as soon as practicable after the services therein have been performed, and without unnecessary delay, be reported in full to the clerk in such form as shall enable him promptly to issue certificates therefor as required by law; and at the close of each fiscal quarter, or within ten days thereafter, the sheriff shall transmit to the auditor of accounts full and certified copies from his register, showing the expenses of his office during that quarter; which reports of the sheriff shall be compared by the auditor with the reports of the clerk for the same period, and he shall note any material discrepancies or differences between them, or deficiencies in either, in his annual report.

SEC. 65. Each sheriff may appoint a deputy from under his own hand, and shall notify the district judge of such appointment. Such deputy shall, before entering upon the discharge of his duties as such, take an oath to faithfully discharge the same according to law; and the district judge shall record such appointment, with the date thereof, and of the administration of the said oath; the deputy sheriffs shall be authorized to exercise the powers and perform the duties of sheriff, and shall be subject to displacement at the will of the sheriffs, respectively, who may have appointed them. Each sheriff shall be responsible for the pay, conduct, and behavior in office of the deputy appointed by him.

SEC. 66. No officer empowered to serve process, except warrant for arrest of persons charged with the commission of crime, shall serve the same between the hours of twelve and twelve, commencing and ending the Sabbath day; and any such service shall be void, and the officer so offending shall be liable to the penalties imposed by law for neglect of serving lawful process.

SEC. 67. It shall not be lawful for any sheriff to board any prisoner at any public boarding-house in the town of Tahlequah during the session of the national council.

ARTICLE V.

Duties of district clerks.

SEC. 68. There shall be one clerk for each of the several districts of this nation, who shall be a resident of the district for which he may be elected, and who shall be elected by the qualified votes thereof, and commissioned as provided by law.

SEC. 69. Each clerk so elected shall act as clerk of both the circuit and district court of his district, at the regular and special terms thereof, and also act as clerk in all criminal cases triable by a supreme or special judge within his district.

SEC. 70. Each clerk elected as provided in section 68 shall, on or before the 3d Monday of November following, file a bond in double the amount of his salary, conditioned upon the faithful performance of the duties of his office, which bond, or any part thereof, shall be recoverable in a civil suit for damages, sustained by any citizen, by reason of the malpractice, willful neglect, omission, or refusal to do duty on part of any clerk filing such bond.

SEC. 71. The district clerk shall also, before he shall enter upon the duties of his office, take the following oath :

"I do solemnly swear (or affirm) that I will carefully file and preserve all books, papers, and documents that may come into my possession, or be placed in my charge, by virtue of my office, and the same, with the furniture and things belonging to the office, safely transmit unimpaired to my successor in office, upon notice from him of his readiness to receive them; that I will true record make of all matters and things required of me by law or the court to record, and that I will faithfully and truly execute all duties which may devolve upon me to perform by virtue of my office, without favor, affection, or partiality, and to the best of my ability: So help me God."

Which oath shall be certified to, as having been taken, on the back of his bond.

SEC. 72. Should a vacancy occur from any cause in the office of district clerk or in any other office of the judicial or executive departments created by law, and not provided for by the constitution, the principal chief may temporarily fill such vacancy by appointment until the vacant office shall be permanently filled for the remainder of the unexpired term, as provided by law.

SEC. 73. Each clerk shall keep a set of books, one of which shall be separately devoted to each of the following matters of record, to wit:

1st. The registration of all regular appointments made within his district in conformity to law, including those of administrators, guardians, appraisers of property, superintendents, judges, and clerks of election, &c., showing what person appointed, time of appointment, and for what special purpose.

2d. Copies in full of all schedules of property, required by law to be made and returned to the district judge, with the lawful appraisements of the articles, respectively, and special reports of appraisers, if any, in connection with such schedules.

3d. Synopsis of all bonds filed in the office of the district judge, showing for what purpose or upon what condition given, names of principals and sureties to each, date and amount, and to whom given, and also the names, with date, of any additional sureties required to be given to any bond already filed.

4th. Wills purporting to be of deceased person, verbal or written, as

proven, or attempted to be proven, to the satisfaction of the district judge, with certificate attached to the record that the will has been so proven, or not, as the case may be.

5th. Reports of administrators and other appointees of the description of property placed in their trust, including settlements with heirs, wards, creditors, or other appointees.

6th. Criminal cases tried by the district court, with all proceedings had in open court, except testimony of witnesses.

7th. Criminal cases tried by a circuit or supreme judge, with record of all proceedings in each case, including that of testimony given in such case.

8th. Civil cases tried by the district court, with proceedings of court in each case in full, from institution to disposition of case, except testimony of witnesses.

9th. Civil cases tried by the circuit court, with proceedings in cases liable to be appealed, the oral testimony in each case in full, and including testimony of witnesses originally given, and copies of all documentary testimony.

10th. Stray property, as reported and sold by the sheriff, copied in full from his returns of same, as required by law.

11th. Marks and brands of stock, as provided to be recorded by law.

12th. Improvements, showing location of each, and by whom claimed or owned, as provided to be recorded by law.

SEC. 74. The original of all matters of record, having reference to the action of the district judge, had between the regular terms of the district court, or to any returns, applications, and reports made to him during the same time, shall, as speedily as possible, and in no case with longer delay than one month, be transmitted by the district judge to the district clerk, to be filed in his office, and recorded as required.

SEC. 75. All matters required by law to be recorded by the district clerk shall be placed by him on record in the appropriate book, without unnecessary delay; and he shall attach an index to each book, at the time of record, of each matter recorded, to assist reference and examination.

SEC. 76. The records of the office of the district clerk, or any part thereof, shall, when so desired by any citizen as to any particular matter recorded, be submitted to his inspection by the clerk at any time during office hours, with the assistance and only in the presence of the clerk.

SEC. 77. All lawful official documents or process issued by any district clerk shall bear the seal of the district.

SEC. 78. Each clerk shall issue, on blanks furnished him for that purpose by the national treasurer, certificates of all services done the nation, within his district, by jurymen, guards, witnesses, interpreters, and other persons not otherwise ordered to be paid, of whom special service to the nation may be required by law, and who the law provides shall receive per diem compensation. Each certificate issued by him shall be numbered in the order in which it is issued, from the commencement to the end of each fiscal year, beginning with number one; and shall also designate the time served, kind of service, when the service was done, name of person serving, and date of issuance of certificate. For service done in criminal cases the certificate shall specify, also, the name of the party charged, nature of accusation, and disposition of case. All certificates shall be signed officially by the clerk, and bear the stamp of the district seal.

SEC. 79. The national treasurer shall furnish each clerk, when applied for by him, with "neatly printed" blank forms of "national scrip" for

the issuing of certificates; and no certificate shall be issued by any clerk except upon blanks so furnished. The treasurer shall stamp the blanks so furnished by him with the seal of his office, and shall take a receipt from each clerk for the number each time to him provided. The treasurer shall also furnish each district clerk with a seal for his office, bearing on the margin the name of the district and nation, and in the center the word "justice."

SEC. 80. Each clerk shall keep a register of all certificates issued as above required for services proved before him, and a separate register of all certificates issued for services proven before the sheriff, and reported by the sheriff to him, to be certified to and paid. Each clerk shall also be required to furnish on oath quarterly reports to the auditor of accounts within ten days after the expiration of each quarter. The first quarter shall end December 31st, the second March 31st, the third June 30th, the fourth or last quarter September 30th, from which reports the auditor shall furnish on oath the treasurer with quarterly abstracts. Certificates shall be accurately described in registers of the same, as required by law to be issued, for the prevention of fraud, and their certain identification and approval by the auditor.

SEC. 81. For every failure on the part of any clerk to furnish the auditor of accounts with registers of certificates and reports, as before required, and within the time required, he shall forfeit to the nation, as a penalty for such failure, twenty-five dollars, which sum the auditor shall deduct from the salary of such clerk in his register of salaries of officers, and shall at once enter upon such register the cause of such reduction; and for every failure of the auditor to make such reduction, when authorized and required by him to be made, a fine of fifty dollars is hereby imposed upon such auditor for such omission of duty, which shall be deducted and withheld by the treasurer from his salary.

SEC. 82. The principal chief is hereby authorized to furnish each clerk, for the use of the circuit and district courts, such dockets as may be necessary in conducting the business thereof, and to purchase by wholesale all paper, ink, envelopes, blank-books, and other stationery, of uniform quality, required for the use of the national council, executive office, supreme court, and district clerks; and the principal chief shall report all purchases made under this provision to the national council at the session following.

SEC. 83. The district clerks contemplated by this act shall each receive a salary of five hundred dollars per annum, payable out of the general fund, and be allowed to charge and collect a fee of twenty-five cents for all papers of private or personal character executed by them not exceeding one page legal-cap, or two hundred words, fifty cents for all papers exceeding two hundred words, and twenty-five cents for every additional or fraction of two hundred words: *Provided, however,* That no additional pay over and above his salary shall be allowed any clerk for services required by law to be rendered by him.

SEC. 84. Each clerk shall, when necessary, have the right by written notice to appoint a deputy clerk, which appointment, when made, shall be reported without delay to the district judge; and such deputy clerk shall take the oath prescribed to be taken by the clerk, and who shall be only authorized during the period of his appointment, unless sooner removed by the clerk, to discharge the duties of the office specially designated for him to perform in his written appointment, and the deputy clerk shall be compensated for his services as such out of the salary of the clerk, according to the contract in such case made between them.

SEC. 85. When in any criminal case the clerk shall be unable to at-

tend a called session of any court within his district, and no deputy clerk shall appear in his place, the court shall be authorized to appoint and qualify for the special occasion a clerk *pro tempore*, who shall act as such during that session; and the clerk so appointed shall be required, upon the adjournment, to supply a statement of the proceedings of the court during that session, with the proven expenses of the same, duly certified to by him, to the district clerk; and for the accuracy of such report of proceedings and expenses by any clerk *pro tempore*, the district clerk shall be held responsible; and for and in consideration of the services of any clerk *pro tempore* appointed in pursuance of this section, such clerk shall receive, upon the certificate of the presiding judge, five dollars per day of actual service, to be deducted from the salary of the district clerk by the auditor of accounts.

ARTICLE VI.

Duties of executive council.

SEC. 86. The executive council shall consist of three members, who shall be elected in the manner, and whose term of office shall be as, defined by the constitution. They shall perform such duties as are required of them by the constitution, and such as are or may be required of them by law.

ARTICLE VII.

Duties of solicitor-general.

SEC. 87. The office of solicitor-general is hereby created.

SEC. 88. The solicitor-general shall be elected at the same time and in the manner that the executive councilors are elected, and his term of office shall be that of the national council electing him.

SEC. 89. It shall be the duty of the solicitor-general to attend the sessions of the supreme court, and defend or prosecute any suit before said court in which the Cherokee Nation may be a party, or wherein the Cherokee Nation may be interested, or when, in any case, he may be required by the principal chief.

SEC. 90. He shall give his opinion, in writing, on all questions affecting the public interests, when required by the principal chief, treasurer, auditor, or any of the district solicitors, and when, in the opinion of the principal chief, it shall be deemed necessary to the public interests or the proper administration of law, he shall appear and defend or prosecute any suits, either civil or criminal, in any of the courts of the nation.

SEC. 91. He shall, as required by law, with the treasurer of the nation, examine the accounts of the auditor, and perform such other duties as may by law be required of him.

CHAPTER II.

ARTICLE I.

Organization of the national council.

SECTION 1. The national council of the Cherokee Nation shall meet annually at the time and place fixed by law.

SEC. 2. Members elect to the national council shall take their seats at the time of meeting of the first annual session thereof after the general

biennial elections at which they shall have been elected, and shall constitute a new council; and such new council shall be organized as hereinafter provided.

SEC. 3. Certificates of election shall be deemed good and sufficient evidence of the election of the persons holding the same, unless in cases of contests, as provided for by law.

SEC. 4. As soon as a majority of the members elect to either branch of the national council shall have assembled at the seat of government, such majority shall constitute a quorum competent to transact business, and shall, without delay, proceed to organize the new senate and council; for which purpose they shall elect one of their number temporary chairman, and some one as clerk *pro tem*. The chairman shall call the house to order, receive the credentials of the members claiming seats, and read them aloud for the information of all. The clerk shall enroll the names of the members, district by district, and keep a correct minute of the proceedings, which shall afterwards be entered upon the journal of the senate or council, as the case may be. The chairman shall then, and as soon as may be, summon the chief justice, or any other officer authorized to administer oaths, who shall qualify such members elect, but no person whose seat is contested shall be qualified while the case is pending. The constitutional oath of office may be administered to the members elect by districts or by persons or otherwise according to circumstances, each house exercising the right to judge of the elections, the returns, and the qualifications of its own members.

SEC. 5. The members thus qualified, and being a majority or quorum of the whole number of members of the senate or council, as the case may be, shall at once proceed to vote *viva voce* for a president of the senate or speaker of the council, as the case may be, and for one chief clerk and one assistant or enrolling clerk, and such interpreters as shall be necessary and authorized by law.

SEC. 6. No person shall be chosen president of the senate or speaker of the council unless eligible to the office of principal chief. Any number of members may compete for the office of president of the senate or speaker of the council. The voting shall be in the order in which the roll is called by the clerk *pro tem*., and the candidate receiving the greatest number of votes cast, and a majority of the whole number cast, shall be president of the senate or speaker of the council, as the case may be: *Provided*, That should there be three or more candidates, neither one of whom shall have received a majority of the whole number of votes cast, then, and in that case, the candidates receiving the greatest number of votes shall be voted for; and the one receiving the greatest number of votes shall be declared duly elected: *Provided also*, That the whole number of votes cast shall be a quorum of the whole number of members.

SEC. 7. There shall then, and in like manner, be elected one chief clerk and one assistant clerk, and two interpreters to each branch of the national council so electing such clerks and interpreters; and such clerks and interpreters shall, before entering upon the duties of their offices, take an oath to faithfully discharge the duties thereof to the best of their ability, whereupon such president of the senate, speaker of the council, and the clerks and interpreters thereof, shall be duly qualified to enter upon the discharge of their official duties; and such senate and council, so organized, shall constitute the national council, competent and ready for the transaction of business.

SEC. 8. The president of the senate and speaker of the council shall preside over the deliberations of their respective branches of the na-

tional council, and shall be subject to such rules as may be adopted for the government of the same. Their term of service, and that of the clerks and interpreters, shall expire at the same time with the expiration of the term of service of those electing them, unless sooner removed.

SEC. 9. The clerks and interpreters of the senate and council may be removed by the body electing them, for any neglect or abuse of their official duties, or for incompetency in office.

SEC. 10. The chief clerks of the senate and council shall keep neat and correct records of the proceedings of their respective houses, and read the journal of business as often as may be required.

SEC. 11. The assistant or enrolling clerks shall aid the chief clerk in his duties, and perform such general and special services as may be assigned him by the chief clerk, or by any branch of the council of which he is assistant clerk.

SEC. 12. The assistant or enrolling clerk shall be competent to act as chief clerk, and shall so act in the absence of the chief clerk.

SEC. 13. The interpreters of the senate and council shall interpret into English and Cherokee all acts, resolutions, motions, speeches, and other things or subjects necessary to be interpreted; whereby every member may fully understand every subject or matter claiming legislative notice. Each branch of the national council may dispense with one or all of its interpreters whenever it may deem it expedient so to do, and whenever the public interests will not suffer thereby.

SEC. 14. It shall be the imperative duty of the chief clerks of the senate and council to act as the custodians of the books and papers of the senate and council. They shall each be personally responsible for the safe-keeping of every bill, joint resolution, memorial, report, message, or other document or paper pertaining to legislation, which shall come to their hands, or to the hands of their assistant clerks, from any member, committee, or officer of the national council, or either branch thereof; and shall keep a record of all such bills and other papers pertaining to legislation; which record shall show the disposition made of the same.

SEC. 15. As soon as the senate and the council shall have effected a permanent organization, they, or either branch thereof, shall notify the principal chief of the same, and the principal chief shall immediately transmit to the president of the senate such election returns as he may have in his possession made by law returnable to the national council; which returns shall be opened, examined, and passed upon by the senate and council in joint session, as hereinafter provided, before the transaction of any other public business: *Provided, however,* That election returns for principal and assistant principal chiefs shall be examined first; and such chiefs-elect shall at once be installed as hereinafter provided.

SEC. 16. Members not present at the regular organization of the national council and those elected to fill vacancies may be installed at any time by taking the constitutional oath.

CHAPTER III.

AN ACT relating to the judiciary.

Article.

- I. General provisions.
- II. Supreme court.
- III. Circuit court.
- IV. District court.
- V. Juries.
- VI. Grand jurors.
- VII. Criminal trials.
- VIII. Solicitors.
- IX. Testimony and rules relating thereto.
- X. Witnesses and subpoenas.

Article.

- XI. Execution.
- XII. Limitation of actions.
- XIII. Garnishment.
- XIV. Attachment.
- XV. Possession of property.
- XVI. General rules.
- XVII. Places of holding courts.
- XVIII. Interpreters.
- XIX. Bonds.

ARTICLE I.

General provisions.

SEC. 1. The courts established under the government of this nation shall have cognizance of all suits arising under the constitution and laws of the Cherokee Nation, and of cases originating under the laws and usages of the Eastern Cherokees existing previous to their removal, and of those under the laws and usages in existence among the Western Cherokees prior to the act of union, dated the 12th day of July, 1839; and the adjudication of all questions shall be according to the provisions of the respective laws under which they originated.

SEC. 2. All citizens of this nation, and all persons not citizens, who may be admitted by law to reside therein, in the employ of citizens, shall have the right to appeal and be subject to the jurisdiction of Cherokee courts for the determination of all causes of action at law that may grow out of the lawful intercourse of the parties.

SEC. 3. The commencement of all suits shall be by summons obtained from the clerk of the district in which the party sued shall be resident (except in cases expressly provided for otherwise by law); which summons shall, as exactly as practicable, describe the property sued for, or state the amount claimed, and also for the proper understanding of the issue by the defendant; and the court shall concisely state the nature of the case and the principal grounds upon which the claim is founded. Such summons must be served by some lawful officer at least thirty days before the holding of the court having jurisdiction of the cause, and be returned to the clerk at or before the commencement of the term next following of such court. And the court shall give judgment as the right of the matter in law shall appear, without regarding any formal defect or verbal imperfection in such summons.

SEC. 4. Every summons shall run in the name of the Cherokee Nation, in the following form, to wit:

"CHEROKEE NATION,
"——— District":

And shall be directed and issued substantially in the following form or the like effect:

"To any lawful officer, greeting:

"You are hereby commanded to summon (here insert the name of defendant) to appear at the lawful place of holding court in said district on the (here insert on what Monday of the month and what year court

time shall commence), there and then to answer the demand of (here insert the name of plaintiff), who claims the right (or right of possession) to certain property now in defendant's possession, to wit, (here describe the property sued for sufficiently clear for identification), such property being worth, at a moderate estimation, in cash (here insert probable or appraised value at length), and for cause of action plaintiff alleges that (here state the nature of the case and ground of claim in clear and concise language, so that the opposite party may acquire information of the main and essential facts upon which plaintiff intends to rely to establish his right").

SEC. 5. If the claim is for a definite sum of money, insert after "who claims," in above form, the words, "a certain sum of money, to wit," (then state the sum demanded, with interest, if any), and for ground of such demand alleges that (state nature of case as required in above form).

SEC. 6. If for any indefinite sum, state the largest amount plaintiff can expect to recover, and add, "or so much thereof as the court shall adjudge to be due," and close, as before, with a statement of cause of action.

SEC. 7. After the nature of the case is stated, as required, the summons shall conclude as follows :

"Fail not to execute this summons within the time, and return as required by law.

"Given under my hand and seal of office on this the ____ day of _____, A. D. 18—.

(Signed)

"_____,
____ Clerk _____ Court _____ District."

SEC. 8. Any person instituting a suit at law, when obtaining a summons for that purpose, shall file a bond, to the satisfaction of the clerk, for the payment of all the costs of that suit, conditioned upon the successful prosecution of such suit.

SEC. 9. The form of plaintiff's bond for cost shall be substantially as follows :

"Know all men by these presents that we (insert name of plaintiff), principal, and (insert names of sureties) sureties, do hereby bind ourselves, our heirs, administrators, and assigns, to pay to (insert name of clerk), clerk of _____ district, or successor in office, a sum of lawful money sufficient to discharge all the cost that may attach to a certain suit instituted before the _____ court of said district, wherein the above-named principal of this bond is plaintiff and (insert name of party sued) is defendant.

"Signed on this ____ day of _____, A. D. 18—.

"The condition of this obligation is, that should the aforesaid (insert name of principal) prosecute said suit to a final and successful termination, this bond shall be null and void; otherwise it shall remain in full force and effect.

"(Sig.)

"Security,

"Security,

_____. [L. S.]
_____. [L. S.]
_____. [L. S.]"

SEC. 10. No accepted and *bona-fide* bond for cost of a civil or criminal suit shall be required to be put in suit against the sureties; but execution may immediately issue upon its forfeiture against the principal and sureties. But such execution shall be served upon the property of

the principal first, and, if not sufficient to discharge such cost, then upon the property of the sureties.

SEC. 11. Any summons or notification authorized by law to be issued, citing or informing one of the parties to a cause when the case is to be tried or evidence taken, shall be served, if practicable, upon such party in person, and so certified by the officer serving. But when, after diligent search, such party cannot be found within the district where he has been till that time residing, and the officer shall have cause to believe that he is trying to evade such service, such summons or notification may be served by the officer having such service in charge, by leaving a copy in full of such summons or notification at the party's usual place of residence, with any person not less than ten years of age. And when any summons or notification is so served by copy, the original process shall be returned, with a certificate of the officer that it has been so served, with the date of such service; and such service shall be to all intents and purposes a valid and sufficient service as against any party who may be residing or living within the limits of this nation at the time of the issuance of the summons.

SEC. 12. When two or more persons live in different districts who ought to be sued jointly, it shall be lawful to sue all in one of the districts where one or more of them are residents. In such event, the summons must cite all to answer before the court of the district wherein the suit is to be brought, and be served upon the particular defendant living therein. But duplicate summons shall be issued, corresponding in number to the number of other districts where the other defendants reside, which shall be forwarded to the sheriffs of those districts, there to be served on such defendants and returned as required by law. But before sending such duplicate summons abroad, the clerk issuing the same shall indorse upon each upon what particular defendants it is there to be served, and also that such summons is a duplicate; and he shall also indorse upon each duplicate the defendants to be summoned.

SEC. 13. When any person has been joined to another in any civil case, either as plaintiff or defendant, who ought not to be so joined, or when any person has been omitted to be joined as plaintiff or defendant in any suit, who ought to be joined, such non-joinder or misjoinder may, upon the showing good reasons therefor to the court by either party, and notice given to the opposite party, be amended by order of the court, adding or striking out such person from the record of the case: *Provided*, The consent of such person be first obtained, and such amendment shall be made without making any further delay in the proceedings than may be required to hear and determine such motion.

ARTICLE II.

Supreme court.

SEC. 14. The supreme court shall consist of three judges, one of whom shall be elected by a joint vote of the national council as chief justice. In the absence of the chief justice the senior associate justice by commission shall act as chief justice *pro tempore*. Any two of the judges shall form a quorum to transact business and decide cases.

SEC. 15. Each chief justice shall appoint, to serve during his term of office, a clerk of the supreme court, who may be removed from office before the expiration of the term, for neglect, inability, or misconduct, by the chief justice or by other judges. The clerk of the supreme court shall take the oath prescribed by law to be taken by the district clerks, and it shall be his duty also to enter on a docket, to be kept for that

purpose, all causes brought into this court, and to record faithfully all proceedings and decisions in books, and to preserve with care all papers and books appertaining to the business of the court.

SEC. 16. The court shall have exclusive jurisdiction of all cases instituted to contest an election held by the people, and brought before the court as provided by law. The court shall also have final jurisdiction of all cases and questions of law and evidence connected therewith, that shall be appealed from the circuit court according to law, and the court shall have the power to decide upon the constitutionality of any act of council involved or brought in question in any case so appealed.

SEC. 17. In case all or the majority of the judges of the supreme court are interested in any cause that may be pending before that tribunal for decision, or are related to all or any of the parties, it shall be the duty of the principal chief, by and with the advice and consent of the senate, to select such a number of persons of good character and knowledge as shall correspond with the number of judges so interested or related as shall have been objected to, and specially commission said persons for the trial of such cause.

SEC. 18. In case one of the judges of the supreme court shall be ruled off, in consequence of being interested in any cause, or of being related to all or either of the parties thereto, and the remaining two judges shall be divided, and be unable to render an opinion of the court therein, it shall be the duty of the principal chief to appoint and especially commission a person of good character and knowledge, who shall in conjunction with the disagreeing judges constitute a court for the hearing and deciding of such cause.

SEC. 19. In case one of the justices of the supreme court shall be absent during a part of the regular session of the same, and the remaining two shall hear, and, after consideration of any cause, be unable to agree upon a decision thereupon, the case shall be suspended until the whole bench are present, when the suspended case shall be considered and decided after a rehearing from both parties.

SEC. 20. In the trial of contested elections, the court shall be confined to an examination of the returns of such election, and of the testimony relevant to the grounds set forth by the contestant in support thereof or opposition thereto, that shall be taken and forwarded to the supreme court within the time and in the manner provided by law.

SEC. 21. In trial of all appealed cases, and of questions of law and evidence connected therewith, the court shall be confined to the papers and documents constituting each case that shall be transmitted by clerk of the circuit court in conformity to law, provided that either party shall have the right to except to the accuracy and completeness of any part of the transcript of the testimony, or other paper forwarded, upon a motion to the court made previous to the argument of the case, and accompanied with particular specifications of a serious and material disagreement between the showing of the case, as transmitted, and as submitted to the lower court and filed in the clerk's office. If such motion be accepted, the question shall be determined by an examination of the clerk and of the papers belonging to that case, recorded and filed in his office, and upon suspicion of fraud entertained by the court, by any other testimony they may deem of service to expose the same, for which purpose the court may order the immediate attendance of said clerk, with the official record of the case, for the inquiry and inspection of the court. If the court shall find the exception made, as above provided, well taken, and the transmitted papers materially defective, as alleged, they shall proceed to try and decide the case upon the original

record: *Provided*, Be not objected to; and, if so, there shall be no just ground for suspecting a fraudulent alteration thereof; but if such fraud be evident to or suspected by the court, the case shall be dismissed.

SEC. 22. Should any clerk be found guilty of willful neglect or fraud, in the course of the examination provided in the above section, the court shall enter their decision accordingly; and the clerk of the supreme court shall forward a copy thereof to the principal chief, who shall suspend the clerk so offending from office, and report him to the next national council for malpractice. And the clerk so reported and suspended shall be responsible for the full amount of cost that may attach to the suit dismissed for fraud, which cost shall be collected out of the salary due such clerk, and he shall forfeit, upon trial and conviction, the rest of any salary due him at the time of suspension to the nation for the use and benefit of the public schools.

SEC. 23. No case shall be continued twice (from one term to another) after the suit has been docketed and called, except by consent of parties. But upon satisfactory showing to the court by either party that damage to his interests involved in the case may be reasonably apprehended from a trial at that time, on account of some accident or unexpected event connected with the suit, the court may, at its discretion, grant relief by ordering a continuance until the next term.

SEC. 24. The supreme court shall have power to make and award such judgments, orders, and decrees, and to issue such writs and processes as they may find to be necessary to carry into full effect the powers which are or may be hereafter vested in them by law.

SEC. 25. The supreme court shall have authority, within the limits of their judicial action, as prescribed by law, to exercise a general superintendence over courts of inferior jurisdiction through and by means of decisions made and declared by the court upon questions of law, evidence, and practice, submitted by them in the course of the trial, or examination of all causes of which they shall be allowed cognizance by law.

SEC. 26. The court shall have power to prescribe, from time to time, such rules of practice for regulating the procedure in the trial of causes in the lower courts as they may deem necessary, expedient, or serviceable, and which shall not conflict with the rules prescribed by law. And the object of the court in prescribing such rules shall be the more speedy and accurate presentation of the issue or point of difference between the parties, the exclusion of unnecessary and irrelevant testimony, and the more certain administration of justice.

SEC. 27. After the docket has been disposed of at each term of the court, the court shall continue in session for the consideration of reports of the judges of the circuit courts and for the establishment of such rules of practice for the use of the lower courts as the court shall deem expedient to adopt and impose, and the clerk of the supreme court shall record the rules so adopted and imposed as part of the proceedings of the court, and shall, previous to the next regular term of the respective courts, or whenever applied to by any of the judges, prepare and furnish a certified copy of such rules to such judge for his information and guidance.

SEC. 28. When an appealed case is opened for consideration by the supreme court, the court shall first consider and decide such questions, if any, of evidence, as may have been appealed from the decision of the circuit court. Should the court decide that the testimony offered and excluded in the court below ought to be admitted, or that testimony there admitted ought to be excluded, or in either case shall confirm the

decision of the court below, they shall proceed to try and decide the case upon that part of the testimony transmitted or the whole thereof, as shall be found by them to be proper evidence in the case.

SEC. 29. All decisions of the supreme court (intermediate and final) shall be made and rendered, as well for the government and guidance of the low courts and the citizens of this nation in general, as for the just and true interpretation of the law and the settlement of the dispute and administration of justice between the parties. Accordingly, each decision shall be accompanied with a statement, as far and as full as may be practicable or necessary for the purpose, of the grounds in law or evidence upon and by reason of which such decision has been made. Each decision shall be attended or preceded by a distinct statement of the issue between the parties, the situation of the case as set forth by the evidence before the court, the law or laws governing the case, and the interpretation and application of the same by the court, with the reasons therefor, and the principles of law or evidence involved in the suit and affecting the decision thereof; and of such other matters and considerations, having relation to the decision, which the court may deem essential to give value and force to a law precedent, for the government and guidance of the courts and citizens of the nation in similar cases arising thereafter.

SEC. 30. All decisions made by the supreme court shall have the force of law as to the construction and application thereof in all the courts of this nation until such construction or application shall be limited, altered, or in any manner amended by a subsequent decision of a subsequent case by the supreme court.

SEC. 31. The judges of the supreme court shall have and exercise exclusive criminal jurisdiction of all cases of manslaughter, and of all cases involving the punishment of death, which shall be instituted as required by law. And in order to insure an equal division of labor between the judges, it shall be the duty of the principal chief to divide the districts of the nation into three supreme judicial circuits, as equally as to population as may be practicable, and which circuits shall be respectively numbered, first, second, and third; the district of Delaware being in the first, Tahlequah in the second, and the district of Canadian in the third. To each of the circuits, when defined, one supreme judge shall be assigned by the principal chief by proclamation of such assignment made in the usual manner. Each judge and his successors, unless disqualified by relationship, shall preside, within his circuit, over the trial of the description of cases designated above: *Provided*, That the principal chief may, at the commencement of each year, make such changes as to the limits and extent of and circuit defined by him, and as to the assignment of the judge thereto, as he shall deem expedient. Such changes to take effect upon proclamation thereof as provided above.

SEC. 32. Should any supreme judge be related, in any criminal case reported to him, whether to the accused or to the person upon whom the crime has been committed, and be objected to, or should he be disabled from presiding by any sufficient and lawful cause, he shall, as such case is reported, transmit, by the sheriff reporting the same, a written notice of such disqualification or disability, with the cause thereof, to either of the other supreme judges, who shall be authorized then to try that case; and should the judge thus notified be objected to and disqualified likewise, by relationship, or be made unable to preside, he shall forward the notice received from the first judge, with a notice of the like tenor and effect from himself, to the remaining supreme judge, who shall be authorized to proceed and try that case. And should all the supreme

judges be related or unable to preside in any case, the last judge to whom the case shall be reported shall transmit the written notification received by him from the other judges, with a like notification of the cause of his own disqualification, to the principal chief, who shall then appoint and commission some suitable person to preside as special judge in the trial of that case: *Provided*, That any judge, notified as above, shall proceed to call a court for the trial of the case reported; and no judge shall be held to be disqualified by relationship, except he be lawfully objected to for that reason at the first calling of such case by such judge, otherwise the consent of both parties to his presiding shall be presumed as being given by both parties.

ARTICLE III.

Circuit courts.

SEC. 33. There shall be established three judicial circuits, which shall be respectively designated and known as the "northern," the "middle," and "southern" circuits. The northern circuit shall be composed of Delaware, Coo-we-skoo-we, Saline, and Tahlequah districts. The middle circuit shall be composed of Going Snake, Flint, Sequoyah, and Illinois districts. The southern circuit shall be composed of Canadian district.

SEC. 34. There shall be one judge elected for each circuit by the qualified votes of the districts comprising the same at the time and places and in the manner ordained by law, and whose term of office shall be that prescribed by the constitution, and whose election shall be determined as provided by law.

SEC. 35. The judges shall hold their respective courts in each district commencing on the days following, to wit: In Delaware and Going Snake, on the first Monday in May and September; in Coo-we-skoo and Flint, on the second Monday in May and September; in Saline and Sequoyah, on the third Monday in May and September; in Tahlequah and Illinois, on the fourth Monday in May and September; in Canadian, on the last Monday in April and August of each year.

SEC. 36. The circuit courts shall have exclusive criminal jurisdiction of all felonies not punishable with death, and of all civil suits in which the title to real estate or the occupancy of any portion of the common domain shall be in issue, and of all other civil suits in which the amount at issue shall exceed one hundred dollars. But the court may try and decide all causes that shall be brought before it by appeal from the district court, in which the value of the demand in each case shall not be less than twenty-five dollars; and the decision of the court in cases so appealed from the district shall be final.

SEC. 37. The circuit court shall observe and be guided by such rules regulating the mode of conducting suits in such court as may be established by law and by those made and approved for that object by the supreme court not conflicting with the former.

SEC. 38. The circuit courts shall have power to adopt and practice such other rules and methods of conducting cases therein as it may deem proper and serviceable for the administration of justice between the parties, not inconsistent with the general rules imposed by law or those established by the supreme court, and to make and issue such subpoenas, orders, injunctions, and other processes and writs as the court may find necessary to develop and obtain evidence, and to carry into full effect for the finding, determining, and securing the rights of both

parties to a suit, the powers that are or may be given to the court by the laws of the Cherokee Nation.

SEC. 39. Each judge shall make out, arrange, and number such rules as may be adopted by him, pursuant to the authority given him in the preceding section, which rules the clerk of each court shall copy in a book to be kept for that purpose, with the rules established by law and those imposed by the supreme court. At the close of each full term the several judges shall forward a copy of their respective rules of practice, with such explanation as they may deem proper, to the clerk of the supreme court, to be indorsed or amended by that court.

SEC. 40. The clerks of the circuit courts shall, in all cases liable to be appealed, record in full the testimony of oral witnesses on both sides, and the proceedings of the court, and shall record, as part of the proceedings, all motions made by either party, with the rulings of the court thereon, and the general reasons therefor, as presented by the court and approved by him. And in cases of an appeal no ruling, unless excepted to at the time of its delivery and so entered in the proceedings, shall be subject to the consideration and revision of the supreme court.

SEC. 41. When evidence offered by either party to a suit before the circuit court shall be objected to by the other party as inadmissible, and there appears to the court to be no rule previously established by the supreme court by which the question of its admission or exclusion may be promptly determined, such testimony, if rejected by the judge, shall be separately filed with the other papers in the case, enveloped, and marked as "testimony objected to and rejected," and shall, in case of an appeal, be forwarded to the supreme court as a part of the case, with the ruling of the circuit judge thereupon, for their final decision.

SEC. 42. Any testimony objected to as above and accepted by the judge shall, if oral, be marked by brackets, and the words "objected to" written upon the margin, and, whether oral or documentary, the clerk shall clearly designate in his report of the proceedings in such case what testimony so objected to has been received or rejected by the circuit judge, and in case of an appeal the question of the admissibility of such testimony shall, if submitted by the party, precede the trial of the case.

SEC. 43. Any case in which the amount at issue shall exceed one hundred dollars may be appealed to the supreme court by either party, provided an appeal be moved for before an adjournment of the court; and in the event of an appeal, a copy of the testimony of oral witnesses and of the proceedings and decisions of the court and jury, with the original documentary testimony submitted to the court, whether original instruments or copies, shall be certified to by the clerk as the testimony rendered in that case, and shall be sealed up by him with the names of the parties and the subject of dispute marked on the outside; the package shall then be directed to the chief justice of the supreme court, and placed in the hands of the sheriff of the district, to be conveyed by him to the clerk of the supreme court, on or before the first Monday of October in each year.

SEC. 44. Should the defendant in any case appeal as provided above from the circuit to the supreme court the appeal shall be void, and executions shall issue upon the judgment of the circuit court unless such defendant shall, within three days after the adjournment of the regular session of the court, file a bond with security and to an amount satisfactory to the presiding judge for maintenance of the suit on his part, or the payment of all lawful costs of suit.

ARTICLE IV.

District courts.

SEC. 45. There shall be established one district court in each district, and one judge for each court, who shall be elected for the term of two years by the qualified electors of their respective districts at the time, places, and in the manner provided by law.

SEC. 46. The district courts shall have complete criminal jurisdiction of all misdemeanors, and of all civil suits in which the value of the demand shall not exceed one hundred dollars; and the decisions of the court in all cases where the sum shall not exceed twenty-five dollars shall be final; when over twenty-five and not over one hundred an appeal may be granted to the circuit court and the witnesses again be summoned to appear and give testimony in that court.

SEC. 47. If the defendant takes an appeal he shall be required to give bond and security to the satisfaction of the judge for the payment of all the costs that may attach to that suit, as provided by law.

SEC. 48. The method of conducting suits in the district court shall conform to the rules governing the practice established by law and imposed by the supreme court, so far as the same can be applied in each case by the judge thereof; and it shall be his duty to impartially instruct, advise, and inform either or both parties to any suit, as he may deem it necessary, in regard to the requirements of such rules, for the proper accomplishment of the object thereof, as declared by law.

SEC. 49. The district courts shall hold their regular terms for the trial of all civil causes at the places respectively designated for holding court in the several districts on the first Monday of January and July.

ARTICLE V.

Juries.

SEC. 50. The trial of all cases in which the issue is wholly or in part one of fact, and to be determined by evidence, shall be by jury, except contested elections and cases that may be brought before the supreme court by appeal from the circuit court.

SEC. 51. No person who is related to either of the parties to any suit, either by consanguinity or affinity, nor any person who is interested in the termination of a suit, or who has previously served as juror in the trial of that case, shall serve as juror in that suit. No person under the age of twenty-one years, nor any person who has been, or who shall be, convicted of any felony, nor who may be under punishment for misdemeanor, shall be summoned to serve on a jury in any case. And no member of the legislative or executive departments or any commissioned officer of this nation, nor any officiating minister of the gospel, practicing physician, lawyer, public ferryman, school teacher, or person older than sixty-five years, shall be compelled to serve on any jury, grand jury, or as guard.

SEC. 52. The judge of each court shall, at least thirty days before the regular term of such court, make out and furnish the sheriff with a list of names of respectable persons who shall be summoned to act as jurors, and the judge or clerk shall administer to them the following oath: "You and each of you do solemnly swear that you will well and truly try all issues that may be submitted to you, and left to your decision by the court, during the present term, and true verdicts render

according to the evidence," which oath shall authorize said jury to try all issues that may be submitted to them during that term of the court. Five persons shall constitute a jury in the trial of all civil suits, any three of whom may render a verdict.

SEC. 53. Within the two weeks immediately following the reception of his commission, each of the several judges of courts shall make out and transmit to the clerk of his district, or of each district within his judicial circuit, a list of one hundred and forty-four names of persons the most competent and suitable, having the qualifications of jurors, and being residents of the district, which list the clerk shall file, and write the names contained in each on separate slips of paper, and deposit and safely keep such slips in separate boxes, marked "circuit court," "supreme court," and "district court." And whenever a criminal case is reported the sheriff shall, in the presence of the clerk, draw slip by slip by chance from "box" of the court having jurisdiction, the number of slips corresponding to the number of names required by law; from which slips the clerk shall make a list of names until the number of jurors required have been obtained, and cause immediately to be summoned the persons designated thereby to serve as a jury in that case at the time fixed for trial. If the list in either box is exhausted before the expiration of the year, additional lists of half the number may from time to time be in like manner furnished by the judge; but no person shall be again summoned to serve on a jury in the same court until those included in the list first furnished by the judge have served once.

SEC. 54. The judge furnishing lists of jurors, or clerks filing such lists, as provided in the preceding section, shall not give information to any person what names have been so selected and furnished until they shall have been drawn by the sheriff to serve as jurors as provided; and any judge or clerk who shall give such information shall be deemed guilty of criminal negligence and misconduct in office, and shall be removed from office therefor by the principal chief.

SEC. 55. In all cases of manslaughter, and those involving a capital charge, the sheriff shall draw, to be summoned in the manner provided by the preceding section, twenty-four persons to serve as jurors, and the court, before proceeding to impanel the jury, shall propound to each one, on oath, the question whether or not he has formed or expressed an opinion as to the guilt or innocence of the prisoner arraigned for trial; if the answer be in the affirmative to either question the court shall propound the further question whether such opinion so formed or expressed would deter him from being an impartial juror or from rendering an impartial verdict as such. Any juror answering both questions in the affirmative shall be set aside.

SEC. 56. But any juror answering the latter question in the negative may be interrogated by the court, or, by permission of the court, may be interrogated by either of the parties in reference to his opinion so formed or expressed, and the court may, in its discretion, set aside such juror, upon reasonable suspicion of bias in the mind of such juror for or against the prisoner. Other competent persons shall be immediately summoned in the place of those set aside, whose qualifications to sit shall be tested in like manner, until the requisite number of twenty-four impartial and competent jurors shall be obtained, of which the prosecution shall have the right to challenge or object to six; the accused, if he chooses, or, upon his refusal to choose, the court shall select out of the remaining eighteen the twelve to try the case, who shall be qualified therefor by the judge or clerk. But in all other criminal cases the clerk

shall summon twelve, after the same have in like manner been drawn by the sheriff, who shall be impaneled as above, the prosecution objecting to three and the accused or court selecting the six out of the remaining nine to try the case. No verdict shall be rendered in any criminal case without the unanimous consent of the whole jury.

SEC. 57. In case of a disagreement of the jury, and the court being satisfied that such jury cannot agree, the jury shall be discharged, and a new jury, in like manner, impaneled to try that case.

SEC. 58. In the second or any after trial of any criminal case proceedings shall be conducted upon the charge preferred, as if no previous trial had been had: *Provided*, Either party shall be allowed to examine witnesses as to their former statements, and to introduce such statements as evidence in regard to the credibility of such witnesses.

SEC. 59. After a jury has been impaneled in the manner above prescribed, it shall be the duty of the presiding judge to place said jury in the custody of the sheriff or his deputy, who shall keep the said jury from separating and from holding intercourse with any person, without the permission of the court, until they have rendered a verdict or been discharged by the court; and any juror holding, or attempting to hold, any intercourse with any person, without the consent of the court, while in the custody of the sheriff, shall be peremptorily fined by the court not less than twenty-five dollars, nor more than one hundred dollars. It shall be the duty of the sheriff to furnish any jury thus placed in his custody with necessary provisions and refreshments, the expense of which shall be paid by the nation.

SEC. 60. In charging the jury the judge shall, in all cases, present the testimony without signifying his opinion of the weight and preponderance of the evidence. He shall state the law applicable to the case as set forth in the summons or indictment, with such instructions as to the kind and degree of proof required to sustain the allegations or charge as he may deem of service or necessary to guide the jury to a just and legal decision or verdict.

SEC. 61. If the jury shall disagree in any criminal case, the presiding judge shall require them, or either of them, to make known to him the cause of such disagreement, and if such disagreement, in whole or in part, shall be as to the meaning of the law or the application of the law to the facts found by them, the court shall instruct them thereon, in which case the jury shall return to their deliberations, and continue the same until they agree, or the judge is satisfied they cannot agree.

SEC. 62. Before impaneling a jury in civil and criminal cases, the court shall make such inquiry of those summoned to serve, as to their legal qualifications, as he may deem necessary; and either party may at the same time allege such good cause of disqualification as he may be aware of; which alleged cause shall be examined and determined by the court. The places of those who may be disqualified shall be filled by other competent persons, to be immediately summoned.

ARTICLE VI.

Grand jurors.

SEC. 63. At least fourteen (14) days before the commencement of the first regular terms of the circuit and district courts, in each year, the judges of both courts shall each furnish to the sheriff of each district a list of five names of persons, to be selected from the most respectable, intelligent, and responsible citizens of the district, who shall be sum-

moned to act as grand jurors for that district during the year, and to sit during the regular terms of the court respectively, unless sooner discharged by the court, and if required by the solicitor for any other period not more than five days, and at or near the regular place of holding court, after the adjournment of the court. No person summoned to serve as grand juror shall be exempt from service, except on account of personal sickness, severe or dangerous sickness in his immediate family, or recent death, and before burial of any member thereof. In case of the absence of any person summoned as a grand juror, his place shall be filled by some competent person who shall, if necessary, be summoned by special writ.

SEC. 64. At each regular term of the court the grand jury shall be instructed by the court, and shall enter upon their duties before other business is done or any case is called.

SEC. 65. The following oath shall be administered to the grand jurors before they proceed to business, viz: "You, and each of you, as grand jurors, for and in behalf of this the district of ———, do solemnly swear that you will diligently inquire and true presentment make of all such matters and things as shall be given to you in charge. The purport of your intercourse with each other, with witnesses, and with the solicitor of the district you will keep secret while you are so engaged; that you shall indict no man for envy, hatred, or malice, nor leave any man unindicted for love, fear, favor, or affection, or hope of reward, but that you shall present things truly as they shall come to your knowledge, according to the law, your instructions, and the evidence, and the best of your understanding of these: So help you God."

SEC. 66. After being impaneled as above, the grand jury shall elect their foreman, by ballot, who shall act as foreman during the whole term of their service. In his absence another foreman may be elected.

SEC. 67. It shall be the duty of the grand jury to hear and inquire into all complaints or accusations of crime or misdemeanor of which their courts respectively shall have jurisdiction; and the grand jury of the circuit court shall inquire into cases of which the supreme judges have jurisdiction; to call for and examine persons whom they may have reason to believe may be aware of the perpetration of any indictable offense within their respective districts; to make use of all the means placed in their power to develop a discovery of all violations of law of which they shall have cognizance; to inquire into and to present such indictments or discharge such accusations as shall be in conformity to law and the instructions of the court.

SEC. 68. A majority of the grand jury may find an indictment.

SEC. 69. It shall be the duty of the solicitor of the district to be in attendance at court during the sessions of each grand jury of his district; to report to said grand jury all cases of violations of law subject to their inquiry, which have been reported to him, or which may have come to his knowledge in any manner; to have present, or forthcoming, if possible, such testimony as may be required to establish a *prima facie* case, and to advise and assist the grand jury, on part of the nation, in the prosecution of new inquiries, in the production of evidence of offenses, and in the framing of indictments for the trial of the same, when sufficient evidence has been produced.

SEC. 70. No indictment shall be found by the grand jury against any person suspected, unless, from the evidence before them, the grand jury shall believe, upon their oaths, that the accused is guilty of the charge preferred, and unless the evidence produced is, in their opinion, sufficient,

if not contradicted or explained, to induce and justify a conviction of the offense charged by an impartial jury.

SEC. 71. The grand jury shall appoint one of their number clerk, who shall record their proceedings in general, and keep a record of all witnesses sworn and examined by them, and report their names and time of service to the district clerk, who shall issue certificates accordingly.

SEC. 72. All persons desirous of informing of or prosecuting any offense shall, in the intervals between the regular terms of holding court, communicate with the solicitor of the district information of the facts connected with such case. And the solicitor shall inquire into the accusation or case with due diligence and care, to ascertain the probable truth of the same. Should the solicitor, after inquiry, have good cause to believe that an offense has been committed, which a disclosure of the evidence available shall enable him to prosecute, he shall cause the witnesses to be summoned to appear before the next grand jury; and in all cases he shall report the accusation or information presented to him, from any source, with his views thereon, to the grand jury, with the probable degree and amount of evidence in regard thereto, for their action: *Provided*, That proceedings shall not have been instituted according to law by the solicitor previous to the session of the grand jury.

SEC. 73. No solicitor shall disclose to any person, except members of the grand jury, any information that may come to his knowledge through operation of the preceding section, nor shall any grand juror or officer of the court disclose any matter pertaining to the actions or proceedings of the grand jury, nor that any indictment for felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person shall be arrested.

SEC. 74. No grand juror or solicitor shall state or give information, at any time, of the matter sworn or testified to by any witness who may be brought before any grand jury, nor shall he state or testify in what manner he or any other member of the jury voted on any question, or what opinion was expressed by any juror in relation to such question; and in charging the grand jury, the court shall remind them of the provisions of this and preceding sections.

SEC. 75. Witnesses shall be summoned to appear before the grand jury, by subpoena issued by the district clerk, upon application of the solicitor or the foreman of the grand jury, and served and returned by the sheriff.

SEC. 76. Indictments shall be issued substantially in the form following, to wit:

"CHEROKEE NATION,
"_____ District:

"We, the grand jury of _____ district, after carefully and impartially, and while under our several oaths, having considered certain testimony of sworn witnesses, do hereby charge one _____ with a criminal violation of the law of the Cherokee Nation, found in section —, chapter —, or in an act entitled an act [state title of act], to wit: That the said [name of accused] did, on or about [state time as near as may be] and at or about [state place of crime], commit the crime of [state the nature of the offense and describe the act charged], which act so committed was against the peace and dignity of the Cherokee Nation.

"Date _____.

(Signed)

"_____,
"Foreman of Grand Jury,
"_____ District."

SEC. 77. No grand juror, clerk, sheriff, or any other person to whom information shall come, in the course of the performance of their duties, of the finding of an indictment by the grand jury or solicitor, shall, before the arrest of the person charged, unnecessarily utter, convey, or by any means disclose such information to any other person; and any person so doing shall be subject to be reported to the judge of the court before which the indictment is to be tried, and, if found guilty, summarily fined for contempt, not exceeding fifty dollars.

SEC. 78. The indictments found by the grand jury shall, at the adjournment of each session, be placed by the foreman in the hands of the district clerk, who shall issue warrants of arrest accordingly, and place the same in the hands of the sheriff of the district for service. The trial of any accused person shall proceed upon the original indictment found; but in all cases after arrest, the accused shall be furnished by the clerk with a copy of the indictment, upon his application to the clerk for the same.

SEC. 79. Whenever information of the commission of any felony within his district shall come to the knowledge of any solicitor, at any time between the sessions of the grand jury, and the due execution of the law shall, in his opinion, make it unsafe to wait for their action, but shall require an immediate investigation of the facts of the case, with the view to prevent the escape from justice of any person or persons already arrested, or strongly suspected, or to ascertain and fix the crime upon the guilty party, he shall be required to obtain from the district clerk subpoenas commanding the sheriff to summon such witnesses whose testimony the said solicitor shall, after due inquiry or from reliable information, judge to be necessary to a full and fair investigation of the matter, to appear before such clerk at some convenient time and place to be examined. The clerk shall preside over such examination and shall reduce the material portion of the testimony of all the witnesses examined to writing. After the examination of the witnesses that may be present, the clerk may, upon satisfactory showing by the solicitor that any material witness, already summoned, has refused to attend, or that material and available testimony has come to his knowledge too late to be obtained at that time, adjourn further examination of the matter to some reasonable time, and if the adjournment shall be applied for to obtain the testimony of any witness, already summoned to appear, he shall issue a compulsory process requiring the attendance of such witness. Any person under arrest upon suspicion or charge of having committed the crime under investigation shall be duly notified by the sheriff or other officer having him in charge of the pending of such examination, and subpoenas for witnesses shall be issued at the instance of such person; but no adjournment shall be granted upon his application, except by consent of the solicitor. The object and purpose of the preliminary examination herein provided for shall be to ascertain whether a crime has been committed, and, if so, by whom; and the solicitor shall conduct it without special desire or endeavor to fasten the guilt upon any particular person, further than the facts discovered or obtainable shall warrant.

SEC. 80. After the preliminary examination above provided for shall have closed, the clerk may, upon motion of the solicitor, discharge from custody any one already arrested upon charge of the crime investigated; should no sufficient proof appear to the solicitor to warrant a conviction upon trial, or should such sufficient proof appear against the prisoner, or against any other person, from the testimony produced, the solicitor shall be authorized to file an indictment in consonance with the proof

produced, and warrants of arrests and bring to trial shall be issued accordingly.

SEC. 81. The preliminary examination above provided for may take place either with or without the arrest of any suspected person; but in any case of an arrest for felony by citizens, or when the solicitor shall deem it necessary to prevent the escape of any suspected person, he shall file information of the charge accordingly, before the district clerk, who shall issue a warrant for temporary arrest against such suspected person to prevent his escape until an examination can be had as above provided.

SEC. 82. Any witness who may testify in any preliminary examination shall, if the solicitor require it, give his personal recognizance to the clerk, in the sum of two hundred dollars, for his appearance at or before any special court to be called thereafter, to try any indictment found in consequence of such examination; and should any witness refuse to give such recognizance, he shall forfeit the amount due him for attendance, and be further subject to a fine, hereby imposed, of the amount of his recognizance, for the collection of which execution shall be immediately issued by the clerk; and no property except improvements shall be exempt from satisfying such execution.

SEC. 83. No warrant for arrest for felony or misdemeanor shall be issued except upon indictments found either by the grand jury or upon application of the solicitor, as above provided: *Provided*, That any citizen shall, when the solicitor shall refuse to prosecute on account of insufficient evidence, have the right to indict and prosecute another for felony or misdemeanor after first filing a bond with good and sufficient security, satisfactory to the clerk of the district, for the payment of all costs of the prosecution to be instituted by such person should there be no conviction; and no property, except improvements, shall be exempt from satisfying judgment upon such bond.

SEC. 84. When an indictment for murder has been found upon ex parte proof, or issued upon application of a citizen as provided by law, and upon trial of such indictment and a hearing from both sides no sufficient evidence shall appear as charged, but sufficient evidence shall appear to justify a conviction for manslaughter, either in the first or second degree, it shall be lawful for the jury to find such verdict of manslaughter in the first or second degree, as the case may be, and as the facts found by them, under the law as stated and expounded by the court, may warrant.

SEC. 85. When an indictment for manslaughter in the first degree has been found, it shall be lawful, on the trial thereof, for the jury to find a verdict for manslaughter in the second degree, if the facts proved to them upon such trial shall warrant a verdict of manslaughter in the second degree, and not of the first as charged; and the presiding judge shall so charge the jury when he shall deem it necessary.

SEC. 86. The verdict of a jury shall in no case convict any accused of any crime other than that charged in the indictment, except as provided by law in the case of indictments for murder, or for manslaughter in the first degree.

ARTICLE VII.

Criminal trials.

SEC. 87. Any of the judges shall have the power to call and hold a special term of court for the trial of criminals for offenses over which they respectively have jurisdiction. And when a case shall be reported

by the sheriff to the judge having jurisdiction, he shall bring the accused to an immediate trial, without further delay than shall be necessary to enable both parties to obtain testimony, according to the provisions of the law in relation thereto, unless the accused shall give bail for his appearance at the next regular term of the court, to which time, in such case, the trial may be postponed.

SEC. 88. If any circuit judge shall be related by consanguinity or affinity to either of the parties to a criminal suit (to the person injured or to the accused), and be objected to, he shall inform, by the sheriff, the supreme judge within whose criminal circuit the district in which such criminal suit has been instituted is embraced, of the pendency of such case, and the fact of such relationship or interest, with the degree thereof; and the supreme judge so notified shall be thereupon clothed with the powers of the circuit judge for the trial of that special case, and shall fix the time of trial, and preside in the same accordingly.

SEC. 89. Should any district judge be so related in any criminal case, and be objected to, he shall transmit information of the fact, by the sheriff of the district, to the circuit judge within whose circuit said district may be included; and the circuit judge so notified shall thereupon be vested with and shall perform the powers and duties of district judge for the trial of that special case.

SEC. 90. In case any supreme or circuit judge, who may be notified according to the provisions of the two preceding sections, shall be also disqualified by relationship in any criminal suit, such supreme or circuit judge shall, as soon as the fact shall come lawfully to his knowledge, notify the principal chief by a statement of the facts in writing, and the principal chief shall be authorized to appoint and commission some competent person to preside as special judge in the trial of that case.

SEC. 91. If any judge shall be related, by consanguinity or affinity, to either of the parties in a civil or criminal suit, or be interested in the termination of a civil suit, either party may, at the first calling of said suit, after it has been docketed by the clerk, object to the presiding of such judge, and if no objection be then made the consent of both parties to his presiding shall be construed as given, and no objection shall be allowed afterward. When objection shall be made in any civil suit to any judge, as provided in this section, he shall transmit the same to the principal chief, who shall appoint a special judge to preside in that suit.

SEC. 92. The compensation of judges temporarily appointed to preside in special civil or criminal cases shall be five dollars a day while in actual service.

SEC. 93. When two or more defendants are jointly indicted for a criminal offense, any defendant requiring it may be tried separately, and the prosecution may sever the trial of joint defendants when deemed necessary. But in all cases where the trial of joint defendants are severed, the court shall designate the defendant to be tried first.

SEC. 94. The trial of a criminal suit may be removed from one district to another adjoining, within the same circuit, upon satisfactory showing made to the court by the prisoner, or the prosecuting attorney, under oath, supported by the oath of two or more credible witnesses, to the effect that, owing to the prejudice existing in the public mind, a fair and impartial trial cannot be had in the district where the crime is charged to have been committed. Should the court order the trial to be removed, the clerk shall, without delay, transmit by the sheriff the papers belonging to the case to the clerk of the district to which the trial shall be removed, and the trial shall be conducted in that district the same as though it had there originated.

SEC. 95. No judge appointed under the authority of this nation shall be allowed to appear as counsel or attorney and practice law in the courts of this nation.

ARTICLE VIII.

Solicitors or prosecuting attorneys.

SEC. 96. A solicitor or prosecuting attorney shall be appointed or chosen for each district, by a joint vote of both houses of the national council, whose term of service shall be two years; and such solicitor or attorney, before he enters upon the duties of his office, shall be commissioned by the principal chief, and shall take the following oath or affirmation, to wit: "You do solemnly swear that as solicitor or prosecuting attorney, for and in behalf of the Cherokee Nation, you will, to the best of your skill and ability, faithfully conduct all examinations of crimes committed, or persons charged, and prosecute all persons indicted in pursuance of authority given you by law, without fear, favor, partiality, or malice, within the district of ———, during your continuance in office, and that you will not take or receive any remuneration of any person charged with any criminal offense within said district, or from any one else in behalf of such person, but be faithful to the Cherokee Nation in all prosecutions, and in the performance of all other duties required of a solicitor to perform by law to the best of your ability: So help you God."

SEC. 97. It shall be the duty of the national solicitor to act for and in behalf of the nation in all suits or proceedings within his district in which the nation shall be a party or shall be interested; to indict, in the manner and within the times prescribed by law, all persons within his district against whom there shall be evidence sufficient, in his opinion, to convict of a felony or a misdemeanor, and for such object to make due and diligent inquiry into all the facts and circumstances of any complaint, crime, or misdemeanor made to him, or coming under his notice in any manner; to do his utmost to develop and submit evidence in any case reported by him, or by other means made a subject of investigation by the grand jury, and to prosecute, with intent to discover the true facts of any charge and the just administration of the law, all indictments that may be tried within his district: *Provided*, That when any case has been prematurely brought, either with or without an apparent fraudulent intention to make such trial an estoppel to further prosecution, or there shall not appear to the solicitor sufficient evidence in the charge to justify a continuance of the prosecution, he may, upon motion made in open court, and with the approval of the court, before evidence be taken, enter a *nolle prosequi* in such case, and discontinue any further proceedings in the same, and such case shall be as though it had never been brought before the court, but the charge may be renewed and the offense prosecuted under another indictment.

SEC. 98. The solicitor of each district is authorized and required to collect and dispense with his district, according to law, all fines arising from a violation of law.

ARTICLE IX.

Testimony and rules relating thereto.

SEC. 99. Any person of whatever religious belief, and of sufficient age and intelligence to comprehend the obligation of an oath, not excluded upon the ground of interest, and not otherwise disqualified by law, may

be called as a witness, in any suit brought before a Cherokee court. The following shall be administered to each witness when called for examination in any cause or proceeding, before making his statement, viz : " You do solemnly swear (or affirm) that the statement you will make, and the answers you will give in the matter whereof you are about to be examined, shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge : So help you God."

SEC. 100. All matters properly affecting the credibility of any witness who has been examined by one party shall be allowed to be proven by the opposite party, by means of cross-examination, or by other witnesses, under the rules established by law or the supreme court, found applicable by the presiding judge. If no such rule be found applicable the presiding judge shall determine it as justice shall appear to him to require, and shall cause his ruling on each point to be recorded, with the reasons in brief therefor.

SEC. 101. Any person having a direct, personal, and pecuniary interest in the event of any civil suit at law, or any person to whose personal pecuniary loss or advantage the verdict in any civil suit may be directly used or applied, shall be disqualified, by reason of his interest in such suit, from being a witness in the same, except in cases provided otherwise by law. And the presiding judge shall construe and apply this general rule in each particular case, as the facts shall seem to him justly to warrant, whether in reference to parties to the record or not. But no indirect interest of any kind, nor any direct interest, not pecuniary, growing out of the relations of any person with the parties in interest, shall disqualify such person from testifying in any cause ; but such interest may be proven upon trial and shall go to the credibility of the witness to such a degree as the jury shall, upon their oaths, see reasonable grounds.

SEC. 102. The supreme court shall be authorized to construe, interpret, explain, and provide for the correct application of this rule, as the occasion may require.

SEC. 103. It shall be the duty of the court, in the trial of any civil or criminal case, upon motion of either party, to order the opposite party to produce any documents, books, or papers in possession of such party, as shall be evidence in the case ; and this rule may be enlarged upon, extended and explained by the supreme court, to effect the object thereof, as occasion shall require, under the general authority granted such court to establish rules for the uniform guidance and practice of the courts.

SEC. 104. Hearsay testimony shall not be generally admissible ; but for the more uniform and regular practice of this rule of evidence by the courts, and in view of the modifications frequently found to be necessary in the course of its application, the supreme court shall define, limit, and explain this rule, and its exceptions, with other rules to be adopted by such court, from court practice and guidance ; and from time to time such court shall, by reference or otherwise, further define and explain such rule and its exceptions as circumstances and practice shall, in their opinion, require.

SEC. 105. All other rules respecting the competency and credibility of witnesses, and the admission, exclusion, and relevancy of testimony, are hereby authorized to be made and adopted by the supreme court, consistent with the general rules provided by law, and applied by the presiding judge in each pending case, so far as such rules, or any of them, shall be applicable. In case the rules adopted shall not be adapted or applicable to any question of evidence, the presiding judge

shall be authorized to so rule upon such question as in his opinion will best subserve the purpose of the testimony; but all special rulings in criminal cases, with the facts explaining them, shall be, to insure uniformity of practice, recorded by the clerk, and be by him reported in brief, yearly, to the supreme court, with civil cases, on or before the first Monday of October of each year.

SEC. 106. All suits upon a note of hand, or upon any written promise, covenant, contract, or sworn account whatever, shall either have a copy of the written instrument or account embodied in full in the summons, or a copy of such instrument shall be by the plaintiff left in the hands of the clerk issuing the summons, when the summons shall be issued, for the information of the defendant; and no original document or writing upon which suit is brought shall be allowed to be produced upon trial unless the defendant shall have been accurately notified of the contents thereof, as provided in this section.

SEC. 107. No documentary rebutting testimony shall be allowed to be produced as an offset by the defendant in any suit instituted upon a note of hand, promise, agreement, or covenant, or upon a sworn account, unless such documentary rebutting testimony, or copies thereof, shall be transmitted to or left in the hands of the clerk of the court issuing the summons in such suit, for the period of ten days or more immediately preceding the first holding of the court after the institution of the case.

ARTICLE X.

Witnesses and subpoenas.

SEC. 108. Parties instituting and defending civil suits at law, or representing the parties in criminal prosecutions, may apply to the clerk of the court having jurisdiction of the case for subpoenas for witnesses in their behalf, living within the limits of this nation or elsewhere.

SEC. 109. No case shall be continued from onetern to another by the plaintiff on account of the non-attendance of oral witnesses, unless subpoenas commanding their attendance shall have been obtained in time for service, nor by the defendant for the same reason, unless subpoenas have been obtained in like time by him, or oath is made by him that information of material testimony possible to obtain has come to his knowledge too late for the service of a subpoena.

SEC. 110. The original subpoenas issued for a witness living outside of the Indian Territory shall be retained by the clerk and kept on file with the other papers in the case; but a duplicate copy shall be furnished the party applying, for transmission to such witness.

SEC. 111. The original subpoena for any witness living within the Indian Territory, and without this nation, shall likewise be retained by the clerk, but a duplicate shall be furnished by the clerk to the party applying, to be placed in the hands of the sheriff of the district, who shall thereto attach an official request, from under his hand, requesting "any lawful officer" of the nation where the witnesses reside, to serve and return, by mail, the accompanying process to the hands of the sheriff forwarding the same, which duplicate shall then be inclosed and directed to "sheriff or executive officer" of the particular district or division of the nation in which the witness lives, and be mailed at the nearest post-office.

SEC. 112. All process which may be issued by any judicial tribunal of any other Indian nation within this territory, summoning a citizen of this nation to appear before such tribunal to testify, and which shall

come to the hands of any sheriff of this nation in time for service, shall be by him promptly served and returned, or forwarded to the proper officer for that purpose.

SEC. 113. No case shall be postponed from one term of the court to another on account of the absence of any witness living outside of the limits of this nation, unless the court be first assured that the testimony of such witness is material; that all lawful and proper endeavors have been made by the party to obtain his attendance, and that either sufficient time has not been had for the purpose, or that the witness, having been notified, is willing to appear, but has been unavoidably prevented, and may reasonably be expected to be present at the next term.

SEC. 114. Any person not a citizen of this nation who shall refuse or willfully neglect to obey a subpoena to testify, either in a civil or a criminal case pending before a Cherokee court, may be reported by the party obtaining such subpoena to the solicitor of the district where such non-citizen resides, whose duty in such case shall be to report him to the proper authority for immediate removal as an intruder.

SEC. 115. Any citizen of this nation who shall fail to obey a lawful subpoena to testify in a civil or criminal case pending before a Cherokee court, and who shall not give timely information to the presiding judge satisfactory to him, of good and valid reasons for his non-attendance, shall, upon complaint of the party obtaining the subpoena, setting forth the fact, and that he considered the witness important, be summoned by such judge to appear at the next regular term of the court and answer for contempt. Should any citizen so summoned fail to appear to answer, or if he appear, and no valid excuse is set forth to the court's satisfaction for his non-attendance as a witness, he shall be peremptorily fined for contempt, in a sum not less than twenty-five dollars nor more than one hundred dollars, at the discretion of the court, and be moreover liable to a suit for damages by the party by whom he had been subpoenaed to the amount of the injury done such party by his non-attendance.

SEC. 116. In all criminal trials, when a witness has been summoned and is absent without lawful excuse, or where there is reason to suspect that a witness is seeking to evade the service of a subpoena to testify, and the party desiring his testimony shall make oath that he considers the testimony of the absent witness material to him, the presiding judge shall be authorized to compel the attendance of such witness, either for or against the prisoner, by directing the clerk to issue a compulsory process commanding the sheriff to arrest the witness and have him in person at the time and place fixed for trial, and the court may, at its discretion, and with due regard for the rights of the parties and the execution of the laws, continue the cause to such reasonable time or times as will allow the attendance of any witness excusably absent, or the service of any compulsory process ordered by such court.

SEC. 117. No excuse for non-attendance on part of a witness, duly summoned to testify before any court, shall be deemed lawful and valid, unless satisfactory showing be made to the court that obedience to the summons was impossible, or would be, or would have been, attended with serious and unavoidable loss, or with probable and serious danger to his own health or the health of his family.

SEC. 118. Witnesses summoned in any case, and serving until discharged or excused, shall be allowed one dollar for each day's attendance, including going and returning from court.

SEC. 119. In civil cases the compensation of witnesses in each suit shall be attached to the same as costs, and shall be paid by the party cast, and no further costs shall attach to any suit.

ARTICLE XI.

Executions.

SEC. 120. Whenever final judgment is rendered in any case by a court, the clerk thereof shall, within five days after the adjournment of the court, issue an execution, directed to any proper officer, to proceed forthwith and make collection from such party, to the amount of such judgment and costs; and such execution shall be returnable at the next session of said court, with a certificate of the proceedings had thereon, which shall be recorded by the clerk of said court.

SEC. 121. Property levied upon, by virtue of an execution, shall be advertised by the sheriff at three of the most public places in the district, to be sold to the highest bidder; and for all sums not exceeding fifty dollars, such sale shall be advertised ten days, and for all sums over fifty dollars, twenty days' notice shall be given; and the sheriff shall be allowed a fee of six per centum on all collections of money which may be made by him under an execution, to be deducted from the amount collected: *Provided*, It shall not be lawful, except in cases otherwise expressly provided for by law, for any officer to levy upon, and sell to satisfy an execution, the following property, which is hereby exempted and reserved for the use and benefit of the owners thereof, viz: The house, farm, and other improvements, mechanical tools, manufacturing and farming implements, one span of horses or mules, or in lieu thereof, one yoke of oxen, one wagon, one pair of harness, one saddle and bridle, wearing apparel, fire-arms, library, household and kitchen furniture, two hundred and fifty bushels of corn or other grain, one thousand pounds of pork or bacon, twenty head of stock hogs, five cows and calves, and all domestic fowls: *And provided further*, That the above exemptions, except so far as improvements are concerned, shall not apply to any case wherein a person shall be required by law to give bond, and who shall give bond for the maintenance, security, or preservation of national or individual interests; and this proviso shall extend to the sureties of such bond in like manner as the principal; but all the property and effects of any such principal or surety, with the above exception, shall be liable to be levied upon to satisfy any execution which may be issued upon any final judgment of the court declaring a forfeiture of such bond.

SEC. 122. Any execution remaining unsatisfied, in whole or in part, at the next term of the court after its issuance, may, at the request of the party in whose favor it has been issued, be delivered to him by the clerk, who shall make record of such delivery. And any lawful officer shall be authorized, upon the application of the party holding such execution, at any time to serve, in whole or in part, such execution upon any property of the debtor subject to levy, until the execution shall be fully satisfied, when it shall be returned, as provided above, to the clerk of the court from whence it issued, for a record of the proceedings had therein. And any officer serving such execution at any time, in part, shall indorse upon it a certificate of the amount of such service, for record.

ARTICLE XII.

Limitation of actions.

SEC. 123. Judgment shall not be rendered for the recovery of any improvement upon the public domain in any suit brought before the

courts of this nation, unless such suit be instituted, as required by law, within three years next after the time at which the right of bringing suit for recovery thereof or the cause of action shall have accrued to the person claiming the same, or to the person through whom he claims, saving to minors and persons *non compos mentes*, the three years named above after the removal of their disabilities.

SEC. 124. Judgment shall not be rendered upon any written contract, obligation, or note of hand in any suit brought before the courts of this nation, unless suit be instituted thereafter, as required by law, within five years next after the time at which the cause of action shall have accrued to the person bringing the same, or to the person through whom he claims, saving to minors and persons *non compos mentes*, the three years above named next after the removal of their disabilities.

SEC. 125. Judgment shall not be rendered for the recovery of any claim or demand, except as provided in the two preceding sections, in any suit brought before the courts of this nation, unless such suit be instituted for the recovery thereof, as required by law, within two years next after the time at which the cause of action shall have been accrued to the person bringing the same, or to the person through whom he claims: *Provided*, It is made the duty of every administrator, guardian, and executor to bring suit for the claims or demands due any estate or ward within the time herein above specified, or such claims shall not be recoverable by law; and any administrator, executor, or guardian neglecting or failing so to do shall be liable to the parties in interest for such failure or neglect.

SEC. 126. No criminal procedure, excepting in cases of felony or larceny wherein the sum is over twenty-five dollars, shall be instituted against any person, unless within two years after the cause of action shall have arisen.

ARTICLE XIII.

Garnishment.

SEC. 127. The clerks of the several districts, on the oath of any plaintiff to a suit, or in whose favor judgment may have been rendered by any court in a suit, that he has reasons to believe that any person has in his possession any money or property belonging to the defendant therein, and that he further believes that such defendant has not in his possession visible property sufficient to satisfy plaintiff's demands, shall issue a summons of garnishment, directed to the sheriff of the district wherein such garnisher may reside, commanding him to summon such person to be and appear at the time and place in the district designated, to answer on oath whether he has in his possession any money or property belonging to the defendant, and in what sum, and in what kind, or had at the time of the service of the garnishment. The garnishee answering affirmatively shall be required to retain such property or money so held in his possession until the termination of suit, or be answerable to plaintiff for the same, and be liable to damages for such loss as the plaintiff may thereby sustain; but if judgment be had against the defendant, such property or money shall be delivered to the sheriff, who shall dispose of the same as the judgment of the court may require.

SEC. 128. Any person willfully failing or refusing to obey any summons of garnishment as served upon him shall be deemed guilty of misdemeanor, and, upon conviction, be fined not less than twenty-five nor exceeding one hundred dollars, and in default of payment be imprisoned

not less than thirty nor exceeding ninety days, at the discretion of the court.

ARTICLE XIV.

Attachments.

SEC. 129. That it shall be lawful, whenever any person shall have a claim or debt against another, for such person to go before any of the judges or clerks and make oath that he has such claim or debt, and that he either has commenced suit upon the same or that he is about to commence suit; also, to make oath that he is apprehensive that the defendant is about to abscond, or that he has good reasons to apprehend that the defendant may dispose of the property claimed or liable to satisfy such debt, so as to place it beyond the reach of law. And it shall be the duty of the judge or clerk before whom such oath, in any case, may be made to issue an attachment forthwith, to be placed in the hands of any lawful officer, whose duty it shall be to attach the property of the defendant liable to satisfy the debt as will satisfy the demand, and the same to safely keep until authorized by law or the order or judgment of the court having jurisdiction of the suit, having reference to such property, to release the same or serve an execution thereon, unless the debtor or defendant, or person out of whose possession the property shall have been sued, shall secure the claim or debt by giving bond, with sufficient security, personal or collateral, satisfactory to the sheriff, either for the forthcoming of the property at the final termination of the suit, or for the payment of the alleged debt in case the same be adjudged due; and in which event the sheriff shall release the property attached to the defendant, to use and take charge of during the pending of the suit.

SEC. 130. All property under attachment shall be considered in the legal possession of the sheriff holding such property under attachment; and any person taking, secreting, making use or disposing of such property while so attached, without the permission of the sheriff, shall be deemed guilty of theft, and be punished accordingly.

SEC. 131. Should the defendant give bond, as above provided, and the plaintiff make complaint to the sheriff that the security upon such bond is insufficient, by which insufficiency the plaintiff should lose his remedy by attachment, or any part thereof, in such case the sheriff shall be personally responsible to the plaintiff to the amount of the value of the property attached and not forthcoming, according to the terms of the bond; and the sheriff, after satisfying the plaintiff, as in this section provided, may have recourse to make himself secure against the principal and sureties of the bond to the amount paid by him to the plaintiff.

SEC. 132. Any attachment issued before the issuance of a summons in the suit shall be annulled and be of no effect or force, and the property thereupon attached shall be returned to the person out of whose possession it shall be sued, unless suit shall be instituted by the claimant or creditor within five days after the day upon which the attachment is issued and notice of such failure to institute suit being received by the officer holding such attachment, and any person applying for and obtaining an attachment, and not instituting suit within fifteen days thereafter, as provided, shall be responsible to the amount of any damage done by the service of such attachment, to be recovered upon suit by the party injured.

SEC. 133. Whenever the property of any person shall be attached or

levied upon to secure the payment of the debt of another, the owner of such property so attached or levied upon shall have the right to go before the judge or clerk, where such attachment or execution may have issued, and establish his right to the same, after due notice shall have been given to the plaintiff in the case, wherein the property in question has been made subject to attachment or levy, of the time, place, and object of such investigation. Such proof shall be taken in writing and filed in the office of the district clerk, and shall show that the property in question does belong of right to claimant, and did rightfully belong to the claimant, or to the estate or person of whom or which the claimant is lawfully in charge before the service of such attachment or execution; and whenever such proof is made to the satisfaction of the judge or clerk, it shall be his duty to give an order forthwith to the officer having such property under attachment or levy to deliver it to the owner thereof.

SEC. 134. No property belonging respectively to the wife shall be taken to secure the payment of the debts of the husband without her consent, nor shall any property separately belonging to the husband be taken to pay the debts of his wife without the consent of the husband; and property belonging separately to either, attached or levied upon to secure the payment of the debts of the other, may be released as in other cases: *Provided*, That where man and wife are living together, and hold property jointly, such property shall be subject to the payment of debts contracted by either while so living together: *And provided further*, That no property acquired by a man and his wife, while living together, shall be made the separate and individual property of the wife by transfer of the title, or any part thereof, to her from the husband, except a copy of such transfer be first filed in the office of the district clerk of the district where the parties reside.

SEC. 135. Any person who shall fraudulently, collusively, and wrongfully set up a claim to the ownership of any property under attachment or execution with a view to release the same, as provided above, or who shall willfully claim such property under and by virtue of any title, except lawful conveyance to him made for good or valuable consideration prior to the seizure of such property then under attachment or execution, by authority of either writ, through and by which false and fraudulent claims such property shall be released, shall be deemed guilty of a criminal misdemeanor, and, upon conviction, shall be fined in a sum double the amount of the value of the property so fraudulently claimed and released from attachment or execution, and shall also be imprisoned not less than three months nor more than one year at the discretion of the court.

ARTICLE XV.

Possession of property.

SEC. 136. Any person having peaceable possession of private property, obtained through lawful means, and claiming a limited or absolute right in the same, shall be held, in law, to have a prior right of possession thereto against all persons obtaining possession thereafter, until the right of such person shall expire or be by him transferred to another for good or valuable consideration, or until his right shall be disputed and invalidated by due course of law. And any person having a prior right of possession of any property to any other person, and the property being detained by the latter from the former without his voluntary consent, may recover such property upon suit for possession merely,

without regard to or investigation had by the court of other or higher title, either in plaintiff or defendant of such suit. But such person may submit to the court as plaintiff the general question of right, involving the right of possession of the property, or be awarded possession of such property merely as provided above, with the right accruing of answering as defendant in all suits involving the right, title, and interest of the parties to such property.

SEC. 137. Any lessee, borrower, agent, or person who may obtain temporary possession of any private property for a definite time, or at will, by lawful contract, shall be estopped by such contract from claiming or defending continued possession of such property by virtue of a title adverse to the terms of such contract, or any right decreed from a third party; but the court shall compel a restoration of such property according to contract, with such actual and exemplary damages claimed as may be just.

SEC. 138. Suits for the recovery of property shall be instituted against the person having the property in legal possession and control; but in any suit by a third party against any lessee or agent of another holding property of another in his possession, in which suit the right of the principal in such property is mainly involved, such fact being brought to the notice of the court at the calling of the case by disclaimer of ownership on part of defendant, the court shall order the name of the principal to be placed upon the record as party defendant in that suit, and judgment shall be rendered accordingly.

SEC. 139. Property shall be held to be in the legal possession and control of any person when in his actual possession, or in the actual possession of any person in the service or employment of such defendant temporarily, to use or take charge thereof. When property consists of stock, the possession thereof shall be determined as provided by law.

ARTICLE XVI.

General rules.

SEC. 140. Each court shall have the right to make and enforce such regulations for the orderly transaction of business and the preservation of order in and about the court during its sessions as may be deemed necessary and proper, and which shall not be in violation of law; and for every contempt or disrespect offered or obstruction of business by the improper conduct of individuals, the court may impose a fine on any such person so offending of not less than one nor more than fifty dollars, at its discretion.

SEC. 141. When any court is organized at any regular term the sheriff shall, at the bidding of the judge, call the parties to each case, in the order in which the cases shall be entered upon the docket, three several times, at intervals of not less than one hour between each calling; and all cases not previously disposed of shall be finally disposed of for that term at the third calling, unless both parties consent otherwise: *Provided*, That the parties to any suit answering to their names at the first or second calling shall then have the right to come to trial if they so prefer.

SEC. 142. If at the third calling of a case at any term the plaintiff does not answer, either in person or by attorney, no trial of that suit shall be had, but the suit shall be dismissed at the plaintiff's costs.

SEC. 143. If at the third calling of any case at any term the defendant does not appear in person or by attorney, the court shall proceed to

ascertain if the summons in the case has been duly served according to law, and, if so, the absence of the defendant shall be taken as confession of judgment, and the court may, upon motion of plaintiff, render final judgment in such a case accordingly.

SEC. 144. Motions to abate or dismiss a suit shall be made at the earliest practicable moment after the alleged cause shall exist therefor; and if not then made, the right of defendant to make such motion shall be considered waived.

SEC. 145. When a civil case is submitted to a court upon a statement of facts by the parties to which they both agree, or when a discovery of fact is not put in trial but the parties differ only in respect to the meaning and construction of the law thereupon, it shall be the duty of the judge to interpret and apply the law for a settlement of the dispute between the parties and to render a decision accordingly, which decision may be appealed from as in other cases.

SEC. 146. No suit shall be dismissed from the docket or abated on account of any formal defect or omission in the proceedings thereof, when such defect or omission is not the fault of the plaintiff, and the defendant is not injured thereby or his rights jeopardized. But the court may remedy any such defect or omission by ordering such amendment as shall agree with the facts of the case.

SEC. 147. No cause shall be continued to the term following, except upon the oath of the party making the motion to continue, that evidence material to the case is absent which he has used all lawful means and endeavored to obtain, and which a continuance will probably enable him to obtain. Each party may continue once, but no case shall be continued a third time except by consent of parties.

SEC. 148. The following rules of practice for the finding of the issue shall be applied, as far as practicable, by the several circuit and district judges in the trial of civil suits.

SEC. 149. When the parties have pronounced themselves ready for trial, the allegations contained in the summons shall be read to the defendant, and the said defendant shall be required to admit or deny the allegations in the order in which they are alleged. The answer of defendant to such allegation shall be distinctly recorded by the clerk in the proceedings, and no testimony shall be allowed in regard to any allegation admitted, but such allegation shall be taken as proven, and the point at issue between the parties shall be the facts alleged and denied.

SEC. 150. Any defendant may admit the allegations of plaintiff, in whole or in part, and set up his defense by the affirmation of other facts upon which he may rely to defeat plaintiff's claim, or any part thereof, if plaintiff's allegations prove true. In which case, the clerk shall record the facts admitted by defendant, and the plaintiff shall then be required to admit or deny the facts as alleged by defendant, and the clerk shall record his answer in the proceedings of the case, and those admitted shall be taken as proven, and testimony shall be introduced only as to those denied.

SEC. 151. Should the plaintiff not choose to deny the allegations of defendant, and should desire to answer and avoid the same by another statement of facts on his side supposed by him to be sufficient in law to amend the defense set up, he may do so, and the defendant shall be required to admit or deny as before, and all matters denied shall be deemed and held as the issue between the parties, and those not denied, on one side or the other, shall be taken as proven, and testimony shall be introduced accordingly.

SEC. 152. Either party to a suit may, according to the principle involved in the three preceding rules, be permitted to admit the allegations of the other, in whole or in part, in the order in which the parties shall be required to admit or deny, and to allege new matter or facts in avoidance of the facts alleged by the opposite party, and in support of, or against, the original demand; and when new matter is alleged, the opposite party shall be required to admit or deny as above, provided that the facts so alleged by either party shall constitute a good cause in law of action or defense, as regards the original demand set forth in the summons; and if, upon demurrer by either party to the allegations of the other, it shall appear to the court that such allegations, if true, do not constitute good grounds in law for supporting or defending the claim demanded, no testimony shall be taken in the case, but the facts admitted by either or both sides shall constitute the evidence in the case, and the court shall proceed to give judgment, as required in the second section of this act. If the allegations contained in the summons are demurred to as insufficient in law, and the court approve such demurrer, the case shall be dismissed at plaintiff's costs.

SEC. 153. It shall be the duty of each circuit judge to impartially inform, instruct, and assist the parties to a suit, in conforming to the rules above prescribed, when he shall deem it necessary for the due attainment of the object thereof, to wit, the more speedy and certain discovery of the point of difference between the parties, the exclusion of irrelevant and immaterial testimony, and the more accurate and satisfactory dispensation of justice.

SEC. 154. When a cause is ready for hearing, and the issue defined as distinctly as practicable by the allegations and demands of the parties as provided, the party holding the affirmative, or upon whom the burden of proof shall rest, shall be allowed to introduce his testimony in support of his allegations; and no testimony shall be admitted from such party by the court, except such as may be admissible to prove such allegations, according to the rules governing the admission of evidence that may be recognized by law and by the courts. When the party first presenting testimony shall have closed, the opposite party shall be allowed the same right, with the same restrictions, to introduce pertinent and competent evidence in justification of his denial: *Provided*, That such opposite party shall have the right to introduce evidence affecting the credibility of the witnesses and the testimony of the other side; which right shall be likewise allowed to the first party after the testimony in chief, on part of the negative or defense, shall have been closed.

SEC. 155. After the testimony in chief has been submitted by both parties, in affirmation or denial of the facts alleged, respectively, the court may, upon motion, allow either party to introduce other testimony as to the credibility of the opposite witnesses or testimony, or in rebuttal of new matter material to the issue, lawfully brought to the consideration of the court in the course of such examination in chief.

SEC. 156. No suit shall be brought nor any offset to any suit be presented upon a sworn account, except the articles or work, matter of such account, is usually matter of credit, and record thereof has been kept, with the date of each transaction, by the creditor, as a necessary way of doing business; and all sworn accounts or offsets submitted as evidence by the plaintiff or defendant shall be copied from the original record or act, with the items and date of each item as charged, and the account-book or record from which the sworn account purports to be a copy shall be produced when called for by the opposite party, under

the rule as provided in section 154, or may be, if not demanded, voluntarily submitted as corroborative evidence of the sworn account, and the court shall give judgment in reference to any sworn account submitted by plaintiff or defendant as the weight of evidence shall appear to authorize.

SEC. 157. In all suits upon sworn accounts, the original record of the account having been produced, the opposite party may introduce and examine, as a witness, the party submitting a sworn account in reference thereto.

ARTICLE XVII.

Places of holding courts.

SEC. 158. The following places are designated and fixed upon for holding courts, viz :

In Sequoyah district, at the present court-house.
 In Canadian district, at the present court-house.
 In Illinois district, at the present court-house.
 In Flint district, at the present court-house.
 In Going Snake district, at the present court-house.
 In Delaware district, at the present court-house.
 In Saline district, at the present court-house.
 In Coo-we-skoo-we district, at the present court-house.
 In Tahlequah district, in the town of Tahlequah.

ARTICLE XVIII.

Interpreters.

SEC. 159. In the trial of all causes, civil or criminal, by any of the courts of this nation, when it may become necessary for the proper understanding of the proceedings by the jury or the court that an interpreter be appointed, the presiding judge may appoint a competent interpreter, who shall be sworn accurately to interpret to the best of his ability, and who shall receive for such service \$3 per day.

ARTICLE XIX.

Bonds.

SEC. 160. All officers of this nation from whom bond is or may be required by law, and all other persons who may be required by law to give bond to secure the payment of any tax, or to insure the fulfillment of any duty or the discharge of any trust committed to them by the national authority to do or to preserve on the general behalf or interest of the people of this nation, shall, except in cases expressly provided otherwise by law, file in the executive office the bond required, with sureties satisfactory to the principal chief. And upon failure of any officer or such person to comply with the conditions of any bond whatever that may be given to secure or guard the general interests of the people of this nation, or upon the report of such failure by the national treasurer to the national solicitor, the latter officer shall, in the name of the national treasurer, enter suit upon such bond, in the manner and form prescribed for other civil suits at law, and the national solicitor shall be entitled to and receive as his fees for entering and prosecuting any such suit in be-

half of the nation to final judgment 10 per cent. of all collections upon executions obtained thereon.

SEC. 161. All sureties to bonds required to be given by law shall be required, by the officer to whose satisfaction they shall be given, to state, under oath, before their acceptance as bondsmen, the description and value of the property owned by them, respectively, and subject to execution in case of forfeiture of bond; and no surety shall be accepted for an amount above that to which he shall be able to qualify as herein provided.

CHAPTER IV.

AN ACT in relation to crimes and misdemeanors.

Article.

- I. Treason and conspiracy.
- II. Murder and manslaughter.
- III. Excusable and justifiable homicide.
- IV. Assault with intent to kill.
- V. Burglary, robbery, and larceny.
- VI. Rape.
- VII. Mayhem.
- VIII. Arson.
- IX. Perjury.
- X. Abortion.
- XI. Poisoning.
- XII. Bribery.
- XIII. Embezzlement.
- XIV. Forgery and counterfeiting.
- XV. Escape of prisoners.
- XVI. Guards.
- XVII. Introduction and vending of liquors.

Article.

- XVIII. Houses of ill-fame.
- XIX. Gambling.
- XX. Marking and branding stock.
- XXI. Offenses against health.
- XXII. Disturbing public assemblies.
- XXIII. Malicious trespassing.
- XXIV. False pretense.
- XXV. Burning prairie or woods.
- XXVI. Weights and measures.
- XXVII. Betting on elections.
- XXVIII. Obstructing public roads.
- XXIX. Destroying pecan and other trees.
- XXX. Principals and accessories.
- XXXI. Damages.
- XXXII. Sundays, violation of.
- XXXIII. Slander or libel.

ARTICLE I.

Treason and conspiracy.

SECTION 1. Every person who shall, by force of arms, attempt to subvert the government of the Cherokee Nation, or who shall in like manner resist the enforcement of its laws, and every person who shall, contrary to the will and consent of the national council, enter into a treaty with the Government of the United States, or with any department or officer thereof, or with any State of the United States or officer thereof, and agree to cede, sell, exchange, or dispose of, in any manner, the lands belonging to the Cherokees, or any part or portion thereof, shall be deemed guilty of treason, and on conviction thereof suffer death by hanging.

SEC. 2. Every person who shall, without the authority of the national council, enter into and make a treaty with the Government of the United States, or with any department or officer thereof, or with any State of the United States or officer thereof, for any purpose, other than the cession of lands, shall be deemed guilty of treason, and on conviction thereof be punished by imprisonment for not less than ten years.

SEC. 3. Every person who shall conspire to subvert the government of this nation, or shall combine to resist the enforcement of the laws thereof, shall be deemed guilty of a felony, and upon conviction suffer imprisonment not less than one year nor exceeding ten years.

SEC. 4. No treaty shall be binding upon the Cherokee Nation which shall not be ratified by the national council and approved by the principal chief.

ARTICLE II.

Murder and manslaughter.

SEC. 5. Every killing of a human being, without the authority of the law, by shooting, stabbing, poisoning, or by other means or in any other manner, is either murder or manslaughter in the first or second degree, or excusable or justifiable homicide, according to the intention of the person perpetrating the same and the facts and circumstances connected with each case.

SEC. 6. Such killing, when done with malice aforethought or from premeditated design to effect the death of any person, though some other than the one intended should be killed, or where perpetrated by any act, not in self-defense, imminently dangerous to others, and evincing a reckless or depraved mind, regardless of human life, although without any previous design to effect the death of any particular individual, or when done by any person engaged in a duel, or when done in the perpetration of the crime of rape, arson, burglary, or robbery, shall be murder, and every person convicted thereof shall suffer death by hanging.

SEC. 7. Every killing of a human being, when done without design to effect death, by the act, procurement, or culpable negligence of any person, while such person is engaged in the perpetration of any crime other than rape, arson, burglary, or robbery, shall be manslaughter in the first degree, and every person convicted thereof shall be imprisoned for a term of not less than five years nor exceeding twenty years, at the discretion of the court.

SEC. 8. Every person who shall deliberately assist another in the commission of self-murder, or who shall willfully kill any unborn child, by the infliction of an injury, by violence, or otherwise, which would be murder, manslaughter, or suicide, if it result in the death of the mother, shall be deemed guilty of manslaughter in the first degree, and, upon conviction thereof, be imprisoned not less than five nor exceeding twenty years.

SEC. 9. Every person who shall be present at and act as second or medical adviser in any duel or prize-fight which shall result in the death of either principal shall be deemed guilty of manslaughter in the second degree, and, upon conviction, shall be imprisoned not less than three years nor exceeding ten years.

SEC. 10. Every person who shall administer any drug, medicine, or other substance to, or shall use any instrument or other means or perform any operation upon, any pregnant woman, for the purpose of destroying the child, unless advised by a physician or midwife as necessary to save the life of the mother, whereby the life of the child or mother is destroyed, shall be deemed guilty of manslaughter in the second degree, and, upon conviction, shall be imprisoned not less than three nor exceeding ten years.

SEC. 11. Any person who shall kill another without previous design to effect death while in a heat of passion, and not in self-defense, but in a cruel and unusual manner, or any person who shall unnecessarily kill another while such other is attempting to commit an unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree, and, upon conviction, shall be imprisoned not less than three years nor exceeding ten years.

SEC. 12. Every person who shall kill another in a heat of passion or in any sudden affray, without design to effect death, but not in self-

defense nor in a cruel and unusual manner, shall be deemed guilty of manslaughter in the second degree, and, upon conviction, be imprisoned not more than three years, at the discretion of the court.

SEC. 13. Every person navigating any ferry or other boat for gain who shall willfully or negligently overload said boat, whereby the boat shall sink or be upset, or any person be thrown or knocked overboard, and thereby any person shall be drowned or otherwise killed, or every captain, engineer, or other person in charge of any steamboat or other steam-power who shall, willfully or by neglect, cause any explosion or breakage of boiler, or steam apparatus or fixture, whereby any person shall be killed, shall be deemed guilty of manslaughter in the second degree, and, upon conviction, shall be imprisoned not exceeding five years nor less than one year, at the discretion of the court.

SEC. 14. Every physician while in a state of intoxication who shall, without design to effect death, administer any poison, drug, or medicine, or perform any operation whereby the death of another is effected, or every druggist or other person acting as such who shall, by neglect or ignorance, administer any poison, medicine, or drug, which shall cause the death of any person, or every owner of any mischievous animal, knowing its propensities, who shall not use due care in keeping it, and such animal kill any person outside of the inclosure of such owner, or every person who shall in any manner, otherwise than hereinbefore specified, and not in self-defense, and such killing not being excusable or justifiable, shall be deemed guilty of manslaughter in the second degree, and, upon conviction, shall be imprisoned not exceeding five years nor less than one, at the discretion of the court.

ARTICLE III.

Excusable and justifiable homicide.

SEC. 15. Every killing of a human being is hereby declared to be excusable or justifiable in the following cases, to wit: Such killing is excusable when done by accident or misfortune, in lawfully correcting a child or ward, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent or purpose to effect death, or by accident or misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden affray, without undue advantage being taken, and without the use of any dangerous weapon, and not done in a cruel and unusual manner.

SEC. 16. Every killing of a human being is justifiable when necessarily done by any public officer, or those acting under his authority, in enforcing obedience to a process from any legal tribunal, or when done in overcoming actual resistance to the execution of such process, or when necessarily done in the discharge of any duty required by law, or when done by any person in resisting the attempt of another to kill such person, or to commit any felony upon such person, or upon or in any dwelling-house in which such person may be, or when committed in the lawful defense of such person, or in the defense of his or her husband, wife, child, parent, ward, guardian, relative, or friend, when there shall be a reasonable ground to apprehend a design to commit some felony or do some serious bodily injury, and there shall be reasonable cause for believing that there is imminent danger of such design being accomplished, or when necessarily done in attempting, by lawful ways and means, to quell any tumult or riotous conduct, or in lawfully keeping and preserving the peace.

ARTICLE IV.

Assault with intent to kill.

SEC. 17. Every person who shall be convicted of shooting at another, or of attempting to discharge any fire-arms at another, or of any assault or assault and battery upon another, with any deadly weapon, or other means likely to produce death, with intent to kill and murder, or to maim, disfigure, or rob another; or in the attempt to commit murder, manslaughter, burglary, or other felony; or in resisting the execution of any legal process, or any officer or private person lawfully attempting to arrest him, her, or any other person, shall be deemed guilty of felony, and shall be imprisoned not less than three years nor exceeding ten years.

SEC. 18. Every person who shall assault and rob or take away, by force or intimidation, from the person of another, any money or other property, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than three years nor exceeding ten years, and be fined in double the amount of damage sustained by the injured party.

ARTICLE V.

Burglary, robbery, and larceny.

SEC. 19. Every person, being armed with a dangerous weapon, or so arming himself after entering, who shall, with intent to commit the crime of murder, rape, robbery, or other felony, break into or unlawfully enter, in the night-time, any dwelling, store, or other house, then being lawfully occupied by any person, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than five years nor more than fifteen years.

SEC. 20. Every person, being not armed, nor arming himself after entering, who shall, with intent to commit the crime of murder, rape, robbery, or other felony, break into or unlawfully enter, in the night-time, any dwelling, store, or other house, then being lawfully occupied by any person, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than one nor exceeding ten years.

SEC. 21. Every person who shall, in the day-time, break into or unlawfully enter any dwelling, store, or other house, or who shall, in the night-time, break into or unlawfully enter any dwelling, store, or other house, at the time being occupied, with intent to commit the crime of murder, rape, or other felony, shall be deemed guilty of a felony, and, upon conviction, shall be imprisoned not less than one year nor exceeding five years.

SEC. 22. Every person who shall willfully take, steal, or maliciously destroy, any goods, wares, merchandise, promissory note, national warrant, certificate, money, or other property, one hundred dollars or more in value, shall be deemed guilty of felony, and, upon conviction, be imprisoned for any term not less than one year nor exceeding ten years, and be fined in a sum double the amount of damage sustained by the injured party, for his benefit.

SEC. 23. Every person who shall willfully take or steal, or maliciously destroy, any goods, wares, merchandise, promissory note, money, national warrant, certificate, or other property, less than one hundred dollars in value, shall, upon conviction, be imprisoned for any term less

than one year, at the discretion of the court, and be fined in double the amount of damage sustained by the injured party, for his benefit.

SEC. 24. Every person who shall steal and carry away, or fraudulently withdraw, conceal, or destroy, or take away any record, paper, or proceeding of the court, or of the executive or legislative department of this nation, or any paper or proceeding filed with any officer or in any public office, without reference to the value of the paper, record, or proceeding so taken, stolen, destroyed, withdrawn, or concealed, shall be deemed guilty of felony, and, upon conviction thereof, shall be fined in a sum double the amount of the injury sustained by the party injured, and be imprisoned not less than one year nor more than five years, at the discretion of the court.

SEC. 25. Every person who shall willfully take or steal a horse, mule, ass, or cow, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than three years nor more than seven years, and be fined, for the benefit of the injured party, in a sum double the amount of loss or damage sustained. And every person found a second time guilty of a violation of this section shall be imprisoned not less than seven years nor exceeding ten years, and be fined as above.

SEC. 26. Every person who shall willfully take or steal any hog, sheep, goat, or other domestic animal, or wild animal kept in an inclosure, shall be deemed guilty of felony, and, upon conviction, be imprisoned not less than one year nor more than three years. And every person found a second time guilty of a violation of the provisions of this section shall be imprisoned not less than three years nor exceeding seven years, and be compelled, in every instance, to make restitution to the injured party in a sum double the amount of injury sustained.

SEC. 27. Every person who shall willfully kill, maim, or disfigure any horse, cow, hog, or other beast of another, or shall willfully administer any poison to such beast, or shall willfully or maliciously destroy the personal property of another in any manner, or by any means, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for any period less than one year, at the discretion of the court, and be fined in a sum double the amount of the damage sustained, for the benefit of the injured party. And every person found a second time guilty of a violation of the provisions of this section shall be deemed a felon, and shall be imprisoned not less than three years nor more than seven years, and be fined in a sum double the amount of the injury sustained, for the benefit of the injured party.

ARTICLE VI.

Rape.

SEC. 28. Every person who shall ravish and carnally know any female, not under twelve years of age, by force and against her will, or by administering to her any substance or liquor which shall produce such stupor or imbecility of mind or weakness of body as will prevent effectual resistance; or shall attempt to ravish or carnally know any female child less than twelve years of age, either with or without her consent, shall be deemed guilty of a felony, and, upon conviction, shall suffer imprisonment for a term not exceeding twenty-five years nor less than ten years: *Provided, however,* If the female be, at the time of the commission of the offense, a common prostitute, she shall be required to make immediate complaint to some public officer or other respectable person, and if on the trial of such offense she is proven to be a common

prostitute, then the court may imprison the offender, upon conviction, for any term not less than one year nor exceeding ten years.

SEC. 29. Every person who shall ravish and carnally know any female child, under the age of twelve years, either with or without her consent, shall, upon conviction, suffer death by hanging: *Provided*, That the principal chief, by and with the advice and consent of the executive council, may, if the circumstances of the case seem to warrant, commute the sentence to imprisonment for life.

ARTICLE VII.

Mayhem.

SEC. 30. Every person who shall, with malicious intent to maim or disfigure, cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, slit or mutilate the nose or lip, or cut off or disable any member of any person, and every person privy to such intent, who shall aid in the commission of such offense, shall be deemed guilty of a felony, and, upon conviction, shall be imprisoned not exceeding ten years nor less than one year, and be fined, for the benefit of the injured party, in any sum not less than one hundred dollars, at the discretion of the court.

ARTICLE VIII.

Arson.

SEC. 31. Every person who shall willfully set fire to and burn any dwelling, or other house, occupied by any person, whereby the life of such person shall be destroyed, shall, on conviction, be deemed guilty of manslaughter in the first degree and suffer death by hanging: *Provided, however*, The principal chief, by and with the advice and consent of the executive council, may, if the facts and circumstances of the case seem to warrant, commute the punishment to imprisonment for life.

SEC. 32. Every person who shall willfully set fire to and burn any dwelling-house, mill, school-house, church, barn, or other building, whether such person be owner or not, shall be deemed guilty of a felony, and, upon conviction, be imprisoned for a term not less than five years nor exceeding fifteen years, and fined in a sum double the amount of damage sustained, for the benefit of any other person injured.

SEC. 33. Every person who shall willfully set fire to and burn any bridge, any goods, wares, or merchandise, or any chattels of any kind, or any stack, bale, or heap of hay, or field of grain, cotton, or other produce, standing or growing in any field, or any orchard, or nursery, or grove of trees not his own, or any fence around any farm, field, or inclosure not his own, or any cord-wood not his own, or any parcel of boards or lumber, or shall willfully set fire to and burn any property not herein specially named, shall be deemed guilty of a felony, and, upon conviction, shall be imprisoned not less than one year nor exceeding five years, and be fined for the benefit of the injured party in a sum double the amount of damage sustained by the injured party.

ARTICLE IX.

Perjury.

SEC. 34. Every person of whom an oath or affirmation may be required by law, who shall, before any court, or officer authorized by law

to administer oaths, willfully swear or affirm falsely in regard to any material matter or thing respecting which such oath or affirmation is required, shall be deemed guilty of a felony, and, upon conviction, suffer imprisonment for not less than one year, nor more than five years : *Provided, however,* If the offense be committed in the trial of an indictment for a crime punishable with death or imprisonment for life, the offender shall be imprisoned for not less than five years, nor exceeding fifteen years. And every person who shall procure another to commit the crime of perjury shall be deemed guilty of a felony, and be imprisoned as hereinabove provided.

SEC. 35. No person convicted of perjury, or subornation of perjury, shall ever afterwards be allowed to give evidence before the courts of this nation.

ARTICLE X.

Abortion.

SEC. 36. Every pregnant woman who shall willfully take any medicine, drug, or other thing, or who shall use or employ any instrument, or other means, with the intent to produce abortion or miscarriage, whether abortion or miscarriage be produced or not, and every other person who shall, with such intent, administer to, prescribe for, advise, or procure any such woman to take anything or employ anything, for such purpose, shall, upon conviction, be deemed guilty of a felony, and be imprisoned not less than one year nor exceeding five years.

SEC. 37. Every woman who shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was or not murdered, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than one year nor exceeding five years.

ARTICLE XI.

Poisoning.

SEC. 38. Every person who shall attempt to commit the crime of murder, or attempt to injure another by using any poison commingled with any food, drink, or medicine, or in any clandestine manner, shall be deemed guilty of a felony; and, upon conviction, suffer imprisonment for a term not less than one year, and not exceeding ten years, and be fined to the amount of damages sustained by the injured party for the benefit of such party.

ARTICLE XII.

Bribery.

SEC. 39. Every person who shall corrupt any witness, guard, or juror, or any executive, legislative, or judicial officer, or other person holding any office or appointment of honor, profit, or trust under the government of this nation, by giving, offering, or promising any gift, gratuity, or consideration whatever, present or prospective, either before or after such person may qualify, with intent to influence his act, vote, opinion, decision, or judgment, in any matter, cause, question, or proceeding which may then be pending, or may, by law, come or be brought before him for his official action, shall be deemed guilty of felony, and, upon conviction, be imprisoned not less than one year nor more than

five years. And every witness, juror, or guard, or executive, legislative, or judicial officer, or person holding any office or appointment of honor, profit, or trust under the government of this nation, who shall corruptly accept any gift, reward, or gratuity, touching any question, cause, proceeding, or appointment which may come before him for his official action, shall be deemed guilty of felony, and, upon conviction, be imprisoned not less than five years nor exceeding ten years.

ARTICLE XIII.

Embezzlement.

SEC. 40. Every attorney, officer, agent, clerk, or employé, of any company or person, or every receiving, forwarding, and commission merchant, or every miller having in charge any moneys, goods, wares, grain, or other produce, or property of another, who shall fraudulently embezzle, make way with, or appropriate to his or her own use, without the consent of the owner, the whole or any part thereof, and shall fail or refuse, on demand, to make full restitution in kind, or in accordance with the terms of agreement, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year, and be fined in a sum double the amount of damages, for the benefit of the party injured.

SEC. 41. Every person holding an office, or appointment of honor, profit or trust, who is or may be interested with, or who is or may be required to receive, and pay over, any moneys or other dues, received in the discharge of his official duties, and belonging to the nation, shall be required to pay over, in kind, whether it be gold, silver, United States paper currency, national warrants, or certificates or other consideration, and shall not set up any claim as an offset, and every person who holds any office or appointment of honor, profit, or trust under the government of this nation, and who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and be subject to suspension from office, and impeachment and removal and disqualification; and, upon conviction, either before or after impeachment, before the courts of this nation, shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars; and in default of payment, be imprisoned for any term less than one year and exceeding six months, at the discretion of the court: *Provided*, Every receiving officer, who shall not within thirty days after notification of such delinquency, or within thirty days after the time required by law, report such offender to the principal chief for suspension from office shall be deemed *particeps criminis*, and, upon conviction, be subject to like punishment as the principal.

SEC. 42. Every person holding an office or appointment of honor, trust, or profit who is or may be intrusted with the collection, safe keeping, receipt, transfer, or disbursement of any tax, rents, revenue, moneys, fines, incomes, or securities, and shall convert the whole or any part thereof to his own use, or shall, without authority of the law, loan, either with or without interest, any part thereof, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than five years nor exceeding fifteen years.

ARTICLE XIV.

Forgery and counterfeiting.

SEC. 43. Every person who shall falsely make, alter, forge, or counterfeit any national warrant, due-bill, or certificate, or any order, note

of hand, draft, power of attorney, will, or deed, or any court or other public record, with intent to fraud, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than one year nor exceeding three years: *Provided*, If the person so convicted shall have been, at the time the offense was committed, an officer of the nation, or of any corporation created by law, he shall be imprisoned not less than three years nor exceeding seven years; and in every case, the offender, upon conviction, shall be fined, for the benefit of the party injured, in double the amount of damages sustained.

ARTICLE XV.

Escape of prisoners.

SEC. 44. Every person, being unarmed, who shall aid or assist any prisoner in escaping from any jail or prison or from the custody of any sheriff or guard, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year and exceeding six months.

SEC. 45. Every person, being armed with a dangerous weapon, who shall forcibly aid in the escape or rescue of any prisoner from any jail or prison, or from the custody of any sheriff or guard, or shall attempt to so aid the escape or rescue of such prisoner, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than one year nor more than five years.

SEC. 46. Every prison-keeper, sheriff, or guard, who shall voluntarily permit the escape of any prisoner who has been placed in his safe keeping, shall, upon conviction, be deemed guilty of a felony, and be imprisoned not less than one year nor more than five years; and if such prisoner be convicted of or charged with any offense punishable with death or imprisonment for life, the prison-keeper, jailor, sheriff, or guard shall be imprisoned not less than five nor more than fifteen years.

SEC. 47. Every officer authorized to serve processes who shall willfully and corruptly refuse to execute any lawful process to him directed, and requiring him to arrest and confine any person convicted of or charged with any criminal offense, or shall willfully and corruptly omit or neglect to execute such process, whereby such person shall escape and go at large, or shall willfully and corruptly refuse to receive into his custody any person committed thereto, on lawful process, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year and not less than six months, or by fine not less than two hundred dollars nor more than one thousand dollars, or both, at the discretion of the court.

ARTICLE XVI.

Guards.

SEC. 48. Every person, being summoned in the name of the Cherokee Nation, by any sheriff or other lawful officer, who shall refuse or neglect to aid and assist such officer in the execution of the duties of his office, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars, and not exceeding two hundred and fifty, and no property shall be exempt from the payment of such fine, improvements excepted: *Provided*, Every person holding an office, or appointment of honor, profit, or trust, under the government of this nation, every officiating minister of the Gospel, practicing physician,

lawyer, public ferryman, carrier, school-teacher (during time), and every person sixty-five years of age, and every minor, shall be exempt from service as guard, excepting when called upon to make immediate arrests, or to prevent the rescue of prisoners, or to quell any riot or tumult, or in the preservation of peace.

ARTICLE XVII.

Introduction and vending of liquors.

SEC. 49. Every person who shall set up and keep a house, room, or place for the purpose of vending intoxicating drinks, or who shall introduce, vend, or in any other manner dispose of for gain, any intoxicating liquors, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for any term less than one year, and not less than one month, or by fine not less than one hundred dollars, or by both fine and imprisonment, at the discretion of the court: *Provided, however,* That this section shall not be construed as to prohibit the introduction and use, by licensed physicians, for medical purposes, of alcohol or other spirits.

ARTICLE XVIII.

Houses of ill-fame.

SEC. 50. Every person who shall set up and keep any house, room, or place, resorted to for the purpose of prostitution of sexes, or every person who shall knowingly rent, lease, or in any other manner permit the use of his house for such purpose, or every woman who shall be found therein as a prostitute, or every person who superintends such house, or may be therein employed, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year, or be fined in any sum of not less than ten dollars, or more than two hundred and fifty, or be both fined and imprisoned, at the discretion of the court.

SEC. 51. Every person, after having been once convicted, who shall persist in keeping a disorderly house for the purpose of gambling, vending of ardent spirits, debauchery, assignation, or the prostitution of the sexes, to the annoyance of society, shall be deemed incorrigible, and, besides the penalties, shall be deemed a common nuisance, and to have forfeited the right of residence in such place; and the citizens of such place or vicinage may, at their option, eject such person, and, if necessary, thoroughly destroy such place of vice in such manner as they may choose, without endangering the property of others or the lives of the inmates.

ARTICLE XIX.

Gambling.

SEC. 52. Every person who shall, at any time, or in any place, play at any game, for gain, with cards, dice, or any device, which may be used or adapted to playing any game of chance or hazard, or shall bet on the hands or sides of those who do play, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not less than ten dollars, nor exceeding one hundred dollars.

SEC. 53. Every person who shall set up or keep any house or room, or place, either private or public, for the purpose of gambling, and shall

induce, entice, or permit any person therein to bet at any game of faro, roulette, or other game whatever, or to play at any game of cards, dice, or other device, for gain, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than fifty dollars, nor exceeding five hundred dollars. And no property, improvements excepted, shall be exempt from the payment of fines imposed under this section.

SEC. 54. All debts incurred at any game of chance, of whatsoever name, or upon any horse race, election, or cock fight, or other sport, or wager, or for the payment of money, or other thing of value, lent or advanced at the time of any game, play, election bet, or wager, for the purpose of being laid, betted, staked, or wagered, shall be void and of no effect. And every person who may have lost at any game of chance, or otherwise, as herein set forth, and paid over to another any money, or other valuable thing, may, at any time within six months after such loss or payment, sue for and recover the same. Suits for the recovery of money or other valuable things, so lost and paid over, may, within one year, be brought by the husband, wife, or legal representative of the loser, for the benefit of his or her family or heirs. And the defendants in such suits may be required to answer, on oath, all questions in relation to the recovery of the money, or other valuable thing specified in the complaint, and thereafter be exempted from all further prosecution of the case.

ARTICLE XX.

Marking and branding stock.

SEC. 55. Every person who shall, willfully and knowingly, mark or brand any animal, the property of another, with a mark or brand not that of the owner, without the consent of the owner, or authority of law; or shall knowingly alter or deface the mark or brand of any animal, the property of another, without his consent, shall be deemed guilty of a felony, and, upon conviction, be imprisoned not less than one year, nor exceeding three years: *Provided*, Any person found a second time guilty of a violation of the provisions of this section, shall be imprisoned not less than three years, nor more than seven years.

ARTICLE XXI.

Offenses against health.

SEC. 56. Every person who shall fraudulently adulterate any substance intended for food, or any fluid intended for drink, or any drug or medicine, in such manner as to render it injurious to health, or who shall knowingly sell any diseased, corrupted, or unwholesome provisions, whether for food or drink, or such adulterated drugs or medicines, without making the same fully known to the buyer; or every druggist, or other person, who shall sell or deliver any arsenic, strychnine, or other active poison, without having the word *poison*, and the true name thereof in English written or printed thereon, in plain letters, upon a label attached to the vial, box, or parcel containing the same, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in a sum not less than one hundred dollars, nor exceeding five hundred dollars, or be imprisoned for any term less than one year, and not less than six months, or by both, in the discretion of the court.

SEC. 57. Every physician, apothecary, druggist, or other person, who

shall in a state of intoxication, or by neglect or carelessness, prescribe or administer any active poison as a medicine to another, thereby endangering the life of such person, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year, or be fined in any sum not less than one hundred dollars and not exceeding one thousand dollars, or be both fined and imprisoned, at the discretion of the court.

ARTICLE XXII.

Disturbing public assemblies.

SEC. 58. Every person who shall willfully annoy, by word or deed, or in any manner disturb any school, religious, political, or social public meeting, lawfully assembled, shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than twenty-five dollars nor exceeding one hundred dollars, and in default of payment of such fine be imprisoned not less than thirty days nor more than ninety days: *Provided*, If the offender be at the time in a state of intoxication, or be armed with a dangerous weapon, he shall be imprisoned not less than six months and less than one year, at the discretion of the court: *Provided, further*, That the members of every religious, political, and social public meeting, when lawfully assembled, be authorized to adopt such measures for the peace and harmony of their meeting, by the suppression of the sale and indulgence in the use of intoxicating drinks, and for the preservation of the peace, as may seem to them most proper and best suited to that purpose, and said assembly, or the individual members thereof, shall not be responsible for any damages suffered by persons in the exercise of the right herein granted.

SEC. 59. Every person who shall, during the holding of any camp or field meeting for religious purposes, and within one mile of the place of holding such meeting, peddle or sell any goods, wares, or merchandise, provisions, or refreshments, without permission from the person having charge of such meeting, or shall practice or engage in any kind of gambling or horse-racing, or exhibit any show or play, shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than twenty-five dollars nor exceeding one hundred dollars, and in default of payment be imprisoned not less than ten nor exceeding thirty days: *Provided*, That any person having his regular and usual place of business within such limits shall not be required to suspend his business.

ARTICLE XXIII.

Malicious trespassing.

SEC. 60. Every person who shall willfully and maliciously enter upon any field, garden, orchard, or other lands of another, and commit any trespass therein, by stealing, willfully taking, or destroying any grain, fruits, vegetables, or other product of the soil, or by destroying or injuring any vine, plant, shrub, fruit, or other tree, not his own, standing or growing for shade, ornament, or other useful purpose, upon the premises of another, or upon any public grounds or park, or by breaking, or throwing down, or opening any gate, bars or fence inclosing lands not his own, or by marring, defacing, or otherwise injuring any building not his own, or by burning, breaking, or otherwise destroying any railing, inclosure, or monument erected in memory of the dead, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned

for any time less than one year at the discretion of the court, and be fined in double the amount of damage done for the benefit of the injured party.

ARTICLE XXIV.

False pretense.

SEC. 61. Every person who shall designedly, and by false pretense, and with intent to defraud, or obtain from another any money, horse, mule, goods, wares, or merchandise, or other property whatsoever, or shall obtain with such intent the signature of another to any instrument of writing, the false making whereof would be forgery, shall be deemed guilty of a felony, and, upon conviction, shall be imprisoned not less than one year nor more than five years, and be fined for the benefit of the injured party in a sum double the amount of damage sustained.

ARTICLE XXV.

Burning prairie or woods.

SEC. 62. Every person who shall, between the first day of July and the first day of April, willfully set fire to and burn any prairie or woodland not within his own inclosure, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five nor exceeding one hundred dollars, or, in default of payment, be imprisoned not exceeding thirty days: *Provided, however*, If the house, fencing, hay, grain, or other property of another, be thereby injured or destroyed, the offender shall be liable to the owner of such property in a sum double the value of the property injured or destroyed; and if payment of such damage is not made before the conviction of such person, he shall be punished for any term less than one year, and exceeding three months, at the discretion of the court.

ARTICLE XXVI.

Weights and measures.

SEC. 63. Every person who shall, with intent to defraud, use, or induce others to use, any false weight or measure, or shall give or receive any false weight or measure in buying, selling, exchanging, or disposing of any commodity sold by weight or measure, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one year, and not less than thirty days, and be fined in double the amount of damage sustained by the injured party, for his benefit: *Provided*, Whenever any commodity shall be sold by the hundred pounds, it shall be construed to mean the net weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

SEC. 64. A bushel shall contain twenty-one hundred and fifty and forty-two one-hundredths (2150.42) cubic inches. The Fairbanks warehouse or platform scales are hereby adopted as the legal standard of weights in the Cherokee Nation, and the weights of the following commodities, by the bushel, shall be as follows, to wit: Wheat, 60 pounds; shelled corn, 56 pounds; corn in ear, 70 pounds; oats, 32 pounds; bar-

ley, 48 pounds; rye, 56 pounds; broom-corn seed, 44 pounds; white beans, 60 pounds; Irish potatoes, 60 pounds; sweet potatoes, 55 pounds; turnips, 55 pounds; onions, 56 pounds; top or button onions, 28 pounds; pease, 60 pounds; corn-meal, 48 pounds; Osage-orange seed, 33 pounds; plastering-hair, 8 pounds; clover seed, 60 pounds; timothy seed, 60 pounds; red-top seed, 14 pounds; Hungarian-grass seed, 50 pounds; blue-grass seed, 14 pounds; dried apples, 24 pounds; dried peaches, 28 pounds: *Provided further*, That nothing in this section shall be construed as changing the standard weights and measures used by apothecaries and others in the sale of drugs and medicines.

ARTICLE XXVII.

Betting on elections.

SEC. 65. Every person who shall bet, stake, or wager any money or other thing of value upon the result of any election held in this nation shall be deemed guilty of a misdemeanor, and, upon conviction, be fined not less than one hundred dollars nor exceeding five hundred dollars, and in default of payment of such fine, shall be imprisoned not less than three nor exceeding six months.

ARTICLE XXVIII.

Obstructing public roads.

SEC. 66. Every person who shall willfully and unnecessarily obstruct, wholly or in part, any public road within the nation, by felling trees in or across the same, or by filling any cuts, or in any manner rendering the crossings of any stream impracticable, on such road, or by inclosing within his improvements, by fencing or otherwise, any part of such road, without first having opened a practicable way around such improvement or fencing to be made, or in any other manner preventing a free passage along such road; and every person who shall alter, deface, remove, or destroy any sign-board, erected for the guidance of travelers, upon such road, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined not less than twenty-five dollars nor exceeding one hundred dollars. And no property shall be exempted from the payment of such fine, improvements excepted: *Provided*, That every road designed for the passage of wagons or other vehicles, opened or used by any citizen or neighborhood, shall be construed to mean a public road, within the meaning of this section.

ARTICLE XXIX.

Destroying pecan and other trees.

SEC. 67. Every person who shall willfully cut down, kill, or destroy any pecan, walnut, hickory, or other fruit or nut-bearing tree standing and growing upon the public domain of the Cherokee Nation, or shall cut down for the nuts or fruit thereof, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined not less than twenty dollars nor more than fifty dollars, or, in default of payment of such fine, be imprisoned not less than ten nor exceeding sixty days: *Provided, however*, That nothing in this section shall be construed as to prohibit the felling or killing such trees when necessary in the improvement or enlargement of farms, or when the timber thereof is designed for fuel or other useful purposes.

ARTICLE XXX.

Principals and accessories.

SEC. 68. Every person, being present, who shall aid, abet, assist, encourage, or consent to the perpetration of any crime, shall be deemed a principal. And every person not being present, who shall advise, counsel, encourage, or consent to the commission of any crime, shall be deemed an accessory.

SEC. 69. Every person who shall be indicted and convicted as an accessory shall be punished in like manner as the principal, and may be proceeded against and tried either before or after the trial of the principal.

SEC. 70. Every person who shall be convicted of having concealed, received, or released any person charged with a criminal offense, or having aided or assisted such person, knowing such person to be so charged, with intent to enable such person to escape, or to avoid arrest, trial, conviction, or punishment after the commission of such offense, on conviction thereof shall be punished by imprisonment for any term not to exceed three years, at the discretion of the court; and in the prosecutions for offenses specified in this section it shall not be necessary to aver in the indictment or to prove on the trial that the principal has been convicted or tried.

SEC. 71. Every person who shall receive, conceal, buy, sell, or dispose of any stolen goods, wares, or other valuable thing or property, knowing them to be such, shall be deemed an accessory, and, upon conviction, be punished in like manner as the principal; and such person may be proceeded against and be tried either before or after the principal.

ARTICLE XXXI.

Slander or libel.

SEC. 72. Every person who shall falsely charge, or wantonly or maliciously speak, write, print, disseminate, or otherwise give publicity to any word, matter, or thing for the purpose of injuring another person in character, feeling, or property, or for the purpose of so injuring the family or friends of such person, shall, on conviction thereof before any court of competent jurisdiction, be deemed guilty of willful and malicious slander, and suffer punishment by fine in any sum not exceeding two thousand dollars, for the benefit of the person injured, or by imprisonment for any term not exceeding two years, or by both fine and imprisonment, at the discretion of the court.

SEC. 73. The repetition or utterance of any charge or accusation whereof the person accused has been tried and honorably acquitted by any legal tribunal of this nation, may be deemed libelous, or not, according to the time and circumstances attending such utterance.

ARTICLE XXXII.

Sundays.

SEC. 74. The seventh portion of time, beginning and ending with Sunday, the first day of the week, shall be a day of rest within the limits of the Cherokee Nation; and every merchant, mechanic, artist, or other person who shall keep open his store, warehouse, shop, work-

house, or other place of business, or shall engage on Sunday in any manner of work, labor, or business, except only works of necessity and charity, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, be fined in any sum not exceeding fifty dollars for each and every such offense, at the discretion of the court.

SEC. 75. One-half of fines collected under this act shall be paid into the general fund of the nation, and the other half to be paid to the solicitor and sheriff prosecuting and collecting the same, equally: *Provided*, That the keeping open of apothecary-shops, and the preparation and sale of medicines on Sundays for immediate use, shall not be deemed a violation of the provisions of this act.

ARTICLE XXXIII.

Damages.

SEC. 76. Whenever any person is injured in property by the unlawful act of another, he shall, within ten days after he is apprised of such injury, report the same to the judge of the district in which the act was done, who shall thereupon immediately appoint and qualify three suitable persons to assess the amount of damages sustained by the party injured; and the amount so assessed, certified to, and signed by the persons so appointed shall be final as to the damages sustained, when judgment may be given thereupon according to law.

CHAPTER V.

AN ACT relating to executions.

ARTICLE I.

Execution in capital cases.

SECTION 1. The punishment of death shall, in all cases, be inflicted by hanging the convict by the neck until he be dead; and the sentence shall, at the time directed, be executed within the walls or inclosure of the national prison, at the town of Tablequah, by the high sheriff, or some one deputized by him for that purpose.

SEC. 2. Whenever any person shall be convicted of any crime for which sentence of death shall be awarded against him, the presiding judge in that case shall, in open court, pass the sentence of death upon the person so convicted. He shall, at the same time, fix the time for the execution in his order to the high sheriff, signed by himself and the clerk of the court; which order, together with the convict, shall be committed to the custody of the sheriff of the district in which the case was tried, to be by him safely delivered to the high sheriff or his deputy at or within the prison at Tablequah; and such order of the judge shall be a sufficient authority for the high sheriff or his deputy to execute such sentence, and he shall execute it accordingly.

SEC. 2. A respite of not less than thirty nor exceeding ninety days from the day of sentence shall be given to every convict awaiting the execution of the death penalty.

SEC. 4. Ministers of the gospel shall have, under the high sheriff, free access to all criminals awaiting the infliction of the death penalty; and whenever the death penalty is to be inflicted the high sheriff shall, if

practicable, cause a physician or surgeon, the sheriff of Tahlequah district, or his deputy, and not less than six other reputable citizens of the nation, to be present to witness the execution. He shall permit the counsel and immediate relatives of the criminal, and the officers and assistants of the prison, and such others as he may see fit, to be present.

SEC. 5. Whenever the punishment of death shall have been inflicted, as herein provided, the high sheriff shall return the order for execution with a statement thereto attached of his doings therein, and as soon as may be after the execution, to the clerk of the court having jurisdiction, for record. He shall also make a record of the same in the office of the prison.

SEC. 6. In every case in which the punishment of imprisonment in the national prison is awarded against any convict, the court (judge) shall transmit, by the sheriff having custody of such convict, the sentence or decree of the court to the high sheriff, and the term of punishment of such convict shall date from the day on which he is delivered for imprisonment to the high sheriff.

CHAPTER VI.

AN ACT relating to the national prison.

ARTICLE I.

The national prison—discipline and management.

SECTION 1. The national prison at Tahlequah shall be the general prison of the Cherokee Nation for the reformation as well as for the punishment of offenders, in which shall be confined, employed at hard labor, and governed, all offenders who have been committed and sentenced, according to law, to the punishment of solitary confinement, or imprisonment and confinement therein at hard labor. It may also be used, when deemed expedient, for the safe-keeping of persons charged with murder, or other high crimes, and for the temporary confinement, or confinement and punishment, of persons sentenced by the national council, or who may be put under arrest for drunkenness or other misdemeanor at the seat of government.

SEC. 2. The organization of the national prison shall consist of one chief officer, to be known and designated "high sheriff of the Cherokee Nation," one deputy, a board of supervisors, and such assistants as shall be authorized by law.

SEC. 3. The high sheriff shall be appointed by the principal chief, with the advice and consent of the senate, and his term of office shall be coextensive with that of the principal chief appointing him. He shall be warden and treasurer of the national prison, and custodian of the capitol building and other public property at the seat of government, and shall perform such general and special duties as shall be imposed upon him by law. He shall receive, out of the national treasury, a salary of eight hundred dollars per annum, and shall, before entering upon the discharge of his official duties, obligate to the Cherokee Nation, in such reasonable bond as shall be required by the board of supervisors, and take an oath to faithfully and to the best of his ability perform all of the duties devolving upon him by virtue of his office.

SEC. 4. The bond of the high sheriff shall be put on file, for safe-keeping, in the office of the principal chief, and such high sheriff and

his sureties shall be jointly and severally responsible for every breach of its conditions.

SEC. 5. The board of prison supervisors shall be composed of the principal chief and assistant principal chiefs and executive council. The principal chief shall be *ex-officio* president of said board whenever he shall deem it expedient so to do. In his absence, or inability to act, the assistant principal chief, or either of the other members of the board, may preside.

SEC. 6. The board of supervisors shall visit the prison from time to time, examine into its condition, and into the condition of the prisoners, and render such advice and aid to the high sheriff as they may deem necessary. They shall prescribe rules and regulations for the guidance of the high sheriff, and for the government of the prison, and the employment of the prisoners. They shall carefully inspect the accounts of the high sheriff, and shall have the right to curtail or reject all contracts made on account of the prison which are manifestly fraudulent, exorbitant, or unjust.

SEC. 7. The high sheriff may appoint his own deputy, with the concurrence of the board of supervisors. He may appoint, in like manner, such cooks, police force, and other assistants, as shall be required, from time to time, in the prison service.

SEC. 8. The high sheriff shall be responsible for the management of the prison, according to the rules and regulations prescribed by the board of supervisors and the laws of the nation thereto applying.

SEC. 9. The high sheriff, or his deputy, as warden of the prison, shall reside within the precincts of the prison. He shall have the letting and making, with the approval of the board of supervisors, of contracts for supplies and work in and for the prison; and, as treasurer, shall settle all bills in such manner as shall be prescribed by the board of supervisors.

SEC. 10. Neither he nor any person holding a position in connection with the prison shall directly or indirectly have any interest in any contract, either verbal or written, which may be entered into by him on the part of the Cherokee Nation, for any purpose whatever connected with the business or interests of the prison.

SEC. 11. As warden of the prison, the high sheriff shall furnish to the prisoners under his charge such wholesome fare as shall be designated by the board of supervisors. He shall see to it that the provisions intended for the use of the prisoners are well and sufficiently cooked, and properly served. As far as may be, he shall, with the consent of the board of supervisors, purchase all supplies of bedding, clothing, fuel, and other necessary articles, by the quantity, and at the lowest market rates.

SEC. 12. The high sheriff shall have the charge and custody of the prison, with the lands, buildings, furniture, tools, implements, stock, and provisions, and every species of property thereto pertaining, or within the precincts thereof; and shall superintend the police of the prison and discipline of the convicts; and shall receive and disburse such sums of money as shall be granted by the national council for the support of the prison, in conformity with the express provisions of law and the instructions of the board of supervisors.

SEC. 13. He shall make an annual detailed report, closing on the 30th day of September of each year, to the principal chief, which shall contain a full and accurate statement of all the concerns of the prison for the fiscal year ending September 30; also, a list of the convicts received into, discharged, pardoned, and died during the year, with an estimate

of the expenses for the ensuing year; which report shall be made to the principal chief on or before the 10th day of October of each year, and shall be by him, with a report of the board of supervisors, laid before the national council at the ensuing annual session thereof.

SEC. 14. He shall, as frequently as may be, secure some minister of the gospel to hold divine service in the prison, instruct the prisoners in their moral and religious duties, and visit the sick among them.

SEC. 15. Whenever any convict shall require medical aid the high sheriff shall promptly call in some physician, who shall attend such sick convict until relieved, and the bill of such physician, for such service, shall be paid by the Cherokee Nation.

SEC. 16. The board of supervisors shall furnish the high sheriff with such medicines as shall be necessary for the prison.

SEC. 17. Should a controversy arise respecting any contract made on account of the prison, the same may be submitted to the final determination of three arbitrators or referees, to be appointed by the principal chief.

SEC. 18. All processes to be served within the precincts of the prison, either upon convicts, upon officers, or other persons employed within the precincts of the prison, shall be served by the high sheriff, or by his deputy, or other person next in rank; and all officers, and other persons in the prison service, shall be exempt from serving on juries and guard.

SEC. 19. It shall be the duty of the high sheriff to see that all judgments passed upon persons sentenced to the national prison, are strictly, but not cruelly, enforced. He shall govern and employ them in the manner prescribed by law, the rules and regulations of the prison, and in conformity to the respective sentences under which they shall be committed.

SEC. 20. All officers and other persons employed in and about the prison, shall perform such duties pertaining thereto as shall be required of them by the high sheriff, in conformity to law and the rules and regulations of the prison.

SEC. 21. The clothing and bedding of the convicts shall be of such quality and quantity as the judgment of the high sheriff and board of supervisors may approve, consulting the health and comfort of the convicts and the interests of the nation.

SEC. 22. The high sheriff, and those employed under him, shall use every necessary means to maintain order in the prison, enforce obedience, suppress insurrection, and effectually prevent escapes; for which purpose the high sheriff may at any time, if necessary, command the aid of any adequate number of citizens of the vicinity; and every person refusing to obey such command shall be held liable to such fines, penalties, or forfeitures as apply to persons refusing to obey a sheriff or other officer calling for aid to assist in serving criminal process or in quelling insurrection or riot.

SEC. 23. The high sheriff, as warden and treasurer of the prison, shall renew his bond whenever deemed necessary by the principal chief, and obligate for such sum as may be required by the principal chief. He shall require all his subordinates, in the discharge of their respective duties, in all cases to refrain from the use of boisterous, harsh, and unbecoming language to the prisoners, and to each other, in or about the prison.

SEC. 24. The principal chief shall visit the prison as frequently as may be, confer with the high sheriff, and make such suggestions in regard to the management of the institution as he may consider appropriate and for the interest of the same.

SEC. 25. Every convict serving one year or more, when discharged or pardoned, shall be provided by the high sheriff with a decent suit of clothes and not exceeding five dollars in money.

SEC. 26. All money and other effects in the possession of convicts when committed to prison, shall be preserved by the high sheriff, and be restored to such convicts when discharged or pardoned, unless otherwise ordered by the courts having had jurisdiction of such cases.

SEC. 27. In case of the death of any convict, the high sheriff shall cause the body to be decently buried, unless claimed by some of the relations or friends of such convict; in which event the body and effects, if any, shall be delivered to them.

SEC. 28. Whenever any person, committed to prison for any cause whatever, shall be unruly, or shall disobey any prison regulations, the high sheriff may order such prisoner to be kept in solitary confinement, and fed on bread and water only, for a period not exceeding thirty days for each offense.

SEC. 29. The high sheriff shall provide, at the expense of the Cherokee Nation, for each prisoner under his charge, a copy of the Holy Scriptures, to be used by such prisoner, at proper seasons, during his confinement; and any minister of the gospel, disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

SEC. 30. All convicts, sentenced to the punishment of hard labor in the prison, shall be employed, as constantly as may be, for the benefit of the Cherokee Nation; no communication shall be allowed between them and any person without the prison; they shall be securely confined in the night in different cells or apartments, if practicable; and in the day-time all communication between them shall be restricted and entirely prevented.

SEC. 31. Male and female convicts shall not be permitted to occupy the same apartments.

SEC. 32. If any convict, sentenced to the national prison for a limited time, shall escape, or use, or attempt to use, any violent means to escape, he or she shall be punished by imprisonment in said prison not more than ten years in addition to his or her former sentence, at the discretion of the court having jurisdiction.

SEC. 33. If any convict in the national prison, under sentence of imprisonment for life, shall escape therefrom, or shall commit assault upon any one for the purpose of escaping, he or she shall be punished by solitary imprisonment not more than one year, to be executed at such time as the court having jurisdiction shall direct.

SEC. 34. The high sheriff shall annually make an inventory of all property belonging to the prison, closing with the fiscal year, and report the same to the principal chief within ten days after the close of such fiscal year. He shall, at the same time, and accompanying such schedule or inventory, render the annual report hereinbefore provided for; and such inventory and report shall be submitted to the principal chief, for the information of the national council, at the next annual session of the same.

SEC. 35. The high sheriff shall keep, or cause to be kept, in suitable books, regular and complete accounts of all expenses, incomes, business, and concern of the prison; also a register of all prisoners received, discharged, pardoned, or died, and such other matters as may be necessary in statistics of the kind. He shall, at all suitable hours, permit all authorized persons to examine the books of his office, and shall admit

visitors at such times and in such manner as shall be designated by the board of supervisors.

SEC. 36. The high sheriff shall enter upon his register a minute and correct description of every convict received into the prison ; and may adopt such means as he may deem best to recapture such escaped prisoners.

SEC. 37. The deputy of the high sheriff shall have the same authority as the high sheriff, and, in the absence of the high sheriff, or his ability to act, shall assume all of the duties, and be subject to all the liabilities of that officer.

SEC. 38. The high sheriff shall pay his own deputy, until otherwise provided by law.

SEC. 39. No tea, sugar, coffee, tobacco, or other article of luxury or indulgence, shall be allowed any convict, except by order of a physician, and for a definite period: *Provided, however,* That the board of supervisors may suspend the enforcement of this provision, so far as regards the use of sugar and coffee by convicts actively employed at productive labor.

SEC. 40. The high sheriff, his deputy, and all other officers employed in the prison service, may be suspended from office by the principal chief for malfeasance, misconduct, or incompetency in office, and the vacancy thus created filled in the usual manner.

SEC. 41. Convicts awaiting in the national prison the execution of the death penalty, and sentenced to be executed at or within the precincts of the prison, shall be executed, in accordance with the mandate of the lawful authority, by the high sheriff or his deputy, or by such other person as the high sheriff shall deputize for that special purpose.

SEC. 42. The high sheriff as custodian of the public property at the seat of government, shall have charge of the capitol and the public grounds enclosing the same and the commons thereto adjoining, and of all movable property belonging to the nation at or in the capitol, not by law in the charge of other officers: *Provided,* That nothing herein contained shall authorize the said high sheriff to interfere with any rooms in the capitol that may be appropriated by law for the use of the senate and council or other national officers during the time the same may be used and occupied.

SEC. 43. The high sheriff shall keep the capitol, the furniture, and other property therein and thereto belonging, and the public grounds and commons contiguous thereto, in a proper state of cleanliness and repair, and shall be responsible for the safe keeping and preservation of the same. He shall make such improvements and repairs as may be from time to time authorized by law. He shall have charge of the keys and fastenings of the exterior doors of the capitol and all rooms not occupied for public purposes. He shall unlock and open the exterior doors of the capitol during the sessions of the national council or the sittings of the supreme court at the hour of seven in the morning and keep the same open until the hour of ten at night: *Provided,* He shall not interfere with the sessions of the courts or of the national council.

SEC. 44. The high sheriff shall at all times keep the rooms of the capitol clean and properly ventilated, and during the sessions of the national council and supreme court, well warmed and supplied with pure water. It shall be his especial duty to cause to be prosecuted every person who shall be guilty or accused of stealing, taking, willfully destroying or defacing, or in any manner trespassing upon any public property lawfully in his custody.

SEC. 45. The high sheriff shall be a conservator of the peace, with

such general powers as are exercised by sheriffs, besides such special or extraordinary powers as may be conferred upon him by law. He shall wait upon, open, and adjourn the sessions of the supreme court, and execute its mandates. He shall also wait upon and execute all orders of the national council and of the committees thereof. He shall have full authority during the sessions of the national council, and at all other times, to suppress within the vicinity of the capitol all riotous brawls, obscene or other improper conduct, and to enforce obedience to the laws, and may, whenever necessary, summon any extra adequate force to his assistance. He may summarily arrest, imprison, and hold, until duly sober, any person acting improperly while under the influence of intoxicating drinks, and arrest and imprison, and deliver to the proper authority, all other persons who may be guilty of a breach of the peace at or about the seat of government.

SEC. 46. All fuel, water, and fires for and in the supreme court room, the offices of the executive, treasurer, and auditor of accounts, and for the senate, council, and committee rooms, shall be provided by the high sheriff out of his salary until otherwise provided for by law. And said high sheriff shall require one or more of his employes to be constantly in attendance during the sessions of the senate and council, for the purpose of keeping the rooms in proper condition, and for the purpose of discharging any other duties of the said high sheriff as custodian of the public property: *Provided, however,* That the assistant clerks of the senate, the council, and the principal chief shall act as messengers in transmitting bills and other official papers from one house to the other, and to and from the principal chief; and such clerks shall be responsible for all papers coming to their hands for that purpose; and such duty shall no longer be required of the fire-makers nor the high sheriff as custodian of the public property.

SEC. 47. Immediately after the adjournment of each annual or special session of the national council or supreme court, and as soon as the several clerks shall have filed and secured the public books and papers, as required by law, the high sheriff shall cause the several rooms (of the capitol?) to be put in good condition, and all the shutters, within and without, closed and securely fastened. He shall also cause the ground floor of the court-house to be put in repair for the use of the circuit and district courts of the Tahlequah district; and said courts shall thereupon be held in said court-house, in the room in the first story, and thereafter the rooms of the upper story of said court-house shall be set apart and occupied as the office of the national printing-press, and the manager of said press shall confine his office, material, and necessary press appliances to the rooms of said upper story.

CHAPTER VII.

AN ACT relating to districts and representation in national and general council.

Article.

I. Relating to districts.

II. Representation in national council.

Article.

III. Representation in general council.

ARTICLE I.

Relating to Districts.

SECTION 1. The Cherokee Nation shall be divided into nine districts, to be defined as follows, to wit:

SEQUOYAH DISTRICT.

SEC. 2. Beginning at the mouth of Salisaw Creek; thence up the same to the crossing of Rogue's Path; thence along said path to within ten yards of Sen-e-kah-wee's house, leaving Sen-e-kah-wee's in Sequoyah district; thence in a direct line to a point one hundred yards north of Edward Still's; thence in a direct line to Corn Tassel's, in Flint district; thence in a direct line to Yellow Springs; thence to George Still's wagon-road, leading to Stone's saw-mill; thence in a direct line to Tsi-a-no-na's, leaving Tsi-a-no-na's in Flint district; thence in a direct line to the line of the State of Arkansas; thence south along said line to the Arkansas River; thence up said river to the place of beginning.

ILLINOIS DISTRICT.

SEC. 3. Beginning at the point where Rogue's Path crosses Salisaw Creek; thence in a direct line to Allen Gafford's, on Elk Creek, and down said creek to its junction with the Illinois River; thence across Short Mountain to Eli Harlan's, leaving Harlan's in Illinois district; thence along the road to Joseph Coody's; thence along the road to William Hendricks's, leaving Hendricks's in Tahlequah district; thence on the main road to the line of the military reservation of Fort Gibson; thence north on said line to the northeast corner of the reservation; thence west on the reserve line to Grand River; thence due west to the line of the Muskogee Nation; thence south on said line to the Arkansas River, and down said river to the mouth of Salisaw Creek, and up the same to the place of beginning.

CANADIAN DISTRICT.

SEC. 4. Beginniag at the junction of the Arkansas and Canadian Rivers, thence up the Canadian River to the line of the Muskogee Nation, thence along said line to the Arkansas River, and down the same to the place of beginning.

FLINT DISTRICT.

SEC. 5. Beginning at the point where Rogue's Path crosses Salisaw Creek; thence along the line of Illinois district to the Illinois River; thence up said river to the mouth of Caney Creek, and up said creek to the mouth of Buffington's Spring branch, and up said branch to the wagon-road at Buffington's; thence along the main old road to the crossing of the south branch of the Barren Fork of the Illinois River; thence up said branch to the line of the State of Arkansas; thence south on said line to the line of Sequoyah district; thence west on said line to the place of beginning.

GOING SNAKE DISTRICT.

SEC. 6. Beginning at the mouth of Little Caney Creek, at the residence of the Eagle; thence up said creek to its source at John Young's; thence to Dick Sanders's, on the Barren Fork of Illinois River; thence along the road to James McDapriel's, on Illinois River; thence along the road, or path, leading to Grand Saline, to Saline Creek; thence up said creek to the crossing of the Washington County wagon-road at Gore's old cabin; thence along said road to Flint Creek and up said creek to

the line of the State of Arkansas; thence south on said line to the line of Flint district; thence on said line to the mouth of Caney Creek and up the same to the place of beginning.

TAHLEQUAH DISTRICT.

SEC. 7. Beginning at the mouth of Little Caney; thence along the line of Going Snake district to Spring Creek; thence down the same to Grand River and down said river to the line of the Illinois district; thence along said line to the Illinois River and up said river to the mouth of Caney Creek; thence up said creek to the place of beginning.

SALINE DISTRICT.

SEC. 8. Commencing at a point on Spring Creek where Going Snake and Tahlequah districts' corner, and up the left-hand fork of Spring Creek, by Switchler Lowrey's, and across to Oo-lee-stu-hee's place, leaving said place in Saline district; thence along a path to Oo-lee-stu-hee's old place, leaving it in Saline district; thence along on the ridge to Chu-le-o's place, leaving that place in Saline district; thence to a fork above Ned Christie's on Spavinaw; and thence in a straight line to the mouth of a small creek above Ned Persimmon's, on Grand River, and down the same to the mouth of Spring Creek, and up said creek to the place of beginning.

COO-WE-SKOO-WEE DISTRICT.

SEC. 9. Commencing at the crossing of the line of Illinois district on Grand River; thence up said river to the mouth of Rock Creek, and up the same to Missouri, Kansas and Texas Railroad; thence north on said road to the line of the State of Kansas; thence west on said line to the 96° of west longitude, and south on said meridian to the northern boundary line of the Muskogee Nation, and east on the same to the northeast corner of said Muskogee Nation; thence south on the line of said nation to the line of Illinois district, and east on said line to the place of beginning.

DELAWARE DISTRICT.

SEC. 10. Commencing at the mouth of Rock Creek, on Grand River, and up said creek to the Missouri, Kansas and Texas Railroad; and thence north on said road to the line of the State of Kansas; thence east to the line of the Seneca, Quapaw, and other affiliated tribes; thence following the boundary line between said tribes and the Cherokees to the line of the State of Missouri; thence south on said line and the line of the State of Arkansas to the line of the Going Snake district; thence west on said line to the southeast corner of Saline district; thence on the line of said district to Grand River, above Ned Persimmon's; thence by the river to the place of beginning.

ARTICLE II.

Apportioning representation in the council.

SEC. 11. In accordance with article third, section second, of the amendment to the constitution, there shall be elected at the election to be held on the first Monday of August, 1877, and thereafter until the taking of

the next census, as provided for by the constitution, the following number of members of the council from each district, to wit:

- From Illinois district, 4 members.
- From Canadian district, 3 members.
- From Sequoyah district, 3 members.
- From Flint district, 3 members.
- From Going Snake district, 4 members.
- From Delaware district, 4 members.
- From Saline district, 3 members.
- From Tahlequah district, 5 members.
- From Coo-we-skoo-we district, 4 members.

ARTICLE III.

Representation in the general council.

SEC. 12. The representation in the general council of the Indian Territory, to which the Cherokee Nation by its population is entitled, shall be eighteen, and shall, until otherwise ordered, be apportioned as follows, to wit:

- From Canadian district, 2 members.
- From Sequoyah district, 1 member.
- From Flint district, 1 member.
- From Going Snake district, 2 members.
- From Delaware district, 2 members.
- From Coo-we-skoo-we district, 3 members.
- From Tahlequah district, 2 members.
- From Saline district, 2 members.
- From Illinois district, 2 members.

And one to be elected by a joint vote of the national council, and commissioned by the principal chief. The term of office of membership of the general council shall be two years, and they shall be elected at the times, places, and manner provided by law.

CHAPTER VIII.

AN ACT relating to elections.

Article.

- I. Relating to elections.
- II. Manner of contesting elections.

Article.

- 1 II. Frauds at election.

ARTICLE I.

Relating to elections.

SECTION 1. Elections for principal chief, assistant principal chief, members of the national council, and all other officers elected by the people, shall be held on the first Monday of August.

SEC. 2. Every male citizen of the nation, aged eighteen years, who shall have been a *bona fide* resident of the district wherein he proposes to vote, for six months immediately preceding the election, and who shall not have been, after the passage of this act, convicted of any felony, unless restored to such right by pardon or act of the national council, or who shall not at the time be undergoing punishment in prison for any crime or misdemeanor, and who shall not be insane or *non compos mentis*, shall be deemed a qualified elector.

SEC. 3. The clerk of each district in which an election is to be held, shall promptly, and as generally as may be, promulgate the writ of election or proclamation of the principal chief, for the information of the qualified electors of his district. He shall cause to be published, by posting up in some conspicuous place, at each and every precinct in his district, the names of all persons put in nomination for office, ten days prior to the election. He shall also appoint and notify, in writing, two clerks and two superintendents of election for each precinct, one of whom shall be able to speak both Cherokee and English, selecting them as equally as may be from the supporters of the opposing candidates.

SEC. 4. He shall provide and furnish the clerks of each precinct in his district the necessary blank rolls and envelopes to be used in conducting the election.

SEC. 5. The rolls shall be headed, "Returns of election held on the — day of —, at — precinct, — district, Cherokee Nation"; and shall state the offices to be filled, and the names of the candidates to each, and shall be ruled with the necessary spaces to record the names of the voters, and the votes each candidate may receive. There shall be thus prepared and furnished, one roll for principal and assistant principal chiefs, and members of the national council, and one for sheriffs, judges, clerks, members of the general council of the Indian Territory, and all other officers that may be elected by the popular vote. Before delivering the envelopes and rolls to the clerks of the election, the clerk of the district shall affix his seal of office to each, and no others shall be used, unless unavoidable; and when others are so used, the superintendents and clerks shall, on the roll, state the reasons therefor.

SEC. 6. In case of the death, absence, or inability to act, of any superintendent or clerk of election, at any precinct, the legal voters present may choose *viva voce*, from qualified voters present, such number as may be necessary to fill the vacancy; but no person shall be appointed clerk or superintendent who is a candidate for office at such election, or who is not a qualified voter of the district.

SEC. 7. Before entering upon the discharge of their duties, each of the superintendents and clerks shall be required to take the following oath (or affirmation), to wit:

"You, and each of you, do solemnly swear (or affirm) that you will well and truly conduct the election; that you will not in any manner, while in the discharge of your duty, attempt to influence or bias the voting of any voter, or suffer the same to be done by others in your presence; but that you will in all things faithfully conform to the requirements of the law governing elections, to the best of your ability, without favor, partiality, or fraud: So help you God."

Said oath or affirmation may be administered by any person authorized by law to administer oaths, or by any of the superintendents or clerks of the election.

SEC. 8. After the superintendents shall have been qualified, they shall appoint three suitable and discreet persons to act as supervisors, to be selected as equally as possible from among the supporters of the opposing candidates. The supervisors shall, before entering upon the discharge of their duties, take the following oath, which may be administered by either of the clerks or superintendents of election, to wit:

"You, and each of you, do solemnly swear that you will faithfully perform all the duties of supervisors during the present election; that you will not in any manner, while in the discharge of your duty, attempt to influence or bias the voting of any voter, nor suffer the same to be done by others; but will in all things conform to, and, to the best of

your ability, require others to conform to, all the requirements of the law governing elections, without partiality, favor, or fraud: So help you God."

SEC. 9. Before the opening of the polls, the supervisors shall measure, within which no person, except the officers of the election, shall be allowed to come but for the purpose of voting, and then but one at a time. Each voter, after casting his vote, shall promptly retire beyond the prescribed limit.

SEC. 10. The supervisors shall have full authority to maintain and preserve the peace during any election and the counting of the votes and making up the returns thereof; and for that purpose they may, if necessary, summon any number of persons present to aid and assist in quelling any riotous or disorderly conduct, or to prevent any threatened breach of the peace. They shall suppress the sale of, or indulgence in, intoxicating drinks, by wasting such liquors, and may arrest, and remove from the precinct, any drunken or disorderly persons, or hold and deliver to the custody of the sheriff for prosecution any person guilty of a criminal violation of law.

SEC. 11. The polls shall be opened between the hours of seven and eight o'clock in the forenoon, and kept open until sunset of the same day; but a recess of one hour may be taken at noon, the superintendents and clerks remaining in company and in possession of the rolls. On the opening of the polls, one of the superintendents shall proclaim the same in an audible voice to the voters present, and state what offices are to be filled. No superintendent, supervisor, or clerk of election shall be allowed to influence or bias, or attempt to influence or bias, the voting of any voter, by word, deed, or in any other manner, while in the discharge of his duty, nor to delay or prevent the casting thereof, except as hereinafter provided for the challenging and determining the qualifications of voters.

SEC. 12. It shall be the duty of the superintendents, clerks, and supervisors of elections to challenge the vote of any person whom they know or suspect to be not a legally-qualified voter. For the determining of the legality of a challenged vote, the superintendents shall receive the statement of the voter, on oath, and such other sworn evidence as may be there and then available, upon which they shall determine the question of his right to vote, and for this purpose any clerk or superintendent may administer oaths.

SEC. 13. On opening of the polls, one of the superintendents or clerks shall expose, for the inspection of the voters present, the rolls then to be used before any names of the voters are recorded thereon. And if necessary to lengthen any roll for the accommodation of voters, it shall be done publicly, by attaching to the main roll the necessary blanks before any names are recorded thereon; and the superintendents and clerks shall state such fact in their certificate.

SEC. 14. One of the clerks shall record the name of each voter as he presents himself to vote, and place his vote to the candidate or candidates designated by such voter; the other clerk shall carefully observe that no mistakes are made in the registry of votes. Each voter shall state, *viva voce*, the name of each candidate for whom he desires to vote. Either of the clerks, when required by a voter, shall distinctly name the candidates for each office, stating the number to be elected, beginning with the first, then in like manner proceeding to the next, and ending with the last office on the roll.

SEC. 15. There shall be kept a roll of every person whose vote is challenged and permitted to vote, also a roll of every person challenged

and not permitted to vote, showing for whom such person intended to vote; and said rolls shall be certified to, and signed by, the superintendents and clerks in like manner as the regular poll-lists, and shall be transmitted with the returns.

SEC. 16. As soon as the polls are finally closed, and before leaving the room or place of holding election, the superintendents and clerks shall proceed to sum up the whole number of votes cast at the precinct, and the number for each candidate, and shall continue without adjournment until completed. The whole number of votes cast, as well as the number for each candidate, shall be stated at the foot of the roll, after which they shall certify to the correctness of the rolls, sign, envelope, seal, and address the same to the clerk of the district, and mark "Election returns of ——— precinct, ——— district." The counting of the votes shall be done publicly in the presence of any person desiring to witness the same, and the result shall be publicly announced by one of the superintendents, who shall state the whole number of votes polled and the number received by each candidate. The returns shall be taken charge of by the superintendents, who for that purpose shall remain together.

SEC. 17. On the following (next) day after the election the superintendents shall assemble at the regular place of holding court in each district, and deliver the returns to the clerk of the district, who shall be present to receive the same, and who shall, in the presence of the superintendents so assembled, proceed to open and count the vote of each precinct, and issue a written certificate of election to each candidate, to the number requisite for each office, who shall have received the highest number of votes. The returns shall again be carefully enveloped and sealed up in a single package, and marked "Election returns for ——— district, Cherokee Nation," and be placed by the clerk in the hands of the sheriff or his deputy on the same day that they are received, and the sheriff or his deputy shall, within six days after such returns are to him delivered, deliver the same in person to the principal chief, or his secretary, at the seat of government.

SEC. 18. In any election in which there shall be no choice in consequence of two or more competing candidates for a particular office receiving the same number of votes, the principal chief, upon receiving notification of the fact from any authentic source, shall immediately issue a writ authorizing the holding of another election in the district in which such tie may have occurred. And it is made the especial duty of the clerk of the district at the time the returns are transmitted to promptly notify the principal chief of any tie that may occur in his district. And any clerk failing or refusing to report such tie shall be suspended from office by the principal chief. Any number of candidates may compete for the office in any such election.

SEC. 19. The returns for principal and assistant principal chiefs, and members of the national council, shall be made through the principal chief to the national council, superscribed "To the president of the senate," and marked "Election returns of ——— district, Cherokee Nation."

SEC. 20. The returns for members of the general council of the Indian Territory and officers requiring commissions, shall be addressed "To the principal chief," and marked "Election returns of ——— district, Cherokee Nation." The principal chief shall be authorized to open the returns addressed to him, and, no legal objections appearing, he shall commission the candidates who appear to be duly elected; but such commissions shall not be a bar to action to any person who may wish to contest such election.

ARTICLE II.

Manner of contesting elections.

SEC. 21. Every person wishing to contest the right of another to a seat in either branch of the national council, shall, within forty days after holding of the election, make oath before the clerk of the district wherein the contest arises, that he has good and sufficient cause to contest the same; and the clerk shall thereupon issue a written notification to the person holding the certificate of election, which notification shall distinctly set forth all the grounds for such contest, and be, within ten days after its issuance, served by the sheriff upon the person holding the certificate of election, either personally or by leaving a copy thereof at his usual place of residence, and be returned within five days after its service by the sheriff with his certificate of service thereon, stating the manner thereof, to the party obtaining the same, who shall transmit it, with his evidence, to the presiding officer of the branch of the national council wherein the contest is to be determined.

SEC. 22. After the service of the notification, either party may proceed to take testimony before the clerk upon the issues set forth in such notification, and the clerk shall afford to either party every facility to mature testimony, and the testimony so taken shall be by the clerk certified to, enveloped, sealed up, and addressed to the presiding officer of the branch of the national council wherein the contest is to be determined, with the names of the parties and the nature of the case indorsed upon the envelope; and the testimony thus taken, indorsed, and directed shall be delivered to the respective parties interested, each holding the testimony taken in his own interest; and the testimony may be so taken from time to time by either party, until the Monday immediately preceding the meeting of the national council. No other testimony shall be received or accepted from either party in the determination of such contest, except the official returns and certificate of election: *Provided, however,* In elections held during the sessions of the national council, or so short a time previous thereto as to preclude a fair and full investigation, as herein provided for, contests may be brought and prosecuted directly before either house of the national council, under such rules as the house may prescribe.

SEC. 23. Every contestant shall, upon the assembling of the members elect, and before any of them are qualified, declare verbally or in writing, in person, by counsel, or by a member whose seat is not contested, his purpose to contest a certain seat, and that he has complied with all the requirements of law and is ready to present his case, whereupon all the testimony taken as hereinbefore provided shall be submitted.

SEC. 24. No person whose right to a seat in either branch of the national council is contested shall be sworn in or be permitted to participate in any of the business proceedings of the house while the contest is pending. He may, however, enjoy the freedom of the house on his good behavior, pending the contest.

SEC. 25. As soon as a permanent organization is effected, and before proceeding with any other business, the presiding officer of the house wherein the contest is pending shall cause all the testimony in the case to be read; and the house shall at once proceed to examine and determine such case. A majority of the members present, being a quorum of the whole as required by the constitution to transact business, shall be necessary to admit to a seat either the contestant or the person holding the certificate of election. A tie in either branch of the na-

tional council in a contested-election case shall be deemed a tie of the voters of the district wherein the contest originated, and shall be by the presiding officer reported to the principal chief who shall issue a writ of election, as provided for by law.

SEC. 26. The election of principal chief may be contested by petition to the national council, signed by at least one hundred electors, setting forth the grounds on which the said election is contested; and thereupon the two branches shall meet in joint session, and elect a committee, to consist of two members of the senate and three of the council, who shall take into consideration said petition, and shall have power to compel the attendance of witnesses and the production of papers; and when said committee shall have reported to their respective houses, the two houses shall again meet in joint session to consider said report; and, if it shall appear that the principal chief obtained his election by bribery, fraud, or tumult, or other illegal or improper means, his office shall be declared vacant, and the acting principal chief shall issue a writ of election within five days thereafter, directing the holding of an election to fill such vacancy. Not less than thirty nor exceeding forty days' notice shall be given of said election. And whenever the office of principal chief shall be declared vacant, as herein provided, the national council shall thereupon adjourn; and shall be again convened by the acting principal chief, within ten days after the holding of such special election, to receive and count the votes thereof, and to install the principal chief elect, and to transact such other business as may be submitted for their action.

SEC. 27. The election of assistant principal chief may be contested, and shall be conducted in like manner as provided for in contesting the election of principal chief.

SEC. 28. Any person desiring to contest the election of sheriff, clerk, or other officer elected by the people and commissioned by the principal chief, shall be required to obtain a written notification, upon oath, from the clerk of the district wherein the party holding the certificate of election resides, which notification shall be obtained within twenty days after such election, and shall set forth all the grounds of contest, and be served by the sheriff in like manner as provided for contesting elections of members of the national council, and the parties may, in like manner, take testimony for twenty days after the service of the notification; after which time, and within ten days, each party shall deliver the testimony, so taken in his own interest, to the chief justice of the supreme court, who shall, as early as practicable, convene and hold a special session of the court for the hearing and determining such contest. The court shall be confined to the testimony so presented, and shall receive none other from either party, excepting the official returns, certificate of election, or commission of defendant. And the court shall have power to award the office to the contestant, or declare the same vacant, as the facts and circumstances of the case may require; a certified copy of the decision of the court shall be by the chief justice transmitted to the principal chief, who shall commission the person declared duly elected, or order another election, as the case may require: *Provided, however*, If the election of the clerk of the district is contested, and he be the incumbent, the principal chief shall, upon the written application—setting forth the reasons therefor—of any person wishing to contest such election, appoint and commission a special clerk for that purpose.

SEC. 29. Elections for members of the national council, and all officers elected by the people and requiring to be commissioned, may be vitiated

and declared void, wholly or in part, for the following reasons, to wit: Failure of the superintendents and clerks, or any of them, to qualify; failure of the clerks to record the names or votes of voters; failure of the superintendents and clerks at the close of the election to cast and foot up the registry of voters; failure by them, or any of them, to properly certify to, seal, and transmit the returns; failure of the clerk of the district to properly envelop, seal up, indorse, and transmit the returns; failure of the sheriff to properly transmit or deliver the returns in like condition as received, as by law directed; or any such election may, wholly or in part, be vitiated and declared void upon sufficient proof of any other facts or circumstances that would destroy the competency of such returns as evidence.

SEC. 30. And whenever it is made to appear that the holder of the certificate obtained his election by bribery, treats, fraud, intimidation, or collusion with or by the officers conducting the election, the contestant, or person having the next highest vote, shall be declared duly elected.

ARTICLE III.

Frauds at elections.

SEC. 31. Every person not having the qualification of a voter, who shall fraudulently vote or attempt to vote more than once for the same candidate, at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined not less than one hundred dollars, and be imprisoned for any time less than one year and exceeding six months, and be forever disqualified from voting.

SEC. 32. Every person who shall by bribery or treats attempt to influence any voter in giving his vote, or shall use any threats to procure any voter to vote contrary to the inclination of such voter, or to deter him from giving his vote, shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum not less than one hundred and not more than five hundred dollars, or be imprisoned for any time less than one year and exceeding three months, or by both fine and imprisonment at the discretion of the court.

SEC. 33. Every superintendent of election who shall willfully and knowingly receive or sanction the reception of the vote of any person not having the qualification of a voter, and every superintendent, clerk, or supervisor of election who shall be guilty of a willful neglect of duty or of any corrupt action in the execution of the same, shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum of not less than one hundred dollars nor more than one thousand dollars, and be imprisoned for any term less than one year and exceeding three months.

SEC. 34. Every person who shall by violence, threats, or riotous conduct attempt to disturb or break up any election, or unlawfully prevent the free exercise of the elective franchise, or shall assault or attempt to intimidate any candidate for office at the time and place of holding election, shall be deemed guilty of a misdemeanor, and upon conviction be imprisoned for any term less than twelve months and exceeding six months, and be fined not less than one hundred dollars nor more than five hundred dollars: *Provided*, If the offense thus committed would under other circumstances be a felony, punished by imprisonment, the offender shall be imprisoned for any term not less than the longest period attaching to such felony: *And provided further*, If such offense be committed by three or more persons armed with any deadly or dan-

gerous weapon, they shall be deemed guilty of treason, and upon conviction suffer death by hanging.

SEC. 35. Any person who shall fraudulently alter, mutilate, destroy, or unlawfully open, after being sealed up, any returns of election, shall be deemed guilty of a felony, and upon conviction be imprisoned for not less than one year nor exceeding five years.

CHAPTER IX.

AN ACT relating to administrations.

Article.

- I. Letters of administration, executors, and guardianship.
- II. Relating to minors.

Article.

- III. Relating to wills.
- IV. Descent of property.

ARTICLE I.

Letters of administration, executors, and guardianship.

SECTION 1. The power of granting letters of administration upon estates of intestates, letters of executorship, and letters of guardianship for minors and other persons for whom the appointment of guardians may be provided for by law, shall be vested in the judge of the district court of the district wherein such intestate, testator, minor, or other person may have or may have had an usual place of residence. And the judge shall be authorized and required, when necessary, to hold a special term of his court, at the usual place of holding court, for the purpose of hearing and determining the claims of contestants for administration, executor, or guardianship, and shall notify all the parties in interest of the time and purpose of holding such court, and shall determine the issue as shall be most conducive to the interest of the parties and conformable to the provisions of law.

SEC. 2. In granting letters of administration, executor, or guardianship the following shall be observed, to wit: 1st. In granting letters of executorship the persons, if any, named in the will shall be preferred. 2d. In granting letters of guardianship or letters of executorship upon estates of testators in whose wills no executors are named, and letters of administration upon estates of intestates, the father or husband first and mother or wife next shall be preferred. 3d. Such persons as may be selected by the distributees, or a majority of them, and recommended by them in writing to the judge, shall be preferred; and in such cases the interests of minors and such others as require guardianship shall be represented by guardians. 4th. The judge may select from among those who stand in the same degree of relationship by blood to the deceased, or to such minor or other person, such person as in his judgment is most competent to discharge the duties required of him. 5th. If no person entitled as above to administer should apply for letters within sixty days after the death of any person, administration shall be granted to any creditor or other suitable person making application therefor; no person applying as above, the judge shall appoint some suitable and competent person to take charge of the estate, and settle up the same according to law: *Provided*, No person being a minor, or of unsound mind, or who has been or may be convicted of felony, or who may be undergoing imprisonment, shall be appointed administrator, executor, or guardian: *And provided further*, That if any person in the foregoing orders be by law incapacitated, or shall fail to give bond as required by law, the person entitled in the next order following shall be preferred.

SEC. 3. Every administrator, executor, or guardian, when obtaining letters, shall file with the judge granting such letters a temporary bond, with surety to his satisfaction, given according to law, in a sum double the probable amount of the property to come into his hands, by virtue of his letters, and shall be required then to take an oath, a certificate of which shall be indorsed upon the letters by the judge, to render a full and complete schedule of all the property, and to faithfully conform to all the requirements of law; and the judge shall thereupon appoint three suitable and competent persons, whose duty it shall be to appraise and make out a schedule of the property of such estate, minor, or other person, which schedule shall give in detail the description and valuation of such property, be certified to on oath, and be signed by the appraisers, and be by the clerk of the district placed upon record as required by law.

SEC. 4. The failure of any administrator, executor, or guardian to file a schedule of the property in his possession, by virtue of his letters, with a permanent bond in a sum double the amount of the property, with surety, as required by law, when required by the judge so to do, and within thirty days after the granting of his letters, shall be sufficient cause for the revocation of the same; and when by the death of any surety, or his removal from the nation, or by his subsequent insolvency, any bond shall, in the opinion of the judge, be insufficient, he shall require other good and sufficient surety, and upon failure of any administrator, executor, or guardian to give such additional surety within the time required by the judge, his letters shall be revoked. No administrator, executor, or guardian shall be allowed to sell or dispose of an estate or ward until he has filed a permanent bond and rendered a schedule of the property.

SEC. 5. It shall be the duty of every administrator, executor, and guardian, at least semi-annually, at the regular terms of the district court, and oftener, if required by the judge, to report to him, under oath, an account of his administration, executor or guardianship, which account shall show the disbursements of the administrator, executor, or guardian, every item of which and the amount thereof shall be distinctly stated; it shall show the receipts of money or property, and from what source, the increase or decrease of property, and cause of such increase or decrease, if any; and upon failure of any administrator, executor, or guardian so to do, his letters shall be revoked, unless a reason satisfactory to the judge be given for such failure.

SEC. 6. Letters of administration, executor, or guardianship shall not be revoked unless for good and sufficient cause; and, whenever application is made by any person for the revocation of such letters, it shall be done in writing, to the judge of the court granting the letters, and shall as concisely as possible set forth the grounds or reasons of complaint, and the administrator, executor, or guardian shall be notified thereof, and be required to appear and answer thereto at such time and place as the judge may appoint. And the judge shall hear and determine the complaint upon the statement of the parties and such other evidence as may be submitted by either in such manner as the right and justice of the cause may appear unto him. And if the cause be deemed sufficient he shall remove such administrator, executor, or guardian, and immediately appoint another; but all the lawful acts of any administrator, executor, or guardian, removed by any judge, shall be valid and binding upon his successor: *Provided*, That whenever letters of administration, executor, or guardianship are revoked for any cause not expressly permitted by law, the action of the judge revoking such letters may be inquired into and confirmed or set aside by any court in a suit at

law brought before it, and whenever such action of the judge is a subject of controversy.

SEC. 7. It shall be the duty of every administrator or executor, within ten days after filing his permanent bond, to give written notice of his appointment, by posting the same, in Cherokee and English, at the court-house and two other public places in the district, or in like manner in the Cherokee Advocate three several times, at intervals of one month, and to certify the same to the clerk, to be by him recorded. And every person having a claim against such estate shall present the same, on oath, to the administrator or executor within six months after such public notice is given, otherwise such claim shall be void and not recoverable by law: *Provided, however*, If such administrator or executor die or be removed within the six months, such claim may be presented to the judge granting the letters, to be by him turned over to the person next appointed.

SEC. 8. Every administrator, executor, or guardian shall be required to collect all debts or claims due the estate or ward, and for this purpose he may, as such, institute and prosecute suits at law for their recovery; and he may also defend suit instituted against him as such before any of the courts of this nation, and for this purpose he may employ counsel in such cases wherein he is a party: *Provided*, The whole amount of fees in any case paid to attorneys shall not exceed ten per cent. of the amount in controversy.

SEC. 9. Every administrator and executor shall assume all the relations of the deceased person upon whose estate he may have obtained letters and none other. In all suits at law, instituted by or against such deceased persons, such suits shall be prosecuted or defended in every particular as if no demise had occurred: *Provided*, That if, at the next term of the court after the death of such person, there be no administrator or executor of his estate appointed, the judge of the court in which such suit is there pending shall continue the same to the following.

SEC. 10. No debts or claims against any estate shall be paid unless approved by the judge or upon a decree of court, and not until after the expiration of the six months' notice required to be given, excepting the necessary funeral expenses of and medical attendance upon such deceased person. After the expiration of the six months' notice, and if the condition of the estate will permit, all the lawful demands against such estate shall be paid out of its effects liable to such payment; and if the estate be insolvent, the demands shall be paid *pro rata* to the creditors, and, if necessary to make such *pro rata*, the property shall be sold at public sale, after twenty days' notice of the time and place of such sale, by posting the same in English and Cherokee at the court-house and two other public places in the district, or in like manner in the Cherokee Advocate for two issues. And when the demands against the estate are paid, as above, and as soon thereafter as the condition of the estate will allow, the residue of the property shall be distributed, according to law, to the heirs—males at twenty-one and females at eighteen years of age: *Provided, however*, If any heir shall lawfully marry before the ages hereinbefore named, such heir shall be deemed of lawful age and be entitled to receive the share due him. The shares of minors shall be paid to their guardians, who shall be required to preserve and pay over the same to their wards, unless otherwise requiring guardianship, as provided above.

SEC. 11. The judge of the district court shall appoint, to be selected as guardians for minors, guardians for idiotic, blind, and insane persons; but before such appointment is made, he shall cause such person

to be examined by one or more physicians as whether such cause for appointment exists or not, and, if so, he shall make the appointment upon the certificate of such physician to that effect: *Provided*, If no physician is to be had to make the examination, the judge shall appoint three disinterested and discreet persons to make such examination, who shall certify to the same on oath.

SEC. 12. Guardians of minors may, with the approval of the judge of the district court, apply to the support and education of his ward in the schools of this nation such portion of his property as may be necessary for that purpose; and any money or property so applied shall be charged to such ward as so much of his share received.

SEC. 13. Every administrator, guardian, or executor shall, on the final and satisfactory settlement of the business of the estate or ward with the judge of the district court, be entitled to 8 per cent. of the value of property that may have been in his possession by virtue of his letters: *Provided, however*, If any administrator, executor, or guardian be removed, and such removal be sustained, he shall forfeit all of his fees.

SEC. 14. All improvements shall be exempt from the payment of debts against any estate and in the administration of estates where there is a surviving wife or husband or minor child or children; all the property exempted by law from execution shall likewise be exempt from the payment of debts against an estate, and shall be at once turned over to the surviving parent or guardian for use of the family.

SEC. 15. It shall be the duty of every administrator, guardian, or executor, with the approval of the judge, to sell or dispose of, for cash or other property, all property so perishable in its nature that it cannot be preserved without material loss or at an expense disproportionate to its worth: *Provided*, Such property so sold shall be first valued and placed upon the schedule, as required by law; and the administrator, executor, or guardian shall report the same in his next settlement, with the kind and value of property received in lieu of it.

SEC. 16. Every administrator, executor, or guardian who shall fraudulently withhold from appraisement any property belonging to an estate or ward, or every appraiser who shall be deemed guilty of perjury and upon conviction, shall be punished as by law provided.

SEC. 17. Every administrator, executor, guardian, or other person who shall fraudulently and corruptly secrete or destroy or mutilate any will or other instrument of writing of value belonging to any estate or ward, shall be deemed guilty of felony, and, upon conviction, be imprisoned for not less than one nor exceeding three years, and be fined in double the amount of damages sustained by the party injured.

ARTICLE II.

Relating to minors.

SEC. 18. Any contract whereby the title to or possession of property is conveyed or transferred, to which contract a minor shall be a party, shall not be lawful, and is hereby forbidden, except the consent of the guardian of such minor, should there be one appointed, and if not, of the parent of such minor, be obtained previous to the making of such contract. And any adult person who shall enter into any contract forbidden in this section shall, for such offense, forfeit, for the benefit of the minor with whom such contract is made, twice the full value of the consideration of such contract on part of the minor upon suit hereby authorized to be instituted by the parent or guardian.

SEC. 19. When property of any kind shall be given or granted to any minor having no guardian, such deed of gift or grant shall be recorded in the office of the district clerk of the district in which the giver shall reside, with the conditions and requirements, if there be any, in reference to the grant; and no title involved in any property conveyed or granted to a minor shall pass to the minor during the life of the grantor except the deed shall be recorded, and then only from the date of the record thereof: *Provided*, That no grant or gift of any property whatever to a minor by an adult, under the provisions of this section, shall exempt the property so granted from any liabilities to which such property would be lawfully subject had no such grant been made.

SEC. 20. The guardian shall have the control and disposal of the ward, with the advice and consent of the district judge who shall appoint him, and for any gross neglect or mistreatment of any ward the guardian shall be removed from his trust, and shall also be held responsible upon his bond to the amount of injury inflicted, recoverable upon suit by the guardian next appointed, or by the ward upon his coming of age, or by his administrator.

SEC. 22. It shall be lawful for any parent or guardian to select and make or otherwise acquire a lawful title to one improvement, and no more, for each of his children or wards having none, which improvement, when made and acquired for the use of the child, may be transferred, by record of the transfer duly made in the office of the district clerk of the district where the improvement may lie within six months after the improvement is made or the title acquired by the parent or guardian. After being registered to the child as required, the improvement so registered shall be, and be held to be, the rightful property of the minor, until he shall come of age, under the regulations and exemptions in reference to improvements, as though such minor was in all cases an orphan: *Provided*, That during the minority of the child owning any improvement, the person making the transfer shall, as natural guardian, be responsible and authorized to answer as plaintiff or defendant in all suits that may arise involving the right to, or use of, such improvement or any part thereof.

SEC. 23. Whenever a minor shall die and leave property or effects of any value in his own right, his estate shall be administered upon, appraised, and divided among heirs, as provided by law in case of the decease of an adult. The guardian of any deceased minor shall have, in all cases, the preference of administering, upon his application for letters within the time prescribed by law.

SEC. 24. No claim shall be paid by an administrator or executor of an estate unless he shall personally know that the debt is just, or unless he shall have good and satisfactory reason to believe that a recovery of the debt would follow a suit at law for the same. Any administrator who shall settle doubtful claims out of the effects of an estate shall be liable upon his bond to the estate to the amount of the doubtful claim settled, upon suit brought by any heir or creditor.

ARTICLE III.

Relating to wills.

SEC. 25. Every person of lawful age, being at the time of sound and disposing mind, shall have the right, by last will, to dispose of all his improvements and other property that he may die possessed of. All written wills shall be signed by the testator, or by some other person in

his presence and by his direction, and be witnessed by at least one person not interested in the disposition of the property made by such will; and all verbal wills shall be proven by at least two persons not interested in the disposition of the property made by such will, and shall be made during the last sickness of such testator, or under circumstances dangerous to life, and which resulted in his death, and shall be proven and recorded within thirty days of the death of the testator.

SEC. 26. All wills shall be recorded, as by law required, by the clerk of the district wherein the testator may have had a usual place of residence.

SEC. 27. After the payment of the debts, as provided by law, the residue of the property and effects shall belong to the persons to whom and in the manner devised: *Provided*, That legitimate children born to the testator after the making of the will shall inherit equally with those provided for by the will: *And provided further*, That if no provision be made in such will for any legitimate minor child, such child shall be entitled to such share of the property as he would have inherited according to law if there had been no will.

SEC. 28. No written will, nor any provision thereof, shall be revocable, but by the testator destroying, canceling, or obliterating the same, or causing the same to be done in his presence, or by a subsequent will or declaration in writing made and executed in manner set forth in the preceding section: *Provided*, No will made by any person not of lawful age, unless self-dependent, and having no guardian at the time of making such will, nor by any person not of sound and disposing mind at the time of making such will, nor by any person who may be *non compos mentis* shall be valid.

SEC. 29. Any person interested may at any time within one year, by suit instituted for such purpose, before the court having jurisdiction of the amount at issue, contest the validity of any will admitted to record with proof satisfactory to the judge; and the issue shall be made up and tried as other issues, to determine whether the writing produced be the will of the testator or not, and the verdict of the court shall be final between the parties to the issue; but if no person shall appear within one year after the record of such will, it shall be valid and forever binding, saving to minors and persons *non compos mentis*, one year to contest such will after the removal of their disabilities: *Provided*, That in case of a concealed fraud the limitation provided in this section shall begin to run at and not before the time when such fraud shall be or with reasonable diligence might have been, first known or discovered.

ARTICLE IV.

Descent of property.

SEC. 30. Whenever any person shall die possessed of property not devised, the same shall descend in the following order, to wit:

1st. In equal parts to the husband or wife and the children of such intestate or their descendants; the descendants of a deceased child or grandchild to take the share of the deceased parent equally among them.

2d. To the father and mother equally or to the survivor of them.

3d. In equal parts to the brothers and sisters of such intestate and their descendants; the descendants of brothers or sisters to take the share of the deceased parent equally among them.

4th. When there are none of the foregoing persons to inherit, the

property of such deceased person shall go to his next of kin by blood; kindred of the whole and half blood, in the same degree, shall inherit equally.

5th. The property of intestates who have no surviving relative to inherit as above shall escheat to the treasury of the nation, to be placed to the credit of the orphan fund.

CHAPTER X.

AN ACT relating to education.

ARTICLE I.

Relating to education.

SEC. 1. For the purpose of maturing and adopting the best possible system of education for the youth of the nation, and for the purpose of devising the best means by placing a liberal education within the reach, as nearly as possible, of all the children of the nation, and enabling those who speak only the Cherokee language to acquire more readily a practical knowledge and use of the English language, there shall be permanently established a board of education, with such powers as shall be conferred by law.

SEC. 2. The board of education shall consist of the principal chief, the assistant principal chief, executive council, treasurer, and three commissioners, to be appointed by the principal chief with the advice and consent of the senate, and whose term of office shall be coextensive with that of the chief appointing or until their successors are appointed and qualified.

SEC. 3. The principal chief shall be *ex officio* president of the board. He shall convene the board whenever he shall deem it expedient, preside at its sessions, advise with the members thereof, but shall not vote except in cases of tie. He shall perform such other duties as may be imposed upon him by the board or by the national council.

SEC. 4. A majority of the board shall constitute a quorum competent to transact business.

SEC. 5. In the absence of the principal chief the assistant principal chief shall preside. In the absence of both principal and assistant principal chiefs, the board shall designate one of its members to act as president *pro tempore*.

SEC. 6. The board shall appoint one of its members secretary thereof, who shall act as such during the pleasure of a majority of the board.

SEC. 7. The secretary shall keep full and correct minutes of the proceedings of the board, and shall furnish annually, by the 1st day of November of each year, to the principal chief, a detailed statement of the same, the condition of the schools, and of the school and orphan funds, with such suggestions and recommendations as the board may deem necessary for advancing the cause of education among the people, which report shall be submitted by the principal chief for the information of the national council, together with the reports, or a synopsis hereof, of the school commissioners.

SEC. 8. The secretary may order a special meeting of the board whenever a majority of the board shall deem it expedient.

SEC. 9. The board of education shall have complete supervision and control of the orphan asylum, the male and female seminaries, and of the educational interests of the nation at large, subject to such restrictions or direction as may be imposed by law.

SEC. 10. For educational purposes the nation shall be divided into three districts, to be known as the first, second, and third school districts. The first district shall embrace Coo-we-skoo-we, Delaware, and Saline; the second, Tahlequah, Going Snake, and Flint; the third, Sequoyah, Illinois, and Canadian districts.

SEC. 11. The board shall assign one commissioner to each of the three school districts, who shall act under instructions of the board.

SEC. 12. They shall constitute an examining board, and shall meet at the seat of government semi-annually, at the close of each school term, for the purpose of examining applicants for schools, and shall then and there examine all persons offering themselves as candidates for teachers of common or district schools in regard to moral character, learning, and ability to teach, and shall deliver to each person examined and found qualified a certificate signed by all or a majority of them as to degree of qualifications, and in such form as shall be prescribed by the board of education; and no person shall be deemed a qualified teacher within the meaning of this section who has not such a certificate in force. Certificates shall be graded first, second, and third class, and shall entitle the person holding the same to a school of that grade, and entitle the teacher to pay accordingly: *Provided*, That the board of education may, if deemed expedient, modify, change, or suspend this classification.

SEC. 13. Each of the school commissioners shall be required, within one year after the beginning of the regular term of office, to ascertain and report to the board of education the whole number of children over seven and under twenty-one years of age in his school district, and the number in each of the three districts of the school district under his superintendence. Such report or census shall state the number of each sex, language spoken by them, and their nationality, and also the number of orphans without parents and with one parent. They shall visit semi-annually all schools under their immediate supervision and report thereon at the close of each school term to the principal chief, which reports or a transcript thereof shall be, with the report of the secretary of education, furnished annually to the national council within ten days after the organization of the regular session thereof.

SEC. 14. The board of education shall assign schools to applicants holding certificates from the examining board according to grade. No teacher shall be assigned to a school of a higher grade than the grade of his certificate. Teachers, principals and assistants, and all other help or employes for the orphan asylum, the male or female seminaries, shall be appointed and assigned to duty by the board of education.

SEC. 15. For school purposes, each year shall be divided into two sessions or terms of twenty weeks each, as the board may determine; and the teachers shall be paid accordingly. Those teaching the district schools shall be paid upon warrants issued by the principal chief upon the treasurer, and based upon the reports of the teacher, certified by the trustees and approved by the commissioner of the district in which the school was taught; principals and assistants in the orphan asylum, and in the male and female seminaries, shall be paid in the same manner, upon their certified accounts, approved by the secretary of the board of education. All other employes shall be paid as the board shall direct.

SEC. 16. The board of education shall adopt and provide such uniform text-books, stationery, globes, maps, apparatus, fixtures, and appliances as they shall deem necessary in any or all of the schools under their control; and shall, as equally as may be, apportion and apply the school

and orphan funds to all children who are entitled to participate in the benefits arising therefrom. They shall fix an age at and above which children may be admitted into the orphan asylum, to the primary departments of the seminaries, and to the district schools; but all youth of the male sex, under twenty-one years of age, shall have the right to enter the seminaries and prosecute their studies therein for the regular term of four years: *Provided*, That such youth shall be required to comply with such conditions as shall be prescribed by the board of education in pursuance of law.

SEC. 17. The board of education shall, without delay, cause the male seminary to be reopened and manned with an efficient corps of teachers for both the advanced and primary departments thereof. It, the female seminary, now in operation, with the primary departments thereof, shall be conducted upon one and the same basis; *Provided*, That the board of education may, if deemed expedient, have authority to modify, change, or alter such basis for the purpose of coeducating the sexes.

SEC. 18. The full term of study in the primary departments of the seminaries shall be three years; that in the seminaries, four years. In reopening the male seminary not exceeding fifty boys may be admitted the first year, after which the board may determine the ratio and time of admission to the male and female seminaries and to the primary departments of the same.

SEC. 19. For admission to the seminaries for the first two years, the grade of scholarship for advanced pupils shall be reasonable proficiency in spelling, reading, writing, arithmetic—embracing addition, subtraction, and multiplication and division—and the geography of the States and Territories of the United States, selections to be made with a view to age and proficiency of pupil. The board may, after the second year, raise the standard of admission.

SEC. 20. The board of education shall furnish tuition, clothing, board, and lodging to children of the primary departments gratuitously, and shall have full control of such children while attending school and until they shall have completed their term of study. They shall furnish, gratuitously, tuition only to other pupils attending the seminaries, but shall provide board at actual cost and no more, and receive in payment for the same national warrants or certificates at their face value, such pupils being required to provide their own bedding and clothing. The board may, however, make exceptions in favor of such youth as are unable to pay for their board, and they shall be required to furnish their clothing and bedding only. As soon as the condition of the funds will admit of it, the nation shall defray all expenses, save only clothing and bedding of the youth attending the seminaries.

SEC. 21. The board of education, in order to better and more rapidly educate the youth of the nation in letters, science, morality, and habits of industry, shall, as rapidly as may be, enlarge the means of boarding-school education at the seminaries, or establish as many other boarding-schools as shall be necessary for the attainment of these ends. For this purpose they may, in their discretion, reorganize the school system, and discontinue a portion of the district schools, and apply the funds to the maintenance of such boarding-schools; and in the establishment of such schools the rights, interests, and wants of all classes of citizens shall be equitably provided for.

SEC. 22. In order to inculcate habits of industry among pupils attending the boarding-schools now in operation or to be hereafter put into operation, the board of education shall have authority to declare such schools to be *industrial or manual-labor boarding-schools*; and shall, when-

ever deemed expedient, provide the necessary means for promoting the agricultural and mechanical industries in such schools.

SEC. 23. The board of education may in their discretion, and until the means of a higher education be provided at home, cause a small number of the male sex to be educated at the expense of the school fund at any institution of the States of the United States; and such young men as have enjoyed the least advantages of the school fund shall have precedence.

SEC. 24. Day scholars may be admitted to the boarding-schools in such numbers and upon such terms as the board of education may determine; and whenever there shall be a sufficient number of such pupils in regular attendance upon any boarding-school, the board of education shall, if deemed expedient, employ one or more additional teachers for such schools, free of charge to such pupils.

SEC. 25. Teachers and school commissioners shall be entitled to such compensation as shall be fixed by law, to be paid out of the school and orphan funds. The principal chief, assistant principal, treasurer, and executive council, as members of the board of education, shall receive out of the general fund their regular salaries or per diem, as fixed by law, and no more.

SEC. 26. The district schools shall remain at their present locations until otherwise located by the board of education by law.

CHAPTER XI.

AN ACT in relation to the asylum for the blind, insane, and others.

Article.

- I. Organization.
- II. Duties of trustees.
- III. Duties of steward.

Article.

- IV. Admission of persons.
- V. Miscellaneous provisions.

ARTICLE I.

Organization.

SECTION 1. The board of trustees for the asylum for the insane, and indigent, blind, deaf and dumb, and decrepit, heretofore established by law, shall consist of the principal chief, assistant principal chief, treasurer, and three trustees to be appointed by the principal chief, by and with the advice and consent of the senate, and whose term of office shall expire with that of the principal chief appointing them. The principal chief shall be *ex officio* president of the board, and the national treasurer shall be *ex officio* treasurer thereof. A majority of the board shall constitute a quorum to transact any business connected with the asylum: *Provided*, It shall require the affirmative vote of a majority of the whole board to repeal or change, alter or amend, any by-law of the board, or to remove any officer appointed by the same. The board shall appoint one of their number secretary.

ARTICLE II.

Duties of trustees.

SEC. 2. The trustees shall manage and direct the affairs of the asylum, and make all necessary by-laws and regulations for the control and government of said institution not inconsistent with the constitution and laws of this nation.

SEC. 3. The board of trustees shall appoint a medical superintendent whenever deemed necessary, and until then they may contract with any competent physician for his services, at such times as they may be required. They shall also appoint one steward and such other officers and assistants as may from time to time be necessary.

SEC. 4. The board of trustees shall keep a fair and full record of all their doings, and shall maintain an effectual inspection of the asylum, for which purpose one of their number shall visit the institution at least once a month, and they shall hold a meeting of said board at the institution once every three months, and special meetings may be called in the manner prescribed by the by-laws; and the secretary shall, on or before the 15th day of October of each year, make a true report of the actual condition of the asylum to the principal chief for the information of the national council.

SEC. 5. The board of trustees shall, until otherwise provided by law, fix and determine the compensation of the steward and other officers and assistant as they may deem necessary for the just and economical administration of the affairs of the asylum.

SEC. 6. The board of trustees shall furnish such bedding and clothing as may be necessary to such inmates of the asylum as may be unable to obtain the same, and shall cause to be procured and prepared, under the direction of the steward, such food as may be suitable to the wants and conditions of the several inmates, and shall purchase such medical supplies as may, from time to time, be required for the use of the asylum.

ARTICLE III.

Duties of steward.

SEC. 7. The steward shall be required to give bond, with surety, according to law in such case, as may be required of him by the board; and his term of office shall be the same as that of the board appointing him, unless sooner removed. He shall have the general superintendence of the buildings, grounds, and farm, with their furniture, fixtures, and stock, the direction and control of all persons thereon, subject to the by-laws and regulations of the board of trustees; he shall daily ascertain the condition, and, under the direction of the physician employed, shall administer to the sick and others such treatment as may be by him prescribed; he shall also be required to see that all the rules and regulations for the discipline and good government of the institution are properly obeyed and enforced; he shall keep a complete record of the name, age, sex, district, date of reception and leaving the institution, death and from what cause, of each inmate; and he shall also keep a record of all his doings, and of the entire business and operations of the institution, to be kept regularly from day to day, in books furnished for that purpose, in the manner and to the extent required of him by the board, and report the same to the secretary of the board by the first day of October of each year: *Provided*, That whenever the permanent medical superintendent is appointed he shall perform all the duties required by the steward by this section.

SEC. 8. The steward shall keep a regular account of disbursements made by him for the institution, take vouchers for the payments, and keep carefully and file away all original bills of purchases made by him under direction of the board, and settle his accounts with the treasurer as often as may be required of him by the board. His accounts shall always be open to the inspection of any member of the board; he shall

be accountable for the economical use of all the furniture, stores, and other articles provided for the asylum, and shall perform such duties as may be required of him by the by-laws in the general superintendence and management of the affairs of the institution.

ARTICLE IV.

Admission of persons.

SEC. 9. Every person applying for admission into the asylum shall, by himself, guardian, or friend, present to the steward an application in writing showing the cause of admission, and that he is destitute of the means of support, and that he has no relatives able or willing to be burdened with his support, and the same shall be certified to on oath by two respectable citizens, before the clerk of the district wherein such person may have resided last, whereupon such person shall be admitted to the asylum by the steward, and reported to the board of trustees at the next meeting for their final action. The trustees may cause such applicant to be examined by the attending physician as to his mental and physical condition, and make such other inquiry, or cause to be made, as to his condition as may be deemed necessary, and determine accordingly: *Provided*, Any person who may be partially or wholly demented shall be admitted into the asylum, for treatment or confinement, upon application and proof being made of such insanity as above.

SEC. 10. In case the friends or relations of any lunatic shall neglect or refuse to place him in the asylum, and shall permit him to go at large, it shall be the duty of the judge of the district court wherein such lunatic may reside, or be found going at large, on the suggestion in writing of any citizen of the district, to order the sheriff to take charge of such person, and place him in the asylum, and the steward shall receive and provide for him until otherwise directed by the board.

ARTICLE V.

Miscellaneous provisions.

SEC. 11. The trustees appointed by and with the advice and consent of the senate shall be paid each four dollars per day while in actual service, and the actual expenses of the other members while attending the meeting of the board shall be paid by the nation.

SEC. 12. There is hereby annually appropriated out of the asylum funds the sum of ——— dollars, or so much thereof as may be necessary, for the support and maintenance of said asylum, and the principal chief is hereby authorized to draw warrants for the same, as specified by the board of trustees, and report annually thereof to the national council.

SEC. 13. From and after the first day of January, 1875, all laws authorizing the payment of pensions to any persons whatever shall be repealed.

CHAPTER XII.

MISCELLANEOUS ACTS.

Article.

- I. Drovers' tax.
- II. Trade and intercourse.
- III. Incorporating town of Fort Gibson.
- IV. Regulating interest on notes.
- V. Establishing the seat of government.
- VI. Recovery of stolen property.
- VII. Fixing compensation of officers and other persons.
- VIII. Fixing places for holding elections.
- IX. Attorneys.
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Article.

- XV. Inter-marriage of white men and foreigners.
- XVI. Arbitration of civil causes.
- XVII. Minerals.
- XVIII. Dangerous weapons.
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- XX. Lawful fences.
- XXI. Prohibiting the sale and restricting the lease of real estate.
- XXII. Grist-mills.
- XXIII. Stray property.
- XXIV. Licensed traders.
- XXV. Intruders.
- XXVI. Liability of the Cherokee Nation to her own citizens.

ARTICLE I.

Drovers' tax.

SECTION. 1. Every person, except citizens of the Cherokee Nation, who may wish to drive stock through the nation, may do so by paying to any of the sheriffs of the nation, or their deputies, or other persons duly authorized by the treasurer (for the benefit of the general fund), the following tax, viz: for beef, work, and stock cattle, except sucking calves, five cents each; loose horses, mules, jacks, and jennies, five cents each, except sucking colts; sheep, hogs, and goats, one cent each, except sucking pigs, lambs, and kids.

SEC. 2. Every person, not a citizen of this nation, engaged in driving stock through the nation, as above provided, who shall keep such stock in the nation a longer time than is necessary to pass through the nation, shall pay an additional tax, at the rates fixed in section first, for every week or fractional part of a week while such stock remains within the limits of the nation.

SEC. 3. Stock may be received in payment of taxes, in case the drover is unable to pay ready cash, or in lieu thereof national warrants or certificates; and all stock so received shall be sold for the benefit of the general fund of the nation, in such manner as the treasurer shall direct; and the person collecting, keeping, and selling such stock shall be entitled to fifteen per cent., in kind, of all sales made and returned to the treasurer.

SEC. 4. Every sheriff, or person intrusted with the collection, care, and sale of stock under this act, shall keep certified records of all stock received in payment of taxes, and of all funds received upon sales thereof, and make returns of the same quarterly to the treasurer. They shall also promptly report all persons who shall be guilty of resisting or of evading the enforcement of the same to the treasurer, who shall adopt such remedial measures as he shall deem expedient.

SEC. 5. Families moving through this nation with less than fifty head of stock cattle, or mixed stock, shall be exempt from the enforcement of the preceding provisions.

SEC. 6. Every sheriff or person levying and receiving tax of drovers shall keep correct account of and report the number and kind of stock

taxed to the treasurer, when required by him, and shall receipt such drover for the amount received, and such receipt shall be a passport through this nation for such stock upon which tax has been paid.

SEC. 7. In all cases where a sheriff, or other person acting under lawful authority, has reason to believe that efforts are being made to evade the provisions of this act by collusion of some citizens of the nation with the owner of stock, such citizen claiming to be the owner, such sheriff, or other person, shall require the claimant to exhibit his bills of purchase, or establish, by witnesses, how he came into possession of the stock in question. If deemed necessary to arrive at the facts, he may put such claimant, or other person supposed to be cognizant of the facts in the premises, upon oath, and question him, or them, as to the *bona-fide* ownership of such stock; and in all such cases, if it appear that there has been fraud attempted for the purpose of evading the revenue laws of this nation, then and in that case there shall be levied double the amount of tax which would otherwise have been done, and any cost which may attach to the investigation; and one-half of taxes so collected shall go to the person collecting, and the other to the general fund of the nation.

SEC. 8. Every citizen of this nation who shall be cited to answer, on oath, questions as to the ownership of stock passing through or being grazed in the nation, who shall refuse to answer, shall be liable to indictment for violation of the revenue laws of this nation; and, upon conviction, before any court of competent jurisdiction, be deemed guilty of a misdemeanor, and be fined in any sum, at the discretion of the court, not exceeding five hundred dollars, payable, one-half to the person prosecuting and recovering the same, and the residue to the general fund of the nation.

SEC. 9. The term "driving stock through this nation" shall be deemed to mean traveling through this nation on a direct traveled route toward the point of destination, at a rate of not less than fifteen miles per day for horses, mules, jacks, and jennies, ten miles per day for cattle, and five miles per day for hogs, sheep, and goats: *Provided*, That unavoidable detention by high water shall not be construed as a violation of the provisions of this act.

SEC. 10. Citizens of the Osage and other nations adjacent to this nation, introducing or permitting their herds or flocks to range or graze upon the pasturage of this nation, unless unavoidable and in small numbers, shall be liable to all of the provisions of this act; and the stock so running in this nation, on the refusal of the owner to pay the lawful tax, may be seized by the lawful authority of this nation and sold for such tax.

SEC. 11. Persons driving stock into this nation for the purpose of wintering, grazing, or feeding the same, shall be liable for the tax thereon, at the same rate fixed for persons driving stock through the same.

ARTICLE II.

Trade and intercourse.

SEC. 12. Every person transacting or proposing to transact a mercantile business in the Cherokee Nation shall make application for and receive license for that purpose from the national council. Such applicant shall make affidavit setting forth the name and style of the party or firm, and of every member or partner thereof, the place where he or they design to trade, and the nature of the business or merchan-

dise; and shall pay into the general fund of the national treasury, on the receipt of such license, the sum of one-fourth of one per cent. on all bills of purchases, and shall continue to pay at the same rates, and at the beginning of each quarter thereafter, for all new or additional bills of goods received and offered for sale.

SEC. 13. Every person who shall attempt to trade or otherwise dispose of merchandise, goods, or wares without previously obtaining a permit or license, shall be fined, on conviction thereof, before a court of competent jurisdiction, in any sum not less than one hundred dollars nor exceeding twenty thousand dollars, for each and every offense, at the discretion of the court: *Provided*, That the treasurer may issue license to a citizen or citizens of the nation, only when the national council is not in session, on the payment of the proper tax and upon compliance with the requirements of this act; which license shall be good until the adjournment of the session of the national council next ensuing.

SEC. 14. Should it appear that any false affidavit has been made, either by omitting to name or misnaming any principal or partner to a mercantile firm, or by rendering any false invoice of goods, or by suppression of or by failure to render an invoice, then, and in that case, the person so falsely representing that firm shall be deemed guilty of perjury and be proceeded against accordingly.

SEC. 15. The executive clerk shall, at the close of each annual session of the national council, furnish to the treasurer a full and correct list of all licenses to trade, granted under this act, with all the names of each firm; and the treasurer shall keep a correct record of all such licenses, together with such as he may grant between the annual sessions of council, showing to whom issued, the nature of the business, and the place or places where such parties may trade.

SEC. 16. Every peddler or trader entering the nation on foot, horseback, or in wagons, or otherwise, with trinkets, jewelry, books, pictures, or other prints, or with merchandise of whatever description, shall, before offering such effects for sale, obtain from the treasurer, or from the district clerk of the district in which he proposes to begin to sell, a written license or permit for that purpose. Such peddler or trader shall produce, for the information of the treasurer or district clerk, a full invoice or list, verified on oath, of his stock on hand, and pay a tax thereon at the rate of five per cent: *Provided*, That sacred or moral literature introduced for sale or gratuitous distribution by colporteurs, preachers of the gospel, or other agents of Christian societies, shall be exempt from taxation: *Provided also*, That improved stock and poultry, breadstuffs, meats, uncanned fruits and vegetables, grain for food, and seeds of every kind for planting, shall also be exempt from taxation.

SEC. 17. It shall be and is hereby made the duty of the sheriff of any district in which any person shall have violated the intent of this act, to seize such person with his merchandise, vehicles, teams, store-house, or place of business, and them safely keep, until the case can be reported and acted upon by the lawful authority, in conformity with the treaties and laws of this nation, or with the intercourse laws of the United States.

ARTICLE III.

Incorporating the town of Fort Gibson.

SEC. 18. The town reservation of Fort Gibson, as defined by law, and the country thereto adjacent, for a distance not to exceed one mile from the boundary thereof, for the purposes of this act, are hereby declared

to be within the corporate limits of the town of Fort Gibson, and the inhabitants, citizens of the Cherokee Nation, residing within the limits aforesaid of said town, be and they are hereby constituted a body politic and corporate, by the name of "Mayor and town council of the town of Fort Gibson," by which name they and their successors may sue and be sued, defend and be defended, in all courts of law in all matters and actions whatsoever, and may grant, purchase, receive, and hold property of any description, within the limits proper of said town, and may have, sell, and dispose of the same for the benefit of the town, and may do all other acts the same as natural persons, not contrary to the constitution of the Cherokee Nation.

SEC. 19. The corporate powers and duties of said town shall invest in one mayor and five members of the council, to be selected annually, on the first Monday in December of each year, and to continue in office till their successors are elected and qualified according to this act, and the said mayor and members of the council shall take an oath, before entering into office, to faithfully discharge their duties, and all qualified electors of the Cherokee Nation, residing within the corporate limits of said town of Fort Gibson, shall be entitled to vote in the election of the mayor and council, and a majority of the votes thus cast at an election shall be necessary to a choice of such officers, and no person shall be chosen mayor or member of the council of the town of Fort Gibson who shall not be of lawful age, and an inhabitant of said town.

SEC. 20. The mayor, or such member of the council as may be designated by such, in the absence of the mayor, shall preside at the meetings of the town council, which shall be regulated by ordinance. He shall be the executive power of the said town of Fort Gibson, and conservator of the peace within the corporate limits thereof, and shall have full power and authority to do and perform all things which may be lawfully done by a judge of the district in criminal matters, in accordance with the powers and authority herein conferred upon him.

SEC. 21. He shall be vested with full powers to enforce all ordinances passed by the council and approved by the mayor, or by the unanimous vote thereof, in case of his failure to approve the same within three days after the passage thereof and its presentation to him; to assess all fines for a violation of said ordinances not exceeding the sum of fifty dollars, and to issue executions for the collection of the same. In case of murder, the mayor may cause the arrest of the perpetrator, and cause him to be turned over to the sheriff of the district for trial by any court having jurisdiction thereof; but in all other offenses, misdemeanors, and crimes the mayor and town council may have authority to arraign, hear, and punish the same, as may be prescribed by the laws of the Cherokee Nation, or the ordinances of said town: *Provided*, That they shall not have the power to inflict, without trial by jury, punishment by stripes, or restrain a person of his liberty longer than two months. The said mayor and town council shall also have jurisdiction in determining rights of property or the collection of debts, where the amount involved shall not exceed the sum of twenty-five dollars.

SEC. 22. Any three members of the town council shall constitute a quorum to transact business, but a less number may adjourn, from time to time, and compel the attendance of absent members, in such manner as the council may prescribe. The members of the town council shall judge of the election, qualifications, and returns of the mayor and their own members, and determine rules for their own proceedings, which shall be recorded by the clerk of the town council in a journal to be kept for that purpose.

SEC. 23. The town council of Fort Gibson shall have full power and authority to pass by-laws and ordinances to prevent, define, and remove nuisances, to restrain and prohibit all disorderly houses and gaming, the introduction and vending of intoxicating drinks, to establish and regulate a market, to cause the streets to be opened, repaired, and paved, by the inhabitants and non-resident owners of houses, lots, and property in said town: *Provided*, The tax imposed on non-residents for said purpose be in exact proportion to an ad-valorem tax imposed on all property belonging to residents in, and situated within, the corporate limits of said town of Fort Gibson; to provide for the prevention and extinguishment of fires; to dig wells and erect pumps for the convenience of the inhabitants; to restrain all violence, obscenity, and disorderly conduct within the limits of the town; to assess and collect fines for a violation of the ordinances, and to collect a tax for defraying the expenses of the town and the improvements thereof; and, generally, to pass such by-laws and ordinances for the regulation of the town as they may deem necessary, not contrary to the provisions of this act, or the constitution of the Cherokee Nation. No tax shall be imposed by the town council of Fort Gibson, in any one year, on property within the town, at a higher rate than one-half of one per centum on the assessment value of the same, unless two-thirds of the persons therein interested shall, by vote taken for that purpose, authorize the same to be done.

SEC. 24. In order to carry into effect the provisions of this act, the town council of Fort Gibson shall have authority to provide by ordinance for the appointment or election of one clerk, one constable, one assessor and collector of taxes, and such other officers as may be necessary; prescribe their duties, fix their compensation, and remove them from office. It shall also have authority to select, lay off, inclose, hold, and regulate, by purchase or otherwise, twenty acres as a cemetery for the burial of dead bodies, and may prohibit the interment of such bodies anywhere within the limits of said town.

SEC. 25. The clerk of the town council shall attend the mayor's courts, issue all writs and summons and other necessary papers, keep a true, full, and correct record of all arrests and trials and of all town-lots and ownership of the same.

SEC. 26. The mayor and town council of the town of Fort Gibson shall cause to be made a resurvey of all that part of the original town not embraced within the military reserve. They shall in such resurvey retrace, as nigh as may be, the original streets and alleys, cause the streets to be reopened, all obstructions to be removed therefrom, and all blocks and lots to be staked with stone, iron, or durable timber, and to be lettered and numbered according to range and number; in consideration of which every odd lot, the property of the nation, in such town reserve shall be the property of the corporation of Fort Gibson, to be used for the benefit of such corporation.

SEC. 27. All other lots, the property of the nation, may be sold from time to time, by order of the mayor, and for the benefit of the general fund of the nation, in such manner as shall be ordered by the principal chief. One-third of the price bid for lots so sold shall be paid at the time of sale, and the residue in two equal annual installments.

SEC. 28. Upon final payment for any lot, the mayor shall issue a receipt in full to the purchaser, upon the presentation of which the principal chief shall execute the necessary conveyance to the owner. Lots not paid for as herein provided shall revert to the nation without recourse for payments previously made thereon.

SEC. 29. Writs for the arrest of persons charged with a violation of

the ordinances of the town corporation may be served by any sheriff into whose district the person accused may have fled, and such sheriff so arresting shall safely deliver the prisoner to the constable of the town, to be dealt with according to the ordinances of the same.

ARTICLE IV.

Regulating interest on notes.

SEC. 30. All promissory notes, executions, or judgments, payable in cash, shall bear interest at the rate of ten per cent. per annum: *Provided, however,* That contracts may be made in writing for the payment of a rate of interest as great but not exceeding fifteen per cent., and all rates of interest exceeding fifteen per cent. shall be recoverable by law.

ARTICLE V.

Establishing the seat of government.

SEC. 31. The capital of the Cherokee Nation is hereby established at the town of Tahlequah.

ARTICLE VI.

Recovery of stolen property.

SEC. 32. Property of any kind which shall be stolen and afterward found in the possession of a citizen of this nation may be demanded and summarily recovered by the owner or rightful possessor thereof, by order of the district judge, directed to the sheriff, to restore the stolen property to the possession of the owner. Such order shall be issued either upon the sworn and positive statement of the owner alone that he has seen and knows the property in question to be the same which, at a given time and place, was stolen from him or his possession, or upon other valid and substantial proof to that effect which may be required by the district judge. But in all cases, before any order or writ of possession shall be issued, the demand shall be supported by evidence satisfactory to the district judge, and after notice duly given to any innocent purchaser of the pendency of such investigation.

SEC. 33. All proceedings had and testimony taken before any district judge in regard to property claimed to be stolen, and demanded in pursuance of the section preceding, shall be rendered and filed in his office, whether any writ of possession be awarded or refused; and such investigation shall be no bar to any suit which may be instituted by either party for the recovery of the property in question.

SEC. 34. Any person who shall willfully and falsely claim any property from another as having been stolen from him or his possession, and falsely make an oath in reference to such property to obtain possession thereof, shall be deemed guilty of perjury, and shall be punished accordingly.

SEC. 35. Should any person know or have cause to suspect that property belonging to him, and which has been stolen, is in the possession of another person, he may notify the possessor that within a fixed and reasonable time he will present his claim to such property before the district judge; and should the property be run off or secreted during that time, or withheld from the inspection of the claimant by the possessor or with his connivance, so that for that cause the claimant shall

be unable or unwilling to definitely identify it, such person so running, hiding, or withholding property after notice to him given as provided shall be deemed guilty of a felony, and be liable to prosecution as an accessory to the theft of the property so concealed or withheld, and upon conviction shall be punished accordingly.

ARTICLE VII.

Fixing compensation of officers and other persons.

SEC. 36. From and after the first Monday of November, 1875, the salary and pay of the following officers and persons in the employ of the Cherokee Nation shall be as follows, to wit:

Principal chief, per annum.....	\$2,000 00
Assistant principal chief, per annum.....	1,000 00
Treasurer, per annum.....	1,000 00
Supreme judges, each, per annum.....	800 00
Circuit judges, each, per annum.....	600 00
District judges, each, per annum.....	400 00
Solicitor-general, per annum.....	1,000 00
Solicitors of districts, each, per annum.....	400 00
Sheriffs, each, per annum.....	400 00
High sheriff, each, per annum.....	800 00
Clerks of districts, per annum.....	500 00
Executive council, each, per day.....	5 00
Members of national council, each, per day.....	5 00
Clerks of national council and executive, each, per day.....	4 00
Interpreters of national council and executive, each, per day.....	4 00
Editor of Advocate, per annum.....	1,000 00
Translator of Advocate, per annum.....	800 00
Clerk of supreme court, per annum.....	300 00
Guard, jurors, and witnesses, per day.....	2 00
Board of man and horse, per day.....	2 00
Board for man, per day.....	1 00
Auditor of accounts, per annum.....	500 00

SEC. 37. There is hereby annually appropriated out of the general fund, not otherwise appropriated, the sum of thirty thousand dollars, or so much thereof as may be necessary, to pay the salaries of the officers of the nation; and the principal chief is authorized to draw warrants semi-annually for the same in favor of the persons holding said offices.

ARTICLE VIII.

Fixing places for holding elections.

SEC. 38. The following places in the several districts are fixed and designated as precincts for the holding of elections:

IN CANADIAN DISTRICT.

I. 1st, at the court-house, Welber's Falls; 2d, at Briartown school-house; 3d, at Texana school-house; 4th, at Brushy Mountain Chalybeate Spring.

IN ILLINOIS DISTRICT.

II. 1st, at Fort Gibson; 2d, at the court-house in Greenleaf; 3d, at the old court-house on Illinois River; 4th, at Au-qua-ta-kee's, on Vian Creek.

IN SEQUOYAH DISTRICT.

III. 1st, at Thomas Ross's, in Sweet Town; 2d, at Tobacco Will's; 3d, at Little John Rodgers's.

IN FLINT DISTRICT.

IV. 1st, at the court-house; 2d, at Broken Canoe's; 3d, at Hungry Mountain school-house.

IN DELAWARE DISTRICT.

V. 1st, at Charles Thomson's; 2d, at Neal Barrows's; 3d, at John Thomson's, on Grand River; 4th, at Richard Taylor's; 5th, at Ned Bigmushe's.

IN GOING SNAKE DISTRICT.

VI. 1st, at Reese Mitchell's, on Illinois River; 2d, at Piney; 3d at the court-house; 4th, at Rabbit-trap, near Thos. Wilkeson's.

IN TAHLEQUAH DISTRICT.

VII. 1st, in the town of Tahlequah; 2d, at Catron's Springs; 3d, at Big Sequoyah's; 4th, at the school-house, near Snyntax's.

IN SALINE DISTRICT.

VIII. 1st, at T. L. Rogers's Salt Works; 2d, at the court-house; 3d, at Sequoyah's, on Spring Creek.

IN COO-WE-SKOO-WE DISTRICT.

IX. 1st, at the Sulphur Spring, on Dog Creek; 2d, at the White Spring; 3d, at Yellow Spring; 4th, at Jim. Davise's; 5th, at John Fal-len's.

ARTICLE IX.

Attorneys.

SEC. 39. Before any citizen shall be allowed to appear before the courts of this nation, for the purpose of practicing law for other parties, he shall obtain a license from the treasurer, or from one of the judges of the supreme or circuit courts, authorizing him to practice law from the date of such license.

SEC. 40. For a license to practice only before the district and circuit judges, in civil and criminal cases, the applicant therefor shall pay, in advance, five dollars, and for license to practice before all the courts and judges of this nation ten dollars shall be paid in advance. The judges shall report annually to the treasurer, turning over all moneys, national warrants, or tickets that they may receive for licenses granted under this section; and any citizen so obtaining license shall have the priv-

ilege without further license or tax, and upon compliance with other conditions attached by law to such privilege, to continue to appear as practicing attorney at law before the courts of this nation, in and before which his license authorized him to appear.

SEC. 41. Any person obtaining license to practice law shall, before he is allowed to appear as an attorney in any court, take the following oath: "I do solemnly swear that I will, to the best of my knowledge and ability, support and defend all cases that may be entrusted to my care, and that so doing I will be true to the court and to the constitution and laws of the Cherokee Nation. So help me God."

SEC. 42. Any attorney practicing before the district and circuit courts may be removed by any circuit judge, and any attorney practicing before the district, circuit, and supreme courts may be removed by the supreme court, for any deceit, malpractice, or other gross misconduct, willful neglect of the interests of his client, or collusion with the opposite party, upon complaint and showing made to the judge or court at any regular term of the court by the aggrieved party, and upon due notification given to the accused of such charge, and shall moreover be liable in damages to the party injured; and the expenses of any inquiry instituted by the court in reference to the removal of any attorney shall be borne by the party respectively at whose instance the expense shall be incurred.

SEC. 43. Parties may manage, prosecute, or defend their own suits and by such counsel as they may see fit to engage.

SEC. 44. Any attorney, recognized as such under the laws of any other Indian nation, and in good standing where so recognized and admitted to practice law, may, on special occasions, and when vouched for by any member of the Cherokee bar in good standing, be allowed, by permission by the presiding judge, as licensed to appear before any of the courts of this nation.

ARTICLE X.

Vacancy in office.

SEC. 45. In case of the death, resignation, removal from office, or inability to act of the principal and assistant principal chief, the president of the senate shall exercise the duties of the office of principal chief until such disability be removed or such vacancy be filled by an election by the national council, according to the provisions of the constitution. If there be no president of the senate, the executive council shall, within thirty days, by proclamation, convene the national council for the purpose of filling the same; and in the interim the senior executive councilor shall exercise the duties of the office of principal chief.

SEC. 46. Whenever a vacancy shall occur in the office of assistant principal chief, by reason of his death, resignation, or removal from office, the same shall be filled by a joint vote of both branches of the national council.

SEC. 47. In case all or a majority of the justices of the supreme court are interested in any cause that may be pending in that court, or are related to all or either of the parties to a suit therein, it shall be the duty of the principal chief, upon being notified thereof by the chief justice, to select and specially commission such number of persons as shall correspond to the number of parties so interested or related as shall have been objected to, for the trial of such cause.

SEC. 48. In case one of the justices of the supreme court is interested in any cause pending in said court, or is related to both or either of the

parties to a suit therein, such justice being objected to, and the remaining justices are unable to render an opinion in such case, it shall be the duty of the principal chief to select and specially commission some suitable person, who shall, in conjunction with the disagreeing justices, constitute a court for the hearing and determining such case.

SEC. 49. Any person, being a member of the national council, who may remove from the district wherein he has been elected a member, shall, from the date of his removal, cease to be a member of the national council, and it is made the duty of the clerk of the district to report to the principal chief any vacancy occurring in his district by reason of the death or removal of any member of either branch of the national council.

SEC. 50. In case of a vacancy in the supreme court, by the death of a justice thereof, the clerk of the court shall notify the principal chief thereof. In case of a vacancy in the office of judge of the circuit court, by reason of the death of such judge, the clerk of the district wherein such judge may have resided, shall notify the principal chief of such vacancy. In case of a vacancy in the office of sheriff, solicitor, or judge of the district court, the clerk of the district shall notify the principal chief of such vacancy; and in case of a vacancy occurring by death in the office of clerk of the district, the solicitor of the district shall report the vacancy to the principal chief. All vacancies occurring in the offices of this nation shall be filled as required by the constitution of the Cherokee Nation or the laws thereof; but the principal chief may, when the public interests demand, make temporary appointments in all offices, the incumbents of which are required to be commissioned by him.

ARTICLE XI.

National newspaper.

SEC. 51. The "Cherokee Advocate" shall have for its object the diffusion of important news among the Cherokee people, the advancement of their general interests, and the defense of Indian rights; and shall be published weekly, in the English and Cherokee languages, provided, nothing of an abusive, personal, nor of a partisan character shall be admitted into its columns.

SEC. 52. There shall be elected, by a joint vote of both branches of the national council, an editor, whose duty it shall be to exercise control over the establishment; to furnish such matter for publication from time to time as in his judgment will promote the object of its institution; to see that the material and property of the concern is properly preserved and economically used; to receive subscription moneys at the rates fixed by law, and account quarterly to the treasurer for the same; and make annually a report to the principal chief, for the information of the national council, of the condition of the paper and its interests, with an itemized account of its receipts and expenditures.

SEC. 53. He shall be authorized to purchase and provide transportation for such necessary material as may be required for publishing the paper, and such other printing as may be required by the national council or the principal chief.

SEC. 54. He shall be authorized to employ, on reasonable terms, such labor as may be required to do the work of the office, provided, contracts made with printers by the editor shall be approved by the principal chief before taking effect.

SEC. 55. There shall be appointed, by the principal chief, one trans-

lator, whose duty it shall be to translate into the Cherokee language, for publication, such laws, public documents, and articles as the editor shall select for such paper.

SEC. 56. The editor and translator shall be subject to removal, by the principal chief, for improper conduct, or failure to perform their respective duties; and the vacancy so occurring shall be filled by the principal chief until otherwise ordered by the national council.

SEC. 57. The terms of subscription to the Cherokee Advocate shall be two dollars per annum, in money, national warrants, or certificates; but may be sent to subscribers who read only Cherokee for one dollar per copy, to be paid in like manner. The rates of advertising shall be fixed by the editor, excepting such public advertising as may be furnished by the officers of the nation, as approved by law.

SEC. 58. The principal chief is authorized to draw warrants quarterly on the general fund, for the salaries of editor and translator, and in like manner for the pay of employes, on the certificate of the editor.

ARTICLE XII.

Military and agency reserve.

SEC. 59. Every military and agency reservation, which is or may be hereafter occupied by the United States, within the limits of this nation, and whenever the United States shall cease to occupy the same, shall revert to the nation; and it will not be lawful for any citizen to take possession of any such reservation, except by the permission of the national authorities, under the penalty of being removed therefrom.

ARTICLE XIII.

Publication of penal laws.

SEC. 60. The principal chief shall cause to be published all the acts of the national council, "prescribing a penalty" for their violation, in either or both of the ways provided for in the seventh article of the treaty of July 19th, 1866, as to him may be deemed best for the public interest, within twenty days after the close of the session of the national council passing such acts. And he shall cause to be entered a certificate of the manner of the publication upon the register of his office. And he may require any officer of a district to post such laws in his district as he may require of him.

SEC. 61. Every officer of this nation who shall willfully or negligently fail or refuse to promulgate any act of the national council prescribing a penalty for its violation, in the manner required of him by the principal chief, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in the sum of five hundred dollars; and, in default of payment, be imprisoned for any term not less than six months and less than one year.

SEC. 62. Every person who shall willfully pull down, destroy, deface, mar, or mutilate any notice posted by any officer of this nation for the general information of the people of this nation respecting any penal law required by the treaty stipulations to be published, shall be deemed guilty of a misdemeanor, and he, upon conviction, imprisoned not less than three months and less than one year, at the discretion of the court.

ARTICLE XIV.

Permits to hire citizens of the United States.

SEC. 63. Any citizen of this nation who shall desire to hire or employ a citizen of the United States as a laborer or mechanic shall be and is hereby, required to obtain therefor a license from the clerk of the district wherein such person may reside. Such license shall state the names of employer and employé, occupation to be pursued, and length of time to be employed, and the nationality of the employé; but no permit shall be granted for a longer period than one year. Before such permit is granted the clerk shall require of the person obtaining the same to file with him a bond, with not less than two sureties, according to law, in the sum of two hundred and fifty dollars, conditioned upon the good behavior of the employé. And any person who may receive any injury or loss of property through or by the action of such employé may bring suit on such bond, and recover the amount of injury sustained, to the extent of the same: *Provided*, That the damages sustained by such person would have been recoverable if the action had been committed by a citizen upon the person or property of another.

SEC. 64. For each permit granted the clerk shall require of the person obtaining it fifty cents for every month or fraction of a month for which it is granted; and, as early as practicable, and within fifteen days, notify the judge and solicitor of the issuance of such permit, with all the specifications embraced in the preceding section; and in like manner he shall report to the treasurer at the end of each quarter, and turn over to him all the receipts that may have come into his hands for the quarter then ending, after deducting therefrom fifteen per cent. as fees. He shall keep in his office a book in which he shall record all the specifications hereinbefore mentioned, and which book shall, at any seasonable time, be open to the inspection of citizens of the district.

SEC. 65. After the expiration of the time of the permit, such person shall be deemed an intruder, and it is made the duty of the solicitor to report him accordingly.

SEC. 66. Any person who shall hire or employ any citizen of the United States in any other manner than as provided in the first section of this article shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than ten nor exceeding twenty-five dollars, at the discretion of the court; and, in default of payment, be imprisoned not less than fifteen nor exceeding thirty days.

ARTICLE XV.

Intermarriage of white men and foreigners.

SEC. 67. Whereas the peace and prosperity of the Cherokee people require that, in the enforcement of the laws, jurisdiction should be exercised over all persons whatever who may from time to time be privileged to reside within the territorial limits of this nation, therefore every white man, or citizen of the United States, or of any foreign state or government, desiring to marry a Cherokee woman, citizen of the nation, shall be and is hereby required to obtain a license for the same from any of the district clerks of the several districts, and make oath or satisfactory showing to such clerk that he has not a surviving wife from whom he has not been lawfully divorced; and unless such information be freely furnished to the satisfaction of the clerk no license shall issue.

SEC. 68. Every white man or person applying for license, as provided in the preceding section of this act, shall, before obtaining the same, be required to present to the said clerk a certificate of good moral character, signed by at least ten (10) respectable Cherokee citizens by blood, who shall have been acquainted with him at least six months immediately preceding the signing of such certificate.

SEC. 69. Before any license as herein provided shall be issued, the person applying shall be, and is hereby, required to pay to the clerk to whom application is made the sum of five dollars, and be also required to take the following oath: "I do solemnly swear that I will honor, defend, and submit to the constitution and laws of the Cherokee Nation, and will neither claim, nor seek, from the United States, or any other government, or from the judicial tribunals thereof, any protection, privilege, or redress incompatible with the same, as guaranteed to the Cherokee Nation by the United States in treaty stipulations entered into between them. So help me, God."

SEC. 70. Marriages contracted under the provisions of this act shall be solemnized as provided by the laws of this nation, or otherwise shall be null and void.

SEC. 71. No marriage between a citizen of the United States, or of any foreign nation, and a female citizen of this nation, entered into within the limits of this nation, except as hereinbefore authorized and provided, shall be legal; and every person who shall engage or assist in solemnizing any such marriage shall, upon conviction before any district court of this nation, be fined one hundred dollars; and it shall be the duty of the solicitor of the district in which such person may reside to collect the same, and such solicitor so collecting shall be entitled for his services to twenty-five per cent. of the amount collected, and shall place the remainder into the hands of the treasurer, to be by him credited to the general fund.

SEC. 72. Every person performing a marriage ceremony under the authority of a license provided for herein shall be required to attach a certificate of marriage to the back of the license and return it to the person in whose behalf it was issued, who shall within thirty days therefrom place the same in the hands of the district clerk, whose duty it shall be to record the same and return it to the owner.

SEC. 73. Every adopted citizen of the Cherokee Nation, by marriage or otherwise, who shall use the intercourse law or laws (as they are termed) in the prosecution of a Cherokee Indian for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his rights of citizenship to the same, and be subject to be dealt with as other intruders in the country, and shall be removed out of this nation.

SEC. 74. Should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Cherokee Nation by intermarriage, and be left a widow or widower by the decease of the Cherokee wife or husband, such surviving widow or widower shall continue to enjoy the rights of citizenship, unless he or she shall marry a white man or woman, or person (as the case may be) having no rights of Cherokee citizenship by blood; in that case all of his or her rights acquired under the provisions of this act shall cease.

SEC. 75. Every person who shall lawfully marry under the provisions of this act, and afterwards abandon his wife, shall thereby forfeit every right and privilege of citizenship of this nation, and shall be considered and removed from the nation as an intruder: *Provided*, That every adopted citizen, under the provisions of this act, shall have been a *bona fide* resident of the nation for six months previous to his admission to

the polls as a legal voter; and every such adopted citizen who shall be guilty of denying or resisting the jurisdiction of this nation, or shall appeal to or claim that of any other government, shall be adjudged guilty of perjury, and be liable to all the pains and penalties prescribed in such cases: *Provided, also,* That the rights and privileges herein conferred shall not extend to right of soil or interest in the vested funds of this nation, unless such adopted citizen shall pay into the general fund of the national treasury a sum of money, to be ascertained and fixed by the national council, equal to the *pro rata* share of each native Cherokee, in the lands and vested wealth of the nation, estimated at five hundred dollars, and thereafter conform to the constitution of the nation, and to the laws made or to be made in pursuance thereof, in which case he shall be deemed a Cherokee to all intent, and be entitled to all the rights of other Cherokees.

SEC. 76. Property of every description possessed within the limits of the Cherokee Nation by an adopted citizen shall, in case such adopted citizen abandon his wife without lawful cause, be the absolute property of such wife, or wife and her children. But whenever such abandonment shall be planned or effected by the wife for the purpose of ridding herself of her husband, then and in that case such wife shall be entitled to only such property as shall be awarded, upon application of either party for divorce, by the court having jurisdiction.

ARTICLE XVI.

Arbitration of civil causes.

SEC. 77. It shall be lawful for parties to settle and adjust any dispute or controversy by arbitration, and when that mode is determined upon the parties shall place in the hands of each arbiter appointed by them a written notice to that effect, signed jointly by the parties, which notice shall contain and state, for the information of the arbitrators, the matter of dispute or controversy to be settled, and before the arbitrators proceed to arbitrate and decide such matter they shall be sworn by the judge of the district or circuit courts, or by the clerk of the district, and their decision shall be final, and shall be recorded in the office of the clerk of such court as would properly have had cognizance of the case, and the execution shall issue by him to the sheriff the same as if judgment had been obtained in such court, unless the arbitrators shall have decided otherwise.

SEC. 78. Any board of arbitrators may appoint their own clerk, who shall receive three dollars per day for his services. The arbitrators shall each be entitled to the sum of three dollars per day during actual service. Subpoenas for the attendance of witnesses shall be issued by the clerk and served by the lawful officer, as in suits at law, and witnesses shall be paid as in other cases. The expense of the arbitration, including the pay of the arbitrators, clerk, and witnesses, as fixed in this section, shall constitute the cost of arbitration, which shall be paid by either or both parties in the proportion awarded by the arbitrators, according to the equity of the case.

SEC. 79. Arbitrators shall be sworn to faithfully and fairly hear, examine, and determine the cause submitted to them, according to the principles of equity and justice, and to make a just and true award, according to the best of their understanding. They shall appoint a time and place for hearing, and shall, in pursuance thereof, proceed with diligence to hear and determine the matters in controversy. But upon

application of either party, and for good cause shown, they may adjourn the hearing from time to time, as may be necessary.

ARTICLE XVII.

Minerals.

SEC. 80. All gold, silver, lead, copper, iron, stone-coal, petroleum, salt, or other mineral or medicinal water existing in its natural state, which has been or may be hereafter discovered within the limits of the Cherokee country, is the property of the Cherokee Nation, and subject to the control of the national council.

SEC. 81. Every *bona fide* citizen of this nation, who may wish to prospect for and engage in the mining of the minerals thereof, gold and silver excepted, or in the manufacture of salt, or in the collection or refining of coal-oil or petroleum, or in the preparation and sale of mineral or medicinal waters, shall make application in writing to the treasurer for that purpose, stating the mineral he wishes to operate in, the number and names of the company, the district and section thereof in which located, and the metes and bounds of the reservation on which he proposes operating: *Provided, also,* That the same shall not be within, or infringe upon, the improvements or legal boundaries or limits of any other citizen or mining company without the written consent of such other.

SEC. 82. No person or company shall locate, hold, or operate a second claim for any particular mineral without first surrendering the claim first located.

SEC. 83. Every person, or company, proposing to engage in mining shall, before beginning the work, obtain from the treasurer a license for that purpose, which license shall clearly describe the location of the reservation selected, with its metes and bounds and the minerals to be mined; and shall at the same time execute to the Cherokee Nation and file with the treasurer, and to his satisfaction, a bond in the sum of two thousand dollars, with good and sufficient security, conditioned upon compliance with the requirements of this act.

SEC. 84. Every person, or company, operating in the minerals of this nation shall be required to report, on oath, to the treasurer, quarterly, on the first days of January, April, July, and October of each year, the gross amount of minerals mined, or salt manufactured, or medicinal waters prepared for sale during each quarter preceding such report, and at the same time pay into the treasury, for the benefit of the school or orphan funds, a sum of money equal to five per cent. of the value of such minerals at the place of production; and the mines, the stock on hand, the buildings, machinery, and fixtures thereto belonging shall be held liable for the payment of the same. The refusal or failure of any person doing business under the provisions of this act to comply with the conditions of his bond shall be good and sufficient cause for the revocation of the lease by the treasurer.

SEC. 85. Every citizen of this nation who shall lease, sublease, sell, give, or grant, in any manner, any interest in any mine, medicinal or mineral water, in this nation, to any person other than a citizen of the same, shall be fined in any sum not exceeding two thousand dollars for each and every such offense, and forfeit his bond and lease; and the treasurer is hereby authorized to proceed against such person or company in the name of the Cherokee Nation, before any court of the nation of competent jurisdiction.

SEC. 86. No license shall be granted by the treasurer for a longer period than ten years, at the option of the lessee; but every lessee who may elect to renew his lease, and who shall have complied with the terms of his former lease, may do so by complying with the law governing the same; but no new lease shall be granted, or old lease renewed, until all arrears to the nation shall have been paid: *Provided*, That the national council may, at any time, change, amend, or repeal any or all of the conditions of leases, so as not to affect leases in force at the time of such change or repeal.

SEC. 87. Should any mining company find upon his reservation any mineral other than that named in the lease, and for which the lease was granted, such company shall at once report such discovery to the treasurer, and shall have the right to work the same by incorporating it into the original contract, and by paying five per cent. thereon for all such mineral obtained: *Provided*, That such act of incorporation shall expire on the expiration of the original lease: *Provided further*, That parties locating claims under this act shall begin work thereon within one year from the date of their license, otherwise such license shall be null and void.

ARTICLE XVIII.

Dangerous weapons.

SEC. 88. Every person, a citizen of this nation, who shall in any way carry arms of any kind whatever, or who shall have on or about his person any dirk, bowie-knife, pistol, revolver, slung-shot, metal knuckles, or other dangerous arm or weapon, except a common pocket-knife, unless for the purpose of hunting game, or upon a journey, or in pursuit of fugitives from justice, or in the discharge of duty by virtue of a legal summons, shall forfeit such arms or weapons to the nation, and be fined in any sum not exceeding one hundred dollars, or be imprisoned not exceeding six months, or be both fined and imprisoned at the discretion of the court having jurisdiction.

SEC. 89. All officers required by law to act as conservators of the peace and to enforce or serve legal processes are exempted from this article; and it is hereby made the duty of every sheriff, town constable, and their lawful deputies, to disarm all persons detected in violating the provisions of this act; to turn over quarterly to the treasurer all weapons or arms confiscated, and report the person so offending to the solicitor for indictment before the district court of the district wherein the offense was committed. The judgment of the court shall be final, and no property shall be exempted from execution and sale to satisfy such judgment, improvements excepted.

SEC. 90. One-half of fines thus collected shall be divided equally between the sheriff and the solicitor, and the other half shall be paid into the treasury for the benefit of the orphans: *Provided*, That, whenever a case is not sustained before the court trying the same, an order shall issue from the court for the restitution of the arms seized; and the treasurer or sheriff shall restore the same accordingly. But in all other cases the arms shall be the property of the nation, subject to the order of the national council.

SEC. 91. Citizens of the United States and foreigners under their protection, lawfully residing or temporarily sojourning in the Cherokee Nation, who shall willfully neglect or refuse to conform to the requirements of this act, so far as it affects citizens of the Cherokee Nation, shall thereby forfeit the protection of Cherokee laws and the right or

privilege of continuing longer in the Cherokee Nation, and shall be disarmed, arrested, and turned over with such arms to the lawful authority for removal beyond the limits of the Cherokee country: *Provided*, That the provisions of the preceding sections shall not be so construed as to annul, impair, or in any manner abridge or destroy the ordinances and rights of town corporations, as guaranteed by law.

ARTICLE XIX.

Marriage and divorce.

SEC. 92. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties, capable in law of contracting, is essential.

SEC. 93. Every male person who shall have attained the age of eighteen years, and every female person who shall have attained the age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent. But in all cases where the male is less than eighteen years of age and the female less than fifteen years of age, the consent of the mother, father, or guardian of such minor shall be given, otherwise such marriage shall be null and void, unless it appear that the parties have no parent or guardian then living, and at the time of marriage are self-dependent.

SEC. 94. No marriage shall be contracted while either of the parties has a husband or wife living; nor between parties who are nearer of kin than first cousins, whether of the half or of the whole blood, nor between parties who are insane or idiotic.

SEC. 95. Marriages may be solemnized by any of the judges of the courts of this nation, or by the clerks of the several districts, or by any ordained minister of the gospel in regular communion with any religious society. And any marriage contracted in writing in the presence of two or more attending witnesses, who shall sign the marriage contract as such, shall be lawful.

SEC. 96. No particular form of marriage shall be required in the solemnization of marriages, except that the parties shall solemnly declare, in the presence of the judge, clerk, or minister officiating, or the attending witnesses, that they take each other as husband and wife: *Provided*, That citizens of the United States, or those of other than Indian nationalities, intermarrying among the Cherokees shall first comply with the law governing such cases.

SEC. 97. It shall be the duty of all persons contracting marriage in the presence of witnesses, or who shall, within the nation, join two citizens thereof in wedlock, or who shall so join a citizen thereof with a citizen of any other government, to report the same to the clerk of the district in which such marriage was solemnized for registration, giving the full names of the contracting parties, their ages, and previous places of residence; and the clerk shall at once make record of the same in a book to be kept for that purpose.

SEC. 98. Every person, a citizen of this nation, who shall, within the nation, violate the provisions of this act, by joining minors in the bonds of matrimony without the consent of the father, mother, or guardian, except as hereinbefore expressly provided, shall be liable to a fine in any sum not exceeding one hundred dollars, or to imprisonment not exceeding six months, at the discretion of the court having jurisdiction.

SEC. 99. All marriages which are herein prohibited on account of

consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall be absolutely void in this nation without any judgment of divorce or other legal proceeding: *Provided*, That the issue from such unlawful marriage shall nevertheless be legitimate: *Provided, also*, That when a man having by a woman one or more children shall afterward intermarry with such woman, such child or children, if recognized by him, or proven to be his, shall thereby be legitimate.

SEC. 100. A divorce from the bonds of matrimony may be adjudged by the circuit courts of this nation, on action brought in the district where the parties or one of them reside, on application by petition or complaint of the aggrieved party.

SEC. 101. Actions for divorce shall be conducted in the same manner as other actions in courts, and the court shall have the power to enforce its judgments, as in other cases; and when a judgment of divorce from the bonds of matrimony is granted, in this nation, by a court of competent authority, such judgment shall fully and completely dissolve the marriage contract as to both parties.

SEC. 102. A divorce from the bonds of matrimony may be adjudged for either of the following causes, viz: For adultery, for imprisonment for three years or more, for willful desertion and neglect for the term of one year next preceding the filing of the complaint or petition, for extreme cruelty whether by violence or other means, and for habitual drunkenness for one year immediately preceding the filing of the complaint or petition.

SEC. 103. The court in granting a divorce shall, in all cases where there are minor children of the parties divorced, make such order concerning the care, custody, and maintenance of such children as it shall deem proper and just, having due regard to the age and sex of the same.

SEC. 104. When a judgment of divorce has been granted, and the parties shall afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all judgments or orders of divorce, alimony, and subsistence, which will not affect the rights of third persons.

ARTICLE XX.

Lawful fences.

SEC. 105. All fences four and a half feet high and constructed of posts placed not exceeding eight feet apart and securely set two feet in the ground, and properly boarded with sawed plank or split railing and in good repair, shall be deemed sufficient and lawful fences.

SEC. 106. All fences constructed of pickets, securely set two feet deep in the ground, and five feet high above the surface of the ground, and in good repair, shall be deemed sufficient and lawful fences.

SEC. 107. All worm fences constructed of rails and of an average height of four and a half feet after settling, and securely staked and ridged and in good repair, shall be deemed sufficient and lawful fences.

SEC. 108. Fences constructed of ordinary rails confined between two posts, securely set two feet in the ground and firmly tied at the top, or of rails fitted by mortice into posts thus set, and four and a half feet high and in good repair, shall be deemed sufficient and lawful fences.

SEC. 109. All paling fences constructed of posts, railings, and palings, the posts being set securely two feet in the ground, with two or more slats

or railing to the panel, with pickets four inches broad and three-quarters of an inch thick, or two and a half inches broad and one inch thick, of sawed or split material, and securely nailed with not less than one eight-penny nail to each bearing of every upright board or picket, and not less than five feet high and in good repair, shall be deemed sufficient and lawful fences.

SEC. 110. All fences constructed of stone, laid with or without mortar, perpendicular on the exterior side, with three and a half feet base and eighteen inches at the top properly capped, and not less than four and a half feet high and in good repair, shall be deemed sufficient and lawful fences.

SEC. 111. All ditches designed for fences with perpendicular interior walls, four feet deep and four feet wide, the excavated earth, gravel, or rock being uniformly distributed along the inner bank of the ditch, and in good repair; and all live hedges not less than three years old, of sufficient growth and compactness and in good repair, and being equal to any one of the fences aforesaid, shall be deemed sufficient and lawful fences: *Provided*, That the cracks or spaces in fences inclosing yards and vegetable gardens, and designed to exclude small animals, shall not exceed an average of two inches to a height of two feet from the ground, four inches for the next foot, and six inches for the residue to the desired height; nor shall such spaces or cracks exceed an average of four inches for the first two and a half feet from the ground, nor six inches thence to the fifth foot in fences inclosing other grounds and designed for the exclusion of stock capable of doing damage to field crops.

ARTICLE XXI.

Prohibiting the sale and restricting the lease of real estate.

SEC. 112. It shall not be lawful for any citizen of the Cherokee Nation to sell any farm or other improvement in said nation to any person other than a *bona-fide* citizen thereof; nor shall it be lawful to rent any farm or other improvement in this nation to any person other than a citizen of the Indian Territory; and every person who shall offend herein shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall suffer punishment by fine in any sum not less than ten dollars, nor exceeding five hundred dollars, or, in default of payment, be imprisoned for any term not exceeding one year.

SEC. 113. The solicitor and sheriff prosecuting the case and collecting the fine shall be entitled to twenty-five per cent. each of all sums so collected, and the residue thereof, or fifty per cent. of the whole amount collected, shall be paid into the national treasury for the benefit of the general fund: *Provided*, That this act shall not be so construed as to prevent the renting of houses and small tracts of land, for cultivation, to school-teachers, officiating ministers, licensed traders, and practicing physicians, lawfully in the country; or to prevent the renting of houses to mechanics and other useful laborers who may be lawfully permitted to sojourn in the nation: *Provided, also*, That the provisions of the next preceding section shall not be construed as granting license to such licensed traders, teachers, and others, to engage in farming or gardening, stock, or poultry raising, or keeping for profit, in lieu of their ostensible business, under penalty of removal from the country as intruders, and confiscation of the property acquired and held in the nation while so intruding.

ARTICLE XXII.

Grist-mills.

SEC. 114. The owners or occupiers of all grist-mills in this nation, moved by water, shall be entitled to one-eighth part of all wheat, corn, or other grain ground or bolted, or ground and not bolted, and no more. Owners or occupiers of all grist-mills in this nation, moved by steam or wind, shall be entitled to one-sixth part of all wheat, corn, or other grain ground or bolted, or ground and not bolted, and no more; and owners and occupiers of any grist-mill in this nation, moved by horse or other animal power, shall be entitled to one-fourth part of all wheat, corn, or other grain ground and bolted, or ground and not bolted, and no more; and any owner or occupier of a grist-mill in this nation who shall exact or make more toll than is herein allowed shall, in every such case, be liable to a fine in any sum, in the discretion of the court, not exceeding fifty dollars, and, to the injured party in five times the actual damages sustained by him, or, in default of payment, to imprisonment not exceeding six months.

SEC. 115. The miller, owner, or other person in charge of a mill, used and occupied as a grist-mill, shall not be permitted to grind his own grain, to the exclusion of other grists, but shall well and sufficiently grind, or grind and bolt, the grain brought to the mill for that purpose, in due time and in the order in which it shall be received. He shall be accountable for the safe keeping of all grain received in such mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, as the case may be, with bags, casks, or other vessel in which it was brought, when demanded: *Provided, however,* That he shall not be accountable for any bag, cask, or other vessel, or other contents, unless plainly marked with the owner's name. Nor shall he be accountable for any loss by fire, or robbery, or unavoidable accident, without the fault of such owner or occupant, his agents or servants.

SEC. 116. The pains and penalties prescribed for a breach of the provisions of section 1 of this act shall also apply to any breach of the provisions of the next preceding section.

SEC. 117. Nothing contained in this act shall be so construed as owners or occupants of mills to grind grain, or grind and bolt, in large quantities for the purposes of trade, to the exclusion of others, or from grinding, or grinding and bolting, his own grain at any time: *Provided,* That in so doing he does not infringe upon the rights of others.

ARTICLE XXIII.

Stray property.

SEC. 118. It shall be the duty of each of the sheriffs of the several districts to receive and advertise for public sale to the highest bidder all stray property that may be found or reported to them in their respective districts, such as horses, mules, asses, cows, hogs, sheep, and goats, giving a description of color, brands, ear and flesh marks, age, and sex; and such property shall be sold, for prompt payment in cash, national warrants or certificates, at the regular term of the circuit and district courts, and on the first day thereof, and not before the hour of ten in the morning.

SEC. 119. All stray property, before being sold, shall be advertised at least ninety days, by written advertisement in the English and Cherokee

languages, posted at the court-house in the district wherein such property is to be sold, and in like manner in the Cherokee Advocate, in *nonpareil* type; and any person having property advertised under the provisions of this act, shall have the right of reclaiming such property by proving the same, on or before the day of sale, before the judge of the district of the district wherein such property is posted; and such judge, if satisfied with the sufficiency of the proof, after recording the same and making his decision thereon, shall issue an order directing the sheriff posting the property to deliver it to the owner.

SEC. 120. If any person having property advertised under the provisions of this act shall fail to prove the same, before the sale of the same, he shall forfeit his right to such property, except as hereinafter provided; but any person who shall prove such property in the manner hereinbefore provided for within nine months after the sale of the same shall be entitled to receive from the treasurer, on the certificate of the judge before whom the proof is made, the proceeds, in kind, of the sale of the same, deducting therefrom the sheriff's fees.

SEC. 121. Any person who may take up stray property shall, within ten days thereafter, be required to have the same posted, and any person failing to comply with this provision shall be liable to a fine of not less than ten nor exceeding twenty dollars.

SEC. 122. Any sheriff not wishing to keep stray property in his possession shall be authorized to place the same in the possession of some responsible person, who shall, for the expense of keeping such property, have the use of the same, but no further expense shall attach to keeping thereof; and any person taking up stray property, or having the same in his possession by permission of the sheriff, shall be required to take good care of the same; and if the property shall be injured through the willfulness or negligence of such person, he shall be responsible in such amount as will indemnify the person or party injured.

SEC. 123. Any person who shall sell, or dispose of, or willfully take any stray property not his own, or shall willfully kill or maim any such property, either before or after such property is posted, shall be deemed guilty of the same offense as if the act was committed upon the property of a citizen, and shall, upon conviction, be punished accordingly.

SEC. 124. It shall be the duty of the several sheriffs to have, if possible, all property that may be posted by them at the court-house on the day of sale, and to place the purchasers thereof in possession of the same when sold, or within a reasonable time, if required to do so. The sheriff may retain ten per cent., in kind, of all proceeds of sales of stray property, and be required to turn over the residue to the treasurer at such times as he may be by law required to make reports of such sale. He shall keep a registry of all property sold, showing dates of sales, to whom made, amount in kind received, and the kind of property sold, and report the same quarterly to the treasurer, as he may direct. He shall also furnish the judge of the district with copies of the advertisements of stray property within ten days after posting the same, and shall notify said judge of all sales made by him, to whom made, amount in kind received, and kind of property, within ten days after sale, and the judge shall file the same in his office.

SEC. 125. The clerk of the district shall be present at all sales of stray property, and shall make, and keep on record in his office, a register of all sales by the sheriffs, to whom made, amount in kind paid, date of sale, and kind of property sold, and make therefrom a quarterly report to the treasurer, as he may direct.

ARTICLE XXIV.

Licensed traders.

SEC. 126. Whereas, in the year one thousand eight hundred and thirty-four, the Congress of the United States enacted a law, known and styled the "Intercourse law," to regulate trade with the Indian tribes; and whereas it is enacted in the 22d section of said law "that if an Indian is party on one side and a white man on the other, the burden of proof shall rest on the white man"; and in the 23d section, "that it shall be lawful for the troops to be employed in the apprehension of any white man who may become a party to a suit where an Indian is concerned, and have him conveyed to the nearest civil authority of the territory or judicial district in which the person may be found, to be proceeded against in due form of law": *Therefore*, from and after the passage of this act, if any licensed trader under the United States, or other person, not a citizen of this nation, has, or may contract debts within the limits of this nation, with a citizen thereof, it shall not be lawful for such person to recover such debts in any of the courts of the same; and all laws or parts of laws that may authorize the collection of such debts, except in cases expressly provided for in this code, are hereby repealed: *Provided*, That whenever an adopted citizen of this nation shall apply for, obtain, or accept a license to trade in this nation, from the United States Government, no license or permit to trade shall be granted to such adopted citizen by the authorities of this nation. And the Cherokee Nation would hereby disclaim all responsibility or liability in consequence of any loss or damage sustained by such licensed trader, under the Government of the United States.

ARTICLE XXV.

Intruders.

SEC. 127. Every person unlawfully residing or sojourning in the Cherokee Nation, agreeably to the twenty-seventh article of the treaty of July 19, A. D. 1866, with the United States, and in violation of the laws of this nation, shall be, and hereby is, deemed an intruder; and it is hereby made the duty of the sheriffs of the several districts, whenever called upon for that purpose, to co-operate with the proper authorities of the United States in the removal of such intruders beyond the limits of this nation: *Provided*, That such sheriffs, while so engaged, shall act under the authority of the United States, and be compensated by the same.

SEC. 128. Solicitors shall furnish annually, by the close of the fiscal year, to the principal chief, a complete and full list of all persons residing or being in their several districts in violation of law, and the principal chief shall, as soon as may be, report the same to the proper authority for removal.

SEC. 129. Improvements made or held by intruders, at the time of their removal, or at the time when reported—if there is no adverse title held by a *bona fide* citizen of the nation—shall be sold to the highest bidder by the sheriff of the district in which located, after fifteen days' notice in the Cherokee Advocate, or by posting at three of the most public places in the district. Such sales to be for prompt payment in cash or national warrants or certificates, and the proceeds, after deducting his fees of ten per cent., shall be paid by the sheriff into the general fund of the national treasury.

ARTICLE XXVI.

Liability of the Cherokee Nation to her own citizens.

SEC. 130. The Cherokee Nation shall be liable to all persons whatever, citizens of the nation, having claims at law or equity against her, to the same extent as individual persons are liable to each other, and may be sued by any citizen having a cause of action, in the manner hereinafter provided; but no suit shall be maintained unless the claim has been demanded and payment refused or waived.

SEC. 131. All suits against the nation shall be commenced in the circuit court of the district in which the national capital is situated; but appeals may be taken to the supreme court in the same manner as in civil cases between individual litigants, and said circuit and supreme courts shall have exclusive jurisdiction over all causes in which the nation may be made a party defendant: *Provided, however,* That said suits may, with the consent of the parties, originate in and be determined by the supreme court alone, independent of the circuit court. Suits against the nation shall be instituted in the same manner as suits between individuals.

SEC. 132. Process in suits against the nation shall be served by the principal chief, in the mode prescribed by law for the service of process in other cases; and the principal chief shall, whenever such process against the nation is served upon him, appear in person or by counsel, and represent the nation. He shall require the solicitor-general, and such other counsel as he may deem necessary, to appear in defense of the nation.

SEC. 133. Judgments and decrees against the nation shall not be enforced in any other manner except by an appropriation made by the national council on the petition of the person holding such judgment or decree, accompanied by a duly certified copy of such judgment or decree.

CHAPTER XIII.

Rules for construing this code.

ARTICLE I.

SEC. 1. All words and phrases used in this code, and the statutes of this nation, shall be construed according to their common and ordinary acceptation and meaning; but technical words and phrases shall be construed according to their technical meaning as established by the profession using them.

SEC. 2. Words used in the singular number only, either as descriptive of persons or things, shall extend to and embrace the plural number also; and in like manner words used in the plural number shall extend to and embrace the singular number, except where a contrary intention is expressed.

SEC. 3. The word "month" shall be understood to mean a calendar month, and the word "year," a calendar year, unless a contrary intention is expressed.

SEC. 4. The word "person" shall apply to artificial as well as natural persons.

SEC. 5. Words in the masculine gender shall embrace a female as well as a male, unless a contrary intention is expressed.

SEC. 6. When process shall be required to be served, on notice given

any number of days, the day of serving the process or of giving the notice shall be excluded, and the day of appearance included, and so in all other cases where any number of days shall be prescribed, one day shall be excluded, and the other included. When the last day falls on Sunday it shall be excluded, but in all other cases Sunday shall be revoked in the computation of time.

CHAPTER XIV.

AN ACT relating to acts inconsistent with the provisions of this code.

SECTION 1. That all acts or parts of acts of a general nature, heretofore enacted and in force, and inconsistent with the provisions of this code, shall be and are hereby declared to be repealed from and after the date when this code shall go into effect : *Provided*, That prosecutions for crime, committed in violation of any penal law in force at the time of the commission of such crime, may be instituted until such prosecutions shall be and become barred by operation of any limitation to the same, duly imposed and declared by law. And all such prosecutions so instituted for violation of any penal law heretofore in force, and all civil suits which shall be instituted for the recovery of claims or demands arising under any repealed law, shall be tried and decided as required by the first section of the article under the head of the judiciary ; that is, pursuant to the understanding, obligations, and responsibilities lawfully binding the parties at the time, and in accordance under which the cases shall have respectively originated.

SEC. 2. All acts or parts of acts, through and by virtue of which private rights have been vested or conferred upon individuals, now citizens of this nation, and in the possession and enjoyment of such rights, shall be and continue in force as heretofore since their enactment, to such extent, and to such time only, as such rights may attach to and vest in such persons, agreeably to the laws of this nation and to the terms and provisions of the acts or parts of acts vesting such rights.

AN ACT regulating settlements on the public domain, and in regard to improvements.

Be it enacted by the national council, That no person shall be permitted to settle or erect any improvement within one-fourth of a mile of the house, field or other improvement of another citizen, without his, her, or their consent, under the penalty of forfeiting such improvement and labor, for the benefit of the original settler ; provided, it may be lawful, however, where a settler has a field one-half mile or more from his residence, and where there may be a spring or running water and timber, for another citizen to improve and settle one hundred yards from such field so situated.

Be it further enacted, That all improvements which may be left unoccupied by any person or persons, citizens of this nation, and such person or persons remove to another place, leaving no person or tenant on their former place for the term of two years, such place or improvements shall be considered abandoned, and revert to the nation as common property ; any person or persons whatever, citizens of this nation, may take possession of any such improvement so left, which shall thenceforward be considered their lawful property.

Be it further enacted, That should any person or persons having possession of and claiming an improvement, and another person or other

persons claim the same, such last mentioned claimant or claimants are required to commence an action by law within twelve months after the person or persons in possession of the improvement in dispute take possession thereof, or otherwise their rights to such improvement is considered forfeited by this act.

Be it further enacted, That nothing in this act shall be so construed as to impair the rights of orphans.

September 24, 1839.

PUBLIC ACTS.

AN ACT relating to public ferries.

Be it enacted by the national council, That any person desirous of keeping a public ferry shall first be required to obtain a license for that purpose from the national treasurer, and for which he shall pay annually, in advance, the following tax, to wit: For a ferry on the Arkansas, Canadian, or Grand Rivers, the sum of twenty-five dollars per annum; on the Illinois, Verdigris, and "Neosho" Rivers, the sum of ten dollars per annum. Any person so obtaining a license shall be required to keep good boats and ferrymen, and cross all persons promptly during seasonable hours (Sundays excepted), when it can be done with safety, at rates heretofore fixed by law. No person shall be allowed to open a new ferry within less than half a mile of any ferry established agreeably to the provisions of this act.

Be it further enacted, That any person found guilty of a violation of the provisions of this act shall be subject to a fine for every such offense in a sum double the amount of the license established above, one-half for the benefit of the informer, and the other for the treasury. All such fines shall be recoverable before the courts of this nation.

October 31, 1849.

AN ACT admitting to the right of citizenship certain Creek Indians.

Whereas, certain Creek Indians, with their families, emigrated from the east of the Mississippi River in the several detachments of Cherokees that removed in 1838 and arrived in 1839; and whereas, the said Creek Indians, having been received by the Cherokees into their nation East, under their customs and agreement then existing between them and the Creek Nation, and thereby becoming a part of the Cherokee people and subject to the Cherokee laws: Therefore, in order to remove all doubts as to their right to live and enjoy the privileges and citizenship in the Cherokee Nation,

Be it further enacted by the national council, That all the Creek Indians who emigrated to this country in the several detachments of Cherokees, as aforesaid, and also all those Creek Indians, together with their families, who were allowed the right of suffrage among the Western Cherokees previous to the arrival of the Eastern Cherokees in 1839, be, and they are hereby, recognized and admitted to the enjoyment of rights and privileges of citizenship of this nation.

Tahlequah, November 13, 1843.

Approved.

JOHN ROSS.

AN ACT providing for a resident agent at Washington City.

Be it enacted by the national council, That, in view of the still unsettled condition of our claims as a nation upon the Government of the United States, and for the better and more economical prosecution of the same before the said Government, this nation shall be represented by a special and resident agent in Washington City, who shall be appointed by the principal chief, by and with the consent of the national committee, and whose term of service shall continue during two years, unless sooner recalled.

Be it further enacted, That said agent shall be fully commissioned and instructed by the principal chief in regard to his duties, which shall be to attend to the general interests of this nation before the Government of the United States, and all claims of this nation and the citizens thereof, and to have the same paid over, when allowed, to the proper officer of this nation.

Be it further enacted, That it shall be the duty of the said agent to make a full and accurate report of all his official acts and correspondence, at least quarterly, to the principal chief, which reports shall be laid before the annual sessions of the national council.

Be it further enacted, That the salary of the above agent shall be two thousand dollars per annum, inclusive of all personal expenses.

Tahlequah, November 4, 1853.

Approved.

JOHN ROSS.

AN ACT respecting the furnishing of railroad ties and other material to the Missouri, Kansas and Texas Railroad Company.

Whereas the Missouri, Kansas and Texas Railroad Company has applied, through its duly accredited agent, Hon. N. S. Goss, for the purchase of railroad ties and other material, to be used by said company for the purpose of building that portion of said railroad which may run within the limits of this nation, and no other portion thereof: Therefore

Be it enacted by the national council, That the said railroad ties and other material be furnished from the public domain of the Cherokee Nation to the said company, upon the following conditions, to wit:

The principal chief shall grant a written license to citizens of the Cherokee Nation only for the purpose of furnishing said ties and material; said citizens, so licensed, before furnishing said ties and material, shall enter into a contract for that purpose with the proper authorities of said railroad company, to be approved by the Interior Department at Washington, according to the terms of the bond of said railroad company, filed in the Interior Department, under date of August 10, 1870, before the said contracts shall be considered as valid and binding. The Cherokee citizens so licensed and contracting shall, before furnishing ties and material as aforesaid, file bonds with the national treasurer, to be approved by the principal chief, and made payable to him, for twice the amount of the tax due the nation on said approved contract, and conditioned upon a faithful compliance with the provisions of this act by the said licensed and contracting citizens.

Be it further enacted, That persons furnishing ties and material under the provisions of this act are hereby required to pay to the sheriffs of their respective districts, on which said ties and material may be obtained, for the benefit of the national treasury, as follows:

For every tie and cross-tie 5 cents.
 For bridge and other railroad timber, whether hewed or sawed,
 15 per centum of the actual cash value of the same at the
 time and place of obtaining the same.
 For every cubic yard of stone used in first-class stone-work.. 15 cents.
 For every cubic yard of stone used in second class stone-work 10 cents.
 For every cubic yard of stone used in third-class stone-work. 5 cents.

And it shall be the duty of said sheriffs to keep a correct account of all funds so received by them, and to make, on oath, a correct report of the same, on the first Monday in May and October in each year, to the treasurer of the nation, to whom, at the same time, the said sheriffs shall turn over all funds received by them under this act.

Be it further enacted, That no person furnishing ties and material as aforesaid shall be permitted to intrude or trespass upon the improvements or rights of any of the citizens of this nation without the consent of such citizen: *Provided*, That no regard be paid to any improvement that may be worth less than fifty dollars, unless said improvement be occupied by an actual settler: *And provided further*, That nothing herein shall be so construed as to impair the rights of orphan children.

Be it further enacted, That after the line of road of said company shall have been completed through the Cherokee Nation, and it shall become necessary from time to time to repair the same or to repair the bridges, or to work upon the depots and other property of the same, it shall be lawful, in order to obtain the necessary material for that purpose, for the said company to enter into contracts with the citizens of the Cherokee Nation, who shall pay the charges on the material so furnished, respectively provided for in the second section of this act.

Be it further enacted, That the principal chief of the Cherokee Nation shall have the power, and he is hereby invested therewith, to appoint from time to time, as occasion may require, three (3) citizens of the Cherokee Nation, whose duty it shall be to examine into and determine the amount of any damages against said railroad company in building and operating its road through said nation, or any part thereof, which may be sustained by any citizen of said nation, by reason of said road passing through his or her farm, or destroying or disturbing his or her improvements, or for any destruction of any property of any such citizen. Such a judgment to be sent to said chief and by him forwarded to the Secretary of the Interior of the United States for his approval; and such adjudgment of damages, so approved, to be collected and paid by the United States or any proper authority thereof, and said commissioners shall be paid for their actual service at the rate of five dollars per day.

Tahlequah, December 10, 1870.

Concurred in, with the following amendment:

"That no citizen of the Cherokee Nation, or corporation of such citizens, shall be allowed to contract for more than ten thousand ties to any single railroad company whose road may have the right to pass through said nation, or any part thereof; and any party violating the provisions of this article shall forfeit to the Cherokee Nation double the amount of his or their contract, to be recoverable before any court of this nation having jurisdiction over the same."

December 14, 1870.

Amendment concurred in.

Approved.

LEWIS DOWNING.

AN ACT for the protection of the public domain.

Be it enacted by the national council, That any citizen or company of citizens of this nation who may desire to dispose of sawed lumber to citizens of the United States, either in or outside of this nation, shall, before doing so, obtain a license for that purpose from the treasurer of the Cherokee Nation, and shall file a bond before him, with good security, in the penal sum of five thousand dollars, conditioned upon a compliance with the requirements of this act, hereinafter expressed, to dispose of sawed lumber; and the sale of all other timber to such persons, and its conveyance beyond the limits of this nation, is hereby expressly declared to be unlawful; and any person convicted thereof shall be punished as hereinafter provided.

1st. Such person or persons, so using or disposing of sawed lumber, shall report, in April and October, in each year, on oath, the amount of funds received by them by such disposition, and shall at the same time pay into the treasury fifteen per centum on the accounts reported.

2d. Any person or persons, who may violate this act shall, in addition to forfeiting the said bond for the benefit of the treasury of the nation, be deemed guilty of a high misdemeanor, and, on conviction thereof, before the proper court of the district in which said offense may be committed, shall be fined not less than one hundred, nor exceeding five hundred dollars, at the discretion of the court.

3d. Such person or persons so disposing of lumber shall be required to make quarterly reports to the sheriff of their respective districts, on oath, of all amounts received by them for all lumber disposed of; and it shall be the duty of the said sheriffs to report the said amounts to the treasurer of the nation on the first Monday in November in each year.

Be it further enacted, That it shall be the duty of the several solicitors of this nation to prosecute all persons violating this act; and should said solicitor fail to prosecute any such offenders he shall be subject to a fine for every such failure for the benefit of the treasury of the nation, in a sum of not less than fifty dollars, nor exceeding one hundred dollars, to be deducted from his salary.

Be it further enacted, That this act shall not be so construed as to authorize any person to obtain or use timber within one-fourth of a mile of the occupied premises of any citizen of this nation without the consent of such citizen; nor shall it be so construed as to deny the right of the United States to use timber for various purposes, as provided for by treaty stipulations between the Cherokee Nation and the United States; nor to authorize or allow any individual or company to hold or occupy or be interested in more than one claim in any pinery or other forest at the same time, and in accordance with the laws of this nation regulating settlements on the public domain.

Tablequah, Cherokee Nation, December 17, 1869.

Approved.

LEWIS DOWNING.

AN ACT in relation to the public domain.

Be it enacted by the national council, That at each and every station along the line of any railroad passing through the lands of the Cherokee Nation there shall be reserved to the Cherokee Nation one mile square, to include such station in such manner as may be deemed advisable by the commissioners hereafter authorized; and said tract shall be laid off in town lots, and sold at public sale to the highest bidder, who shall be

a citizen of the Cherokee Nation, and who shall thereby acquire the same rights, and none other, than those of use and occupancy, in the same way and to the same extent as conferred by law upon purchasers of lots in the towns of Fort Gibson and Tahlequah: *Provided*, That this act shall not be so construed as to interfere with any of the mineral resources of the public domain, or laws of the Cherokee Nation in relation thereto.

And be it further enacted, That the principal chief be, and he is hereby, authorized to appoint three commissioners, whose duty it shall be to locate and survey said town sites, and sell the lots thereof, or such number of lots as may be deemed advisable, as hereinbefore specified, and report to the principal chief, of the locations, surveys, and sales of lots, receipts, and expenditures on the 1st day of October of each year.

And be it further enacted, That the sales, payments, and conditions of titles be the same as provided for by law in the sales of lots in the town of Fort Gibson.

And be it further enacted, That no claim to any place in the Cherokee Nation shall be valid under this act, or any other act regulating the settlement of the public domain, unless the person locating the same shall, within six months thereafter, make improvements thereon to the value of fifty dollars, and be in actual possession thereof, or by agent lawfully resident in the Cherokee Nation, whether such place is to be used as a farm, residence, stock-ranch, or place of business; and if any place or improvement shall be abandoned or left unoccupied for the period of one year, the same shall be deemed and held as part of the public domain: *Provided*, Nothing herein shall be so construed as to impair the rights of orphan children.

Tahlequah, Cherokee Nation, December 14, 1870.

Approved.

LEWIS DOWNING.

AN ACT for the support and education of orphan children.

Be it enacted by the national council, That there shall be established in this nation an asylum for the support and education of orphan children belonging to the Cherokee Nation, and those of Indian descent belonging to other Indian tribes, upon the terms and in the manner hereafter authorized and provided.

SEC. 2. The said asylum shall be called "The Cherokee Orphan Asylum," and shall be under the management and control of a board of trustees, to consist of seven persons, to be appointed by the principal chief, by and with the consent of the senate of the Cherokee Nation, and who shall continue in office for the term of two years, and until their successors shall be appointed and qualified. The principal chief shall be, *ex officio*, one of said board of trustees, any five of whom may constitute a quorum for business. The said board of trustees shall, at their first meeting after their appointment, choose from their own number a president, treasurer, and secretary.

SEC. 3. It shall be the duty of the president to preside at all meetings of the board, and to perform all other duties that may be required of him by any by-laws or rules that may be adopted by the board of trustees. It shall be the duty of the treasurer to receive all moneys that may be provided for the use of said asylum, to receipt for the same, and to pay such moneys out only on the order of the board of trustees, duly signed by the president and attested by the secretary. It shall be

the duty of the secretary to keep, in a suitable book, correct minutes of the proceedings of the board of trustees, together with a correct account of all moneys received and disbursed by the treasurer, which book shall at all times be subject to the inspection of any person interested.

SEC. 4. A majority of the board of trustees shall constitute a quorum, and shall have authority to transact business, and in the absence of any of the officers may appoint one of their number to act *pro tempore*, in the place of such absent officer.

SEC. 5. The board of trustees shall have power to adopt such by-laws and rules, for the government of the board and its officers, as they shall see proper, and shall hold (such) stated and special meetings as may be provided for in such by-laws and rules.

SEC. 6. The board of trustees shall have the power to select, within this nation, a suitable location for said asylum, and to occupy and hold as much land, not exceeding two (2) miles square, as they may deem necessary for farming and mechanical purposes, including mills and other machinery, which selection shall be made in one year after the appointment of the first board of trustees. They shall, as soon as the necessary funds can be obtained, erect on said lands suitable buildings for the accommodation, maintenance, and education of all such orphan children as may be placed in their care, and as soon thereafter as the means at their disposal and the welfare of the institution may require, shall open a farm in connection with said institution, to aid in its support and to train such orphan children in habits of industry.

SEC. 7. The orphan fund provided for in the 23d and 25th articles of the treaty between the United States and the Cherokee, entered into (July 19, 1866) and proclaimed August 11, 1866, is hereby appropriated and forever dedicated to the purpose of erecting and maintaining said asylum and the necessary buildings, farm, &c., and the treasurer of the nation shall, from time to time, and as fast as the same shall come into his hands, pay the same over to the treasurer of the board of trustees aforesaid, and shall take his receipt in duplicate therefor, one copy of which he shall immediately deliver to the secretary of said board, and the other he shall file in his office.

SEC. 8. Before entering upon the duties of his office, the treasurer of the board of trustees aforesaid shall enter into a bond, with two or more securities, to be approved by the board, in the penal sum of fifteen thousand dollars (\$15,000), conditioned that he will faithfully perform all the duties of his office, and will account for, and pay to his successor in office, all money remaining in his hands at the expiration of his term of office, together with all the books and papers pertaining thereto.

SEC. 9. The trustees hereinbefore provided for shall, before entering upon the duties of their respective offices, severally take and subscribe an oath that they will obey the constitution of this nation, and will faithfully discharge all the duties of such offices to the best of their ability, which oath shall be filed in the office of the treasurer of the Cherokee Nation.

SEC. 10. Until suitable buildings can be erected for the purpose aforesaid, the board of trustees shall be authorized to provide, temporarily, for the maintenance and education of the orphan children of this nation; and for that purpose may lease some suitable building, or may use the male seminary belonging to this nation until otherwise ordered by the council.

SEC. 11. *Be it further enacted*, That the said board of trustees may admit to the privilege of said asylum orphans of Indian descent belonging to other tribes whose support and maintenance shall be provided for

out of funds belonging to or set apart for the benefit of such tribes by treaty with the United States or otherwise.

Tahlequah, Cherokee Nation, November 25, 1871.

Approved.

LEWIS DOWNING.

AN ACT supplementary to and amendatory to an act entitled "An act for the support and education of orphan children," approved November 23, 1871.

Be it enacted by the national council, That "An act for the support and education of orphan children," approved November 25, 1871, be amended, and the same is hereby so amended as to provide that the board of trustees provided for by the second section of the said act shall have the management and control of the Cherokee Orphan Asylum, subject to the control and general direction of the national council; and that the said board of trustees shall be required to report annually to the national council, through the principal chief, the condition of the said orphan asylum, the state of the finances, number of inmates in the said asylum, their age, sex, and progress in education, with all the information proper to give a correct understanding of the state of said asylum, and its usefulness as an institution, for the purposes expressed in said act.

Be it further enacted, That the orphan fund shall be dispensed as provided for by the fourth article, section 23, of the constitution, by warrant from the principal chief, and in consequence of appropriations made by law, as the same may be from time to time required by the said board of trustees, on its requisition, signed by the president and secretary of said board, and setting forth the estimate, or cause of expenditures; which requisition shall be retained in the office of the executive, as a voucher, by the principal chief. And the principal chief is hereby authorized to draw such warrants on the national treasurer.

Be it further enacted, That no money appropriated for the support of orphans in the year 1870, including the present school session, ending on the last Friday of January, 1872, shall be subject to the requisition of the said board of trustees.

Be it further enacted, That the said board of trustees be allowed their actual expenses while actually engaged in the performance of their duties, to be paid, on the certificate of the board, out of the orphan fund; and the principal chief is hereby authorized to draw a warrant for the same.

Be it further enacted, That all laws or clauses of laws that conflict with this act are hereby repealed.

Tahlequah, Cherokee Nation, November 29, 1871.

Approved.

LEWIS DOWNING.

AN ACT authorizing the board of trustees of orphan asylum to select a suitable location, and report to the next session of the national council.

NOVEMBER 30, 1872.

To the National Council:

Your committee, to whom was referred the subject of locating the "Cherokee Orphan Asylum," for the want of sufficient time to thoroughly investigate the matter, would respectfully recommend that the subject be referred back to the board of trustees, with instructions that they

make a thorough examination of the Lewis Ross, Dr. Ross, and such other places as they may deem eligible, and report to the next session of the national council the terms on which they can be procured, with estimates of building, &c., whereby the national council can clearly comprehend its duty in permanently locating the orphan asylum.

WILLIAM WILSON, *Chairman.*

Be it enacted by the national council, That the recommendation in the above report is approved by the senate, and the board of trustees are authorized and instructed to proceed accordingly.

Tablequah, Cherokee Nation, December 2, 1872.

CHARLES THOMSON,
President of Senate.

Concurred in.

JOHN R. DUVALL,
Speaker of Council.

Approved December 4, 1872.

JAMES VANN,
Assistant and Acting Principal Chief.

AN ACT authorizing the locating permanently of the orphan asylum, and the home for the insane, deaf, dumb, and blind, of the Cherokee Nation, and for other purposes.

Be it enacted by the national council, That the national treasurer and the superintendent of public schools, together with the board of trustees of the orphan asylum, be, and they are hereby, authorized permanently to locate the said orphan asylum, and also the home for the insane, deaf, dumb, and blind persons of the nation, provided for by the act approved October 31, 1872, and that they adopt such measures as may be necessary for the early establishment of said institutions, as is provided for by law; and the sum of twenty thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of the orphan fund, provided for in said act of October 31, 1872, for the establishment of said orphan asylum; and that the sum of twenty thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of the funds provided for by the said act of October 31, 1872, for the establishment of said home for the blind, deaf, dumb, &c., and the principal chief is authorized to draw warrants, in whole or in part, as necessity may require, from time to time for the same.

Be it further enacted, That the said treasurer, superintendent of public schools, and board of trustees of the orphan asylum be, and they are hereby, required to report the result of their labors, as required by this act, to the next session of the national council during its first week.

Approved November 29, 1873.

WILL. P. ROSS.

AN ACT providing for a revision of the laws, &c.

Whereas in order to meet the demands of a progressive people, and the many and rapid changes occurring among them, it has become necessary that many of the existing laws of the Cherokee Nation be amended, or repealed, and new ones enacted: Now, therefore

Be it enacted by the national council, That the principal chief be,

and he is hereby, authorized to appoint a committee of three, whose duty shall be to revise, amend, and codify existing laws, and prepare such other new laws as the advanced condition of the Cherokee people demands. It shall be the duty of said committee to embody all acts pertaining to any one subject in one act, omit all laws that have become inoperative, or been repealed, or are now inapplicable to existing affairs. They shall thoroughly classify the acts and prepare an index to the same, and present the whole code to the principal chief, for his inspection, by the first day of May, 1874, to be by him presented, with his recommendations, to the national council for their action at the annual session in 1874.

Be it further enacted, That the committee shall each receive a compensation of four dollars (\$4) per day out of the general fund while actually engaged, payable in two installments, and the principal chief is hereby authorized to draw warrants accordingly and report at the next annual session of the national council.

November 19, 1873.

Approved.

WILL. P. ROSS.

AN ACT authorizing an application to be made to the Government of the United States for the payment to the treasurer of the nation for the several sums of money due the Cherokee Nation therein named.

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized and requested to draw requisitions on the Treasury Department, or the Department of the Interior, as the case may be, for the payment to the treasurer of the Cherokee Nation, to wit: For the sum of twenty-five thousand dollars for the purpose of founding a literary institution for the education of indigent persons of the Cherokee Nation, out of the proceeds of the lands ceded to the Great and Little Osages, under the act of Congress approved June 5, 1872, as authorized by an act of the national council, approved October 30, 1872, and authorized by the act of Congress approved February 14, 1873, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1874, and for other purposes," and the further sum of twenty thousand dollars out of the same fund, and in accordance with the provisions and authority of the before-cited acts of the national council, approved October 30, 1872, and of Congress, approved February 14, 1873, for the benefit of the institute for the orphans. And also for the further sum of twenty-five thousand dollars for the establishment of an asylum for the insane, deaf, dumb, and the blind, indigent persons of the Cherokee Nation, out of the proceeds of the sales of "the strip in Kansas," as provided for by an act of the national council, approved October 31, 1872, and authorized by an act of Congress approved February 14, 1873.

November 22, 1873.

Approved.

WILL. P. ROSS.

AN ACT authorizing the transfer or sale of Cherokee lands west of the Arkansas River, and the manner of disposing of the proceeds.

Be it enacted by the national council, That the delegation of the Cherokee Nation to the city of Washington be, and are hereby, authorized to

negotiate with the Government of the United States for the sale or transfer (in such manner not inconsistent with national obligations, and as may be most conducive to the interests of the Cherokee people) of all of the Cherokee lands lying west of the Arkansas River and south of Kansas, and commonly known as the Cherokee Outlet.

Be it further enacted, That the proceeds of the sale or transfer of the lands aforesaid be paid, with the consent of the United States, in whole or in part, to the Cherokee people *per capita*. And the principal chief is hereby authorized to order an enumeration, or census, of the people whenever by him deemed expedient: *Provided*, That the salt plains, with their immunities, profits, and privileges, undivided, be reserved to the Cherokee people.

Approved November 28, 1873.

WILL. P. ROSS.

AN ACT in relation to the male and female seminaries, and establishing primary departments therein for the education of indigent children.

1. *Be it enacted by the national council*, That for the purpose of carrying into effect an act of the national council, approved October 31, 1872, and an act of the Congress of the United States, approved February 14, 1873, authorizing the expenditure of the sum of seventy-five thousand dollars for the purpose of founding "a literary institution for the education of indigent persons of said nation," there be, and is hereby, established in each of the seminaries a primary department for the education of such children as are destitute of the means of support.

2. *Be it further enacted*, That there be created a board of trustees for said institutions, to consist of five members, to be nominated by the principal chief, and confirmed by the senate, who, with the principal chief as *ex-officio* president of said board, shall be authorized to mature and determine upon the most convenient plan of enlarging the male and female seminary building so as to accommodate at least two hundred additional pupils each; to receive proposals and contract for the erection of the same; and for this purpose there is hereby appropriated, out of the fund so set apart, the sum of forty thousand dollars—twenty thousand for the use of each—or so much thereof as may be necessary; and the further sum of ten thousand dollars, out of the same fund, or so much thereof as may be necessary to be expended in furnishing the same with the necessary fixtures and furniture.

Be it further enacted, That whenever repairs or enlargement of either of said seminary buildings will admit of the reception of pupils, the said board of trustees are authorized and instructed to receive into the primary department of the same indigent children, not to exceed in number fifty for the first year, fifty more for the second year, fifty more for the third year, and fifty more for the fourth year, so as to make the full complement of the number of students in said primary department two hundred; and at each succeeding year after the fourth alluded to, the said board of trustees shall dismiss the first fifty students received, and, in place of them, receive fifty more students; and thus continue from year to year, so as to retain the complement of two hundred students. Said board will also be authorized to furnish text-books, to employ teachers, to make all the necessary arrangements for the boarding and clothing of such pupils, to prescribe such rules and regulations for the government and management of said institutions as their judgment may be necessary to successfully operate the same, and be required to report annually to the national council.

Be it further enacted, That the board of directors be authorized to open the male seminary to advanced pupils whenever the orphan asylum is permanently located, upon the same terms as now provided for by law for the admission into the female seminary, and so much of the act of the national council, approved December 4, 1871, as places the female seminary under the care of the executive council as a temporary board of directors, be, and the same is hereby, repealed, and the same is placed in the care of the board created by this act.

Be it further enacted, That the sum of five thousand dollars be, and the same is hereby, appropriated out of the school fund not otherwise appropriated, or so much thereof as may be necessary, to meet the expense of boarding, clothing, and teaching the pupils provided for in section third of this act; and the principal chief is hereby authorized to draw warrants for the sums hereinbefore named.

November 24, 1873.

Approved November 28, 1873.

WILL. P. ROSS.

AN ACT to remunerate settlers west of ninety-six, who settled previous to 1866.

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized and instructed to appoint three commissioners to appraise the improvements of Cherokee citizens situated west of 96° (west longitude), made previous to July 19, 1866, which commissioners shall be sworn to make a correct valuation of said improvements and claims according to the best of their judgment, and report the same to the next regular session of the national council.

Be it further enacted, That said commissioners shall receive four dollars per day while in actual service.

November 24, 1873.

Approved.

WILL. P. ROSS.

AN ACT to build a jail.

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized to appoint three persons to act as commissioners for the purpose of locating and building, as soon as possible, a national prison, for the safe-keeping and punishment of persons charged with criminal offenses. The main walls of said building shall be of stone, the partitions, roofing, and other portions of such materials as the commissioners may deem best. The plan and specifications shall be clearly defined and agreed upon by the commissioners and contractor before commencing work.

Be it further enacted, That said prison shall be completed and ready for use by the 1st day of November, 1874. That the sum of six thousand dollars (\$6,000), or as much thereof as may be necessary, be set apart for that purpose out of the proceeds of the sales of lands in the southern part of Kansas, commonly known as "Cherokee Strip"; and the principal chief is hereby authorized to draw warrants as the work progresses to completion, and report at the next annual session of the national council.

November 24, 1873.

Approved.

WILL. P. ROSS.

AN ACT in relation to persons who have been admitted to citizenship by special acts, &c.

Be it enacted by the national council, That all those persons who have, by special act or otherwise, been readmitted to the rights and privileges of Cherokee citizenship, and who shall fail to return to the nation within six months thereof, and thereafter identify themselves with the people of the Cherokee Nation, by locating permanently, shall be barred such right of citizenship, all provisions to the contrary notwithstanding.

Be it further enacted, That the principal chief cause this act to be published in the Cherokee Advocate for six months from date of passage, for the information of those concerned.

Approved November 28, 1873.

WILL. P. ROSS.

AN ACT declaring the Cherokee Nation not liable for losses alleged to have been sustained by the Osage Nation.

Be it enacted by the national council, That the Cherokee Nation having had no agency in locating the Osage tribe of Indians east of the meridian of ninety-six degrees, as now established, are not in law or equity responsible, pecuniarily or otherwise, for losses alleged to have been sustained by said Osage tribe in consequence of their temporary unlawful occupancy of Cherokee lands east of ninety-six and in consequence of their subsequent removal to lands lying west of said line of ninety-six, and therefore the Cherokee Nation would most respectfully, but firmly, decline to entertain the proposition of the United States to the following effect, to wit:

"That the Cherokee Nation reimburse the Osage Nation for all losses sustained in consequence of their temporary occupancy of lands lying east of the ninety-six meridian, and their subsequent removal west of said line. And that the Osage Nation reimburse the Cherokee Nation for all losses of Cherokee citizens west of ninety-six in consequence of the cession of said country to the Osages."

Be it further enacted, That improvements made and abandoned by the Osage Nation, or by any member of said tribe, east of ninety-six, upon Cherokee lands, are, in law and of right, the property of the Cherokee Nation.

Be it further enacted, That the delegation authorized by the national council to visit Washington during the coming session of the Congress of the United States be, and they are hereby, instructed to take such action as they shall deem expedient for the purpose of vindicating the Cherokee Nation against all responsibility or liability for any losses claimed to have been sustained by the Osage Nation, or any member thereof, in consequence of their removal from Cherokee lands lying east of the ninety-sixth meridian, to lands ceded to them by the Cherokees, lying west of said line.

Be it further enacted, That the national council is of the opinion that the amount of damage done by the Osage Nation in the destruction of timber and live-stock, east of ninety-six, far exceeds all losses alleged to have been sustained by the Osages, and that the Government of the United States ought in equity indemnify the Cherokee Nation for such losses.

November 30, 1874.

Concurred in, with the following amendment: That the words "and subject to the disposal of the same," in the second section, and the words

"and likewise indemnify the Osage Nation for losses sustained by them in consequence of the unlawful occupancy of Cherokee lands and subsequent removal therefrom," in the last section, be, and the same are hereby, stricken out.

December 1, 1874.

Approved, December 2, 1874.

WILL. P. ROSS.

AN ACT authorizing a committee to confer with the United States Indian Commissioners.

Whereas the United States Indian Commissioners having, by telegram, invited the principal chief of the Cherokee Nation to attend a consultation of said Commissioners in the city of Saint Louis, Mo., on the seventh day of December, 1874, and also having invited a conference with representatives from this nation, at Muskogee, Creek Nation, on the tenth instant (December): Therefore,

Be it enacted by the national council, That the principal chief be, and he is hereby, authorized to appoint ten prominent citizens of this nation, who, with himself, shall constitute a committee for the purpose of meeting and conferring with the United States Indian Commissioners, at Muskogee, Creek Nation, on the 10th instant, and that the said principal chief be further authorized, if practicable, to meet said Commissioners in Saint Louis on the 7th instant; and he is hereby authorized to draw from the treasury such sum as shall be necessary for defraying expenses, and report the same to the next regular session of the national council.

December 2, 1874.

Approved.

WILL P. ROSS.

Compact between the several tribes of Indians.

Whereas the removal of the Indian tribes from the homes of their fathers, east of the Mississippi, has there extinguished our ancient council-fires and changed our position in regard to each other; and,

Whereas by the solemnity of treaties we are assured by the government of the United States that the lands we now possess shall be the undisturbed home of ourselves and our posterity forever: Therefore,

We, the authorized representatives of the several nations; parties hereunto, assembled around the great council-fire kindled in the west, at Tablequah, in order to preserve the relations between our several communities, to secure to all their respective rights, and to promote the general welfare, do enter into the following compact:

SECTION 1. Peace and friendship shall forever be maintained between the nations parties to this compact, and between their respective citizens.

SEC. 2. Revenge shall not be cherished, nor retaliation practiced, for offenses committed by individuals.

SEC. 3. To provide for the improvement of our people in agriculture, manufactures, and other domestic arts, adapted to promote the comfort and happiness of our women and children, a fixed and permanent location on our lands is an indispensable condition. In order, therefore, to secure these important objects, to prevent any future removal, and to transmit to our posterity an unimpaired title to the lands guaranteed to our respective nations by the United States, we hereby solemnly pledge ourselves to each other that no nation, party to this contract shall, with-

out the consent of all the other parties, cede or in any manner alienate to the United States any part of their present territory.

SEC. 4. If a citizen of one nation commits willful murder or other crime within the limits of another nation, party hereto, he shall be subject to the same treatment as if he were a citizen of that nation. In cases of property stolen or taken by force or fraud, the property, if found, shall be restored to the owner; but, if not found, the convicted person shall pay the full value thereof.

SEC. 5. If any citizen of any nation, party to this compact, shall commit murder or other crime and flee from justice into the territory of another nation, party hereto, such criminal shall, on demand of the principal chief of the nation from which he fled (accompanied with reasonable proof of his guilt), be delivered up to the authorities of the nation having jurisdiction of the crime.

SEC. 6. We hereby further agree, that if any one of our respective citizens shall commit murder or other crime upon the person of any other citizen, in any place beyond the limits of our several territories, the person so offending shall be subject to the same treatment as if the offense had been committed within the limits of his own nation.

SEC. 7. Any citizen of one nation may be admitted to citizenship in any other nation, party hereto, by consent of the proper authorities of such nation.

SEC. 8. The use of ardent spirits being a fruitful source of crime and misfortune, we recommend its suppression within our respective limits, and agree that no citizen of one nation shall introduce it into the territory of any other nation, party to this compact.

Done in general council, around the *great council-fire*, at Tahlequah, Cherokee Nation, this the third day of July, 1843.

Representatives of the Cherokees.

Hair Conrad,	his x mark.	Tobacco Will,	his x mark.
Samuel Downing,	his x mark.	J. Vann.	
Turtle Fields,	his x mark.	Archibald Cambel,	his x mark.
Stop,	his x mark.	Old Field,	his x mark.
Thomas Foreman.		Thomas Woodward,	his x mark.
Michael Waters.		Dutch,	his x mark.
John Looney,	his x mark.	Charles Coodey.	
George Lowrey.			

Representatives of the Creeks.

Tus-ta-nug-gee Mathla,	his x mark.	Chilly McIntosh.	
In-ther-nis Harjo,	his x mark.	Oak-keen Harjo,	his x mark.
Ho-ler-ter Micco,	his x mark.	Ho-tul-ca Harjo.	
Ufalar Harjo,	his x mark.		

Representatives of the Osages.

Alexander Chouteau, <i>Osage interpreter.</i>	Gron-san-tah,	his x mark.
Shin-ka-wa-sah, or Belbazo,	Gra-tam-e-sah,	his x mark.
Black Dog,	his x mark.	

Be it known, that the national council of the Cherokee Nation, in annual council convened, have this day approved and confirmed the within articles of a compact, entered into the day and date therein named by the authorized representatives of the nations, parties thereto.

Done in national council at Tahlequah, Cherokee Nation, this second day of November, A. D. one thousand eight hundred and forty-three.

CHARLES COODEY,
President National Committee.
JAMES M. PAYNE,
Speaker National Committee.

Approved.

JNO. ROSS.

Articles of agreement with the Delawares, made this eighth day of April, A. D. 1867, between the Cherokee Nation, represented by William P. Ross, principal chief; Riley Keys and Jessie Busheyhead, delegates, duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake and John Sarcoxie, delegates, for and on behalf of said Delaware tribe, duly authorized, witnesseth:

Whereas, by the fifteenth article of a certain treaty between the United States and the Cherokee Nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country, east of the line of 96° of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee Nation, subject to the approval of the President of the United States; and

Whereas, by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country, south of Kansas, was provided for, and in the fourth article whereof an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and

Whereas, no such cession of land was made by the Cherokees to the United States, but in lieu thereof, terms were provided as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and

Whereas, a full and free conference has been held between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee Nation:

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres of land for each individual of the Delaware tribe who has been enrolled upon a certain register, made February 18, 1867, by the Delaware agent, and on file in the Office of Indian Affairs, being the list of the Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto; and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line

of 96⁰ not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements, according to the legal subdivisions when surveys are made (that is to say, 160 acres for each individual), shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation; nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the native citizens thereof: *Provided*, That nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the constitution and laws of said Cherokee Nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees from the Delaware funds, now held or hereafter received by the United States, a sum of money equal to one dollar per acre, for the whole amount of one hundred and sixty acres of land, for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for. And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares. It is agreed that he may transfer such United States bonds to the Cherokee Nation, at their market value at the date of such transfer.

And the said Delawares further agree that there shall be paid from their funds, now or hereafter to come into possession of the United States, a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee Nation.

And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and accurate census of the Cherokees residing in the Cherokee Nation shall be taken, under the laws of that nation, within four months, and properly certified copies thereof filed in the Office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

And, that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is \$678,000.

And the Delawares further agree that, in calculating the total amount of said national fund, there shall be added to the said sum of \$678,000 the sum of \$1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund \$1,678,000, and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund: *Provided*, That as the \$1,678,000 of funds now on hand, belonging to the Cherokees, is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the *pro rata* contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the *pro rata* contribution by the Delawares to said fund shall be in cash or United States

bonds, at their market value. All cash and all proceeds of stock, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under this agreement, shall be invested and applied in accordance with the 23d article of the treaty with the Cherokees of August 11, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe, registered as above provided, shall become members of the Cherokee Nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided. And the children hereafter born of such Delawares, so incorporated into the Cherokee Nation, shall in all respects be regarded as native Cherokees.

WM. P. ROSS,
Principal Chief.

RILEY KEYS,
Cherokee Delegation.

his
JOHN + CONNOR,
mark.
Principal Chief.

CHARLES JOURNEYCAKE,
ISAAC JOURNEYCAKE,

his
JOHN + SARCOXIE,
mark.
Delaware Delegation.

Executed and delivered in our presence, by the above-named delegates of the Cherokee and Delaware Nations, at the city of Washington, in the District of Columbia, the day and year above written.

JOHN G. PRATT.
WM. A. PHILLIPS.
EDWARD S. MENAGUS.

Ratified by the national committee June 15, 1867.

SMITH CHRISTIE,
President National Committee.
JNO. YOUNG,
Speaker of Council.

Resolution in furtherance of the treaty with the Delawares.

Resolved by the national council, That the principal chief be, and he is hereby, authorized to appoint some suitable person or persons to transcribe the Cherokee census-rolls and forward copies of them to the Secretary of the Interior at as early a day as it can be done; also, to call on the Secretary of the Interior for a copy of the Delaware census-roll.

Tahlequah, Cherokee Nation, June 17, 1867.
Approved.

WM. P. ROSS.

*Agreement between Shawnees and Cherokees, concluded June 7, 1869,
approved by the President June 9, 1869.*

Articles of agreement made and entered into at Washington, D. C., this seventh day of June, A. D. 1869, by and between H. D. Reese and William P. Adair, duly authorized delegates representing the Cherokee Nation of Indians, having been duly appointed by the national council of said Cherokees, parties of the first part, and Graham Rogers and Charles Tucker, duly authorized delegates representing the Shawnee tribe of Indians, parties of the second part, witnesseth:

Whereas it is provided by the fifteenth article of the treaty between the United States and the Cherokee Indians, concluded July 19, 1866, that the United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with certain provisions specified in said article; and

Whereas the Shawnee tribe of Indians are civilized and friendly with the Cherokee and adjacent tribes, and desire to settle within the Cherokee country on unoccupied lands east of 96°:

It is therefore agreed by the parties hereto that such settlement may be made upon the following terms and conditions, viz:

That the sum of five thousand dollars belonging to the Shawnee tribe of Indians and arising under the provisions of treaties between the United States and said Shawnee tribe of Indians, as follows, viz: for the permanent annuity for educational purposes, per fourth article treaty 3d August, 1795, and third article 10th May, 1854, one thousand dollars; for interest at five per centum on forty thousand dollars for educational purposes, per third article treaty 10th May, 1854, two thousand dollars; for permanent annuity in specie for educational purposes, per fourth article treaty 29th September, 1817, and third article 10th May, 1854, two thousand dollars, shall be paid annually to the Cherokee Nation of said Indians, and that the annuities and interest, as recited, and the investment or investments upon which the same are based, shall hereafter become and remain the annuities and interest and investment or investments of the Cherokee Nation of Indians; and that the sum of fifty thousand dollars shall be paid to the said Cherokees as soon as the same shall be received by the United States for the said Shawnees from the sale of lands in the State of Kansas known as the Absentee Shawnee Lands, in accordance with the resolution of Congress approved April 7, 1869, entitled "A resolution for the relief of settlers upon the Absentee Shawnee Lands in Kansas," and the provisions of the treaty between the United States and the Shawnee Indians, concluded May 10, 1854, and also that the said Shawnees shall abandon their tribal organization.

And it is further agreed by the parties hereto that in consideration of the said payments and acts agreed upon, as hereinbefore stated, that the said Cherokees will receive the said Shawnees, referring to those now in Kansas, and also to such as properly belong to said tribe who may be at present elsewhere, and including those known as the Absentee Shawnees, now residing in Indian Territory, into the country of the said Cherokees, upon unoccupied lands east of 96°, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms, in every respect, and with all the privileges and immunities of native citizens of said Cherokee Nation:

Provided, That all said Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names and permanently locate in the Cherokee, as herein provided, within two years from the date thereof, otherwise they shall forfeit all rights under this agreement.

In testimony whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and year first above written.

[SEAL.]
[SEAL.]

H. D. REESE,
WM. P. ADAIR,
Delegates representing the Cherokee Nation of Indians.

[SEAL.]
[SEAL.]

GRAHAM ROGERS,
CHARLES TUCKER,
Delegates representing the Shawnee Tribe of Indians.

Attest:

W. R. IRWIN.
H. E. MCKEE.
A. N. BLACKLIDGE.
JAS. B. ABBOTT.

IN THE SENATE OF THE UNITED STATES,
February 25, 1878.

On motion by Mr. VOORHEES,

Resolved by the Senate, That the Committee on Territories be, and the same is hereby, instructed to ascertain at its earliest convenience whether or not the railroad companies referred to by the acts of the Thirty-ninth Congress approved, respectively, July 25, 26, and 27, 1866, and entitled, respectively, "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River," "An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas," and "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," have issued bonds of any kind predicated upon the conditional land-grants of the lands of the Indians of the Indian Territory claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are and for what purpose.

Resolved further, That said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school funds of any of such tribes; and, if so, what legislation is necessary to prevent in future the diversion of such school funds from their legitimate purpose.

Resolved further, That said committee be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property, and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations.

Resolved further, That said committee, in the discharge of its duties

aforesaid, be authorized to send for persons and papers, to employ a stenographer, and, when necessary, to compel the attendance of witnesses in its investigation, and to report the result of said investigation to this body during the present session of Congress.

Attest:

GEO. C. GORHAM,
Secretary.

ARGUMENT OF WM. P. ROSS, OF CHEROKEE DELEGATION.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE ON TERRITORIES: I appear on the part of the Cherokee Nation. The diffidence inspired by the magnitude of my case is relieved only by an appreciation of the courtesy which accords me the privilege of a hearing, and the conviction that "he is thrice armed whose cause is just." If the relations between the United States and the Cherokee Nation are anomalous, they are such as have sprung from their intercourse, been strengthened by the lapse of almost a hundred years, and consecrated by repeated pledges of allegiance on the one hand and protection on the other. Reference to those relations will be had no further than may be deemed necessary for the proper presentation of the subjects embraced in the resolutions of the Senate. And as no correct conclusion can be reached in regard to them without a consideration of both the law and the facts in the premises, I shall state them concisely as possible, without special reference to the order in which they occur in the resolutions themselves. Then,

WHAT IS THE POLITICAL STATUS OF THE CHEROKEE NATION?

Fortunately, the answer to this question is not left open to fine-spun theories nor vague speculations. It is shown by the unbroken character of their intercourse with the whites from the discovery of the continent; defined by numerous treaties; enforced by appropriate legislation, and affirmed by the highest judicial tribunal known to the Constitution of the United States. About 1730 the King of Great Britain deemed the Cherokees of sufficient importance, in the contest going on between the rival powers of Europe for supremacy on this continent, to appoint a special commissioner to establish friendly relations with them in the person of Sir Alexander Cumming, who visited their towns on the Tennessee River, and returned, after accomplishing his mission, to England with a delegation of Cherokees, who were presented at court. After the treaty of peace in 1763 the superintendent of Indian affairs for Great Britain, in a speech delivered at Mobile, said to the Indians: "Whenever you shall be pleased to surrender any of your territories to His Majesty, it must be done for the future at a public meeting of your nation, when the governors of the provinces or the superintendent shall be present and obtain the consent of all your people. The boundaries of your hunting-grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with your people will be faithfully kept, so it is expected that you also will be careful strictly to observe them." The national character of the Cherokees and their right of self-government thus early recognized, has been continued and is acknowledged at the present time. All of the treaties between the United States and the Cherokee Nation, from 1785 to 1868, were negotiated and

concluded upon the recognition of those relations of the Cherokees; and it is a historical fact that President Washington insisted that the treaty of 1785 should receive the ratification of the Senate, in like manner with treaties concluded with foreign powers. And I venture to affirm here that the only way in which the existing provisions of these treaties can be lawfully abrogated or changed will be by the exercise of the same power and formalities between the parties to them, the United States and the Cherokee Nation. Not only have treaties recognized the Cherokee Nation as a political community, possessing a national character, and the right of self-government in all respects not qualified by the provisions of their treaties, but so have the legislative, the executive, and the judicial departments of your government. There is no adverse current in these respects. The stream of intercourse all flows in one direction. It is, however, not only a recognition of these two conditions; but it is a pledge, reiterated again and again, that they shall remain so forever, without the Cherokee Nation shall consent to a change. Indeed, the Cherokees were forced from their homes east of the Mississippi River because it was the policy of the government that they should remain so.

The treaty of 1828 recites the "*anxious desire* of the Government of the United States to secure the Cherokee Nation of Indians a permanent home, and which shall, under the most solemn guarantees of the United States, be and remain theirs forever—a home that shall never in all future time be embarrassed by having extended around it the lines or placed over it the jurisdiction of a State or Territory, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State." The treaty of 1833 annulled the sixth article of the treaty of 1828, which provided, that when they desired it, the United States might allot their lands and give them a plain set of laws suited to their condition—a prophetic forecast to remove even the shadow of a pretext for the very measures now sought to be forced upon them. By the fourth article of the treaty of 1835, the United States pledge themselves to "secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their own people or such persons as have connected themselves with them," not inconsistent with the Constitution of the United States and the acts of Congress regulating trade and intercourse with Indians. The treaty of 1846 continues these guarantees, as does that of 1866. The latter by its thirty-first article reaffirmed and declared to be in full force all provisions of treaties previously ratified and in force which were not inconsistent with that treaty.

Is there anything in the treaty of 1866 inconsistent with the right of the Cherokee Nation to continue to exist in its national capacity and govern itself? Nothing, absolutely nothing. The provision of that treaty authorizing the establishment of a general council for the Indian Territory is itself an explicit reaffirmation of these great and invaluable rights. That I do not incorrectly construe this clause of the treaty, I will quote the whole of the twelfth article, which is the only one relating to the general council:

"ART. 12TH. [Treaty of 1866, pp. 90-91, Rev. Ind. Treaties.] The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.

"First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

"Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank, as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the Superintendent of Indian Affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interests of said tribes shall require such special sessions.

"Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory; the arrest and extradition of criminals and offenders escaping from one tribe to another or into any community of freedmen; the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes or nations; and the common defense and safety of the nations of said Territory. All laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States. Nor shall said council legislate upon matters other than those above indicated: *Provided, however*, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

"Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

"Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

"Sixth. The members of said council shall be paid by the United

States the sum of \$4 per diem during the term actually in attendance on the sessions of said council, and at the rate of \$4 for every 20 miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council."

The form of government contemplated by the article just quoted was purely one of Indian representation. It partakes in no respect of the character of the governments established over New Mexico, Wyoming, or other Territories of the United States by enactment of Congress. It confers not, even by the remotest implication, any authority upon Congress to create any form whatever of civil government over the Cherokee Nation; nor can ingenuity extract from it the feeblest indication that it confers, or was designed to confer, upon Congress the exercise of such power. The same remarks may be applied to the proceedings of the general council during the brief period of its existence. There was not an act performed nor a measure proposed which was not designed to retain the Indian Territory as a home for the Indians, to subject it to Indian rule so far as consistent with relations established by treaties with the United States, and to perpetuate the right of soil and self-government of the several nations and tribes therein domiciled. To the extent that the Cherokee Nation has yielded her assent to the establishment of the general council, she will be found acting in good faith at all times. But in regard to that council, as in regard to any other question, she is obligated only by the stipulations of her own treaties. She maintains her own specifically-defined relations towards the government, and her rights can be in no way compromised by the treaties between the United States and other Indian Nations than by those between the United States and foreign powers. In assuming this position, it is not to be inferred that the provisions of the treaties of those tribes materially differ on the subject of the general council from those of the Cherokee treaty, but because the position taken is so manifestly correct and just, that no one, I apprehend, will be found willing to deny it. While, therefore, the sympathies of race, contiguity of location, association, friendship, and of a common interest and destiny, unite her with hooks of steel to all the tribes of the Indian Territory, questions affecting her rights can be fairly determined only by her own lawfully-defined relations with the government.

UNITED STATES COURTS.

And the same is true of any authority conferred upon Congress to create courts of the United States in the Indian Territory. Their jurisdiction, in its application to the Cherokees, must be limited by the terms of the treaty. The thirteenth article of the treaty of 1866 reads thus:

"The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation by nativity or adoption shall be the only parties, or when the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."

The exception here referred to may be found in the — article, which provides certain remedies between inhabitants of the Canadian and other districts of the nation, and in no way affects the general provision

of the article quoted. Having given its consent, the Cherokee nation cannot and does not object to the creation of these courts in accordance with the terms of the treaty. But it must be evident to every member of the committee that their jurisdiction cannot be allowed to interfere with the local courts of the nation. On the contrary, these are to be fully protected in the exercise of jurisdiction, civil and criminal, over native and adopted members of the nation, in the character of cases described. You cannot lawfully abolish the courts of the nation and subject either native or adopted members to the unlimited jurisdiction of courts of the United States. My conclusion of this part of my remarks is, that the Cherokee Nation is guaranteed in self-government, and that Congress has no authority to establish any form of civil government that will interfere with, impair, or supersede that right without her voluntary consent.

TITLE TO LANDS.

I next desire to invite the attention of the honorable committee to the title by which the Cherokee Nation occupies and holds her lands.

I am aware that the resolution of the Senate which instructs the committee on this subject involves strictly only a legal proposition. But the latitude given to the investigation will excuse its consideration upon broader grounds. It is my purpose to show that her title, whether her lands are held in common or in severalty, is not to be affected by the conditional grants of land made to railroad corporations by Congress, to which her consent was in no way sought or given. And, further, that it is left to her own election whether her people shall continue to hold them in common or divide them in severalty. So far as these conditional grants can affect their rights of ownership they are unimportant; so far only as they hang over the heads of the Indians as a menace, as a boundless corruption fund, they are gigantic. The Cherokees are nowhere mentioned as nomads. They had their provinces and villages in the days of De Soto, and held them by their prowess against all invaders, until they placed themselves under the protection of Great Britain, and then under the United States. By the fiction of power, their title was denominated one of occupancy. They claimed it was derived from the Great Spirit. To-day they hold one recognized as more valid in law, because derived from the United States. Omitting for the present, as superfluous, reference to the lands they held and still hold east of the Mississippi River, allow me to mention briefly the character of the guarantees by which they hold those in the Indian Territory.

State interests fixed the policy pursued toward the Indians within their limits. They wished to be rid of a population differing so widely from their own. The presence of the Indians in the enjoyment of any rights was deemed incompatible with the development of the soil and the progress of the whites. The only relief was to remove them by persuasion or force, or both. Homes had therefore to be obtained for them elsewhere, and pledges of protection in those homes to be given, to reconcile them to the relinquishment of their native streams and mountains. And they were given certainly in good faith, but under that state of sentiment, so fruitful of sorrow and misfortune to the Indians, which so often causes them to be regarded as temporary expedients by succeeding generations, who make other equally solemn stipulations to be equally disregarded by their successors. The injurious and corrupting influence of such a policy is so palpable, it is to be desired that this honorable committee will firmly withhold from it its approval and example. But what are the guarantees which attach to the lands of the Cherokees?

Their origin dates back seventy years, to the administration of President Jefferson, when a portion of the Cherokees went west of the Mississippi, under his authority, to find a location that would suit them on lands which belonged to the United States, and for which they were to exchange a portion of their lands east of that river. The location chosen was the country on the Arkansas and White Rivers, in the State of Arkansas, and it was confirmed by the treaty of 1817-1819. In connection with other matters not material to be stated for the purpose now in mind, the Cherokees who occupied those lands were denominated the "Western Cherokees," and the government had been paid for them by receiving lands from the Eastern Cherokees. The treaty of 1828 was between the United States and the Cherokee Nation west, and I have already quoted from it as bearing upon the question of government. It was made partly, as set forth, "because their location in Arkansas was unfavorable to their present repose and tending to their future degradation and misery"; and because it was the "*anxious desire of the Government of the United States* to secure to the Cherokee Nation of Indians a permanent home, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever." They were then on lands bought from the United States, to which the Indian title had been extinguished, and these they exchanged for others of the same character. This treaty is one of importance to the Cherokee Nation. Its first article, singularly enough for an Indian treaty, established the western boundary of the State of Arkansas, and that with the consent and co-operation of the Delegate in Congress from the Territory.

By the second article "the United States agree to possess the Cherokees and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land, to be bounded as" then described: "In addition to the seven millions of acres thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the described limits, and as far west as the sovereignty of the United States and the right of soil extend."

By the seventh article, in consideration of the stipulations and provisions of the preceding article, the Cherokees surrendered to the United States all the lands to which they were entitled in Arkansas, and which were secured to them by the treaty of 8th January, 1817, and the convention of the 27th February, 1819.

The eighth article, in making provision for the removal of Eastern Cherokees, again recites: "The Cherokee Nation west of the Mississippi having by this agreement freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guarantee of the United States as contained in this agreement, a large extent of unembarrassed country," &c.

Before proceeding further with reference to treaty provisions which bear upon the Cherokee title to lands, I desire to mention the legislation of Congress which was intermediate between the treaty of 1828 and 1833.

I refer to the act of May 28, 1830, the provisions of which were in accordance with the recommendations of Presidents Jefferson, Monroe, and Jackson, and the very spirit and intent of which was to secure the Indians in their lands and in governments of their own choice, subject to no other control, as President Jackson declared, from the United States than such as may be necessary to preserve peace on the frontier and between the

several tribes. I repeat here only the language of the third section of that act:

"That in the making of any such exchange or exchanges of lands it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them and to their heirs and successors the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided, always,* That such lands shall revert to the United States if the Indians become extinct or abandon the same."

The guarantees which Congress authorized the President to give were those already given the Cherokees in 1828, and repeated afterward in the treaty of 1833, which was supplemental to that of 1828, modified in part the boundaries of the Cherokee country, as therein defined, and provided that letters patent should be issued for the same. The treaty of 1835 with the Eastern Cherokees repeats the language of the treaty of 1833, and stipulated by its third article "that the lands ceded by that treaty, including the outlet and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States according to the provisions of the act of May 28, 1830." By the fourth article of the treaty of 1835, "the United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory." By the second article of the treaty of 1835, the United States ceded to the Cherokee Nation 800,000 acres of land, commonly designated as the "neutral land," for the sum of \$500,000, by patent, in *fee simple*, and which was included in the patent with their other lands. To this tract I will further refer after quoting the patent. The patent is in these words:

Letters patent to Cherokee domain.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee Nation of Indians, of the 6th of May, one thousand eight hundred and twenty-eight, the 14th of February, one thousand eight hundred and thirty-three, and the 29th of December, one thousand eight hundred and thirty-five, it was stipulated and agreed, on the part of the United States, that in consideration of the premises mentioned in the said treaties, respectively, the United States shall guarantee, secure, and convey, by patent, to the said Cherokee Nation, certain tracts of land, the descriptions of which tracts, and the terms and conditions on which they were to be conveyed are set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the words following, that is to say: "Article 2d. Whereas, by the treaty of May 6th, one thousand eight hundred and twenty-eight, and the supplementary treaty thereto of February 14th, one thousand eight hundred and thirty-three, with the Cherokees west of the Mississippi, the United States guaranteed and secured to be conveyed by patent to the Cherokee Nation of Indians the following tract of country: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where

the territorial line crosses the Arkansas River; thence running from said north point south on the said territorial line where the said territorial line crosses Verdigris River; thence down said Verdigris River to the Arkansas; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand River at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian; thence along the said four-mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to a point on the Arkansas where the eastern Choctaw boundary strikes said river, and running thence with the western line of Arkansas Territory, as now defined, to the southwest corner of Missouri; thence along the Western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to the Grand River; thence up said Grand River as far as the south line of the Osage Reservation, extended if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend: *Provided, however,* That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees, and letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore hereby covenant and agree to convey to the said Indians and their descendants, by patents in fee-simple, the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof, and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a *pro rata* reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

"Article 3d. The United States also agree that the lands above ceded by the treaty of February 14, one thousand eight hundred and thirty-three, including the outlet, and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May 28, one thousand eight hundred and thirty. It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation.

The United States shall always have the right to make and establish such post and military roads and posts in any part of the Cherokee country as they may deem proper for the interest and protection of the same, and the free use of as much land, timber, fuel, and materials of all kinds for the construction and support of the same as may be necessary: *Provided*, That if the private rights of individuals are interfered with, a just compensation therefor shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows:

Beginning at a mound of rocks four feet square at base, and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western Territorial line of Arkansas Territory, twenty-five miles north of Arkansas River; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Verdigris River, from which a hackberry fifteen inches in diameter bears south sixty-one degrees thirty-one minutes east forty-three links, marked C. H. L., and a cottonwood, forty-two inches diameter, bears south twenty-one degrees fifteen minutes east fifty links, marked C. R. K. L.; thence down the Verdigris River on the northeast bank, with its meanders, to the junction of Verdigris and Arkansas Rivers; thence from the lower bank of Verdigris River, on the north bank of Arkansas River, south forty-four degrees thirteen minutes east, fifty-seven chains, to a post on the south bank of the Arkansas River opposite the eastern bank of Neosho or Grand River at its junction with the Arkansas, from which a red oak thirty-six inches diameter bears south seventy-five degrees forty-five minutes west twenty-four links, and a hickory twenty-four inches diameter bears south eighty-nine degrees east four links; thence south fifty-three degrees west one mile, to a post from which a rock bears north fifty-three degrees east fifty links, and a rock bears south eighteen degrees eighteen minutes west, fifty links; thence south eighteen degrees eighteen minutes west thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the North Fork of Canadian River, at its junction with Canadian River, from which a cottonwood twenty-four inches diameter bears north eighteen degrees east forty links, and a cottonwood fifteen inches diameter bears south nine degrees east fourteen links; thence down the Canadian River on its north bank to its junction with Arkansas River; thence down the main channel of Arkansas River to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas River, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the southwest corner of the State of Missouri; thence north, on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links to the north bank of Cowskin or Seneca River, at a mound six feet square at base, and five feet high, in which is a post marked on the south side cor. N. ch. Ld.; thence west on the southern boundary of the lands of the Senecas eleven miles and forty-eight chains, to a post on the east bank of Neosho River, from which a maple eighteen inches in diameter bears south thirty-one degrees east seventy-two links; thence up Neosho River, with its meanders, on the east bank, to the southern boundary of

the Osage lands, thirty-six chains and fifty links west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho River; thence west, on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains and sixty-six links, to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long, four inches diameter; thence south, along the line of the territory of the United States and of Mexico, sixty miles and twelve chains, to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east, along the northern boundary of the Creek lands, two hundred and seventy-three miles fifty-five chains and sixty-six links, to the beginning; containing within the survey thirteen millions five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen-hundredths of an acre.

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows:

Beginning at southeast corner of Osage lands, described by a rock from which a red oak, twenty inches diameter, bears south twenty-seven degrees east seventy-six links, and a burr oak, thirty inches diameter, bears south fifty-nine degrees west one chain; and another burr oak, thirty inches diameter bears north eight degrees west one chain and thirty-seven links; and another burr oak, forty inches diameter, bears north thirty degrees west one chain and eighty-one links, and running east twenty-five miles, to a rock on the western line of the State of Missouri, from which a post oak, ten inches diameter, bears north forty-eight degrees thirty minutes east four chains; and a post oak, twelve inches diameter, bears south sixty-two degrees east five chains; thence north, with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base, and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at the base and five feet high; thence south, along the eastern boundary of the Osage lands, fifty miles to the beginning; containing eight hundred thousand acres.

Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee Nation the two tracts of land so surveyed and hereinbefore described, containing in the whole 13,374,135.14 acres, to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, to the said Cherokee Nation forever; subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain, on the western prairie referred to in the second article of the treaty of the twenty-eighth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject, also, to all the other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the conditions provided by the act of Congress of the twenty-eighth of May, one thousand eight hundred and thirty, and which condition is that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-third.

[s. s.]

M. VAN BUREN.

By the President :

H. M. GARLAND,

Recorder of the General Land Office.

GENERAL LAND OFFICE.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent from the United States to the Cherokee Nation of Indians is a true and literal exemplification of said patent as recorded in vol. 9, pages 34, 35, 36, 37, 38, 39, 40, and 41, in Record of Donation Patents.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

J. M. EDMUNDS,

Commissioner of the General Land Office.

By the treaty of 1868, so much of the 800,000 acres of the "neutral land" referred to above as were not disposed of under the treaty of 1866 were sold by the Cherokee Nation to James F. Joy, of Detroit, Mich. A suit at law grew out of this sale in the case of Holden *vs.* Joy, which was decided at the December term of 1871 (17 Wallace, 211) by the Supreme Court of the United States. As the opinion of the court bore directly on both the political character of the Cherokee Nation and the subject of her title to her lands, I have to beg the indulgence of the committee in allowing me to read again from that opinion, as I have done on other occasions when dwelling upon the same questions :

"Indeed treaties have been made by the United States with the Indian tribes ever since the Union was formed, of which numerous examples are to be found in the seventh volume of the public statutes. (Cherokee Nation *vs.* Georgia, 5 Pet., 17; Worcester *vs.* Georgia, 6 Pet., 543.)

"Indian tribes are states in a certain sense, though not foreign states, or States of the United States within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. They are not states within the meaning of any one of these clauses of the Constitution; and yet, in a certain domestic sense and for certain municipal purposes they are states, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community.

"Laws have been enacted by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative

departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts. (*Doe vs. Braden*, 16 How., 635; *Fellows vs. Blacksmith*, 19 How., 372; *Garcia vs. Lee*, 12 Pet., 519.)

"Express power is given to the President, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and inasmuch as the power is given in general terms, without any description of the objects intended to be embraced within its scope, it must be assumed that the framers of the Constitution intended that it should extend to all those objects which, in the intercourse of nations, had usually been regarded as the proper subjects of negotiation and treaty, if not inconsistent with the nature of our government and the relation between the States and the United States. (*Holmes vs. Jennison et al.*, 14 Pet., 569; 1 Kent's Com., 166; 2 Story on Cons., sec. 1508; 7 Hamilton's Works, 501; Duer's Jurisp., 229.)

"Beyond doubt the Cherokees were the owners and occupants of the territory where they resided before the first approach of civilized man to the western continent, deriving their title, as they claimed, from the Great Spirit, to whom the whole earth belongs, and they were unquestionably the sole and exclusive masters of the territory, and claimed the right to govern themselves by their own laws, usages, and customs.

"Throughout, the Indians, as tribes or nations, have been considered as distinct, independent communities, retaining their original natural rights as the undisputed possessors of the soil, from time immemorial, subject to the conditions imposed by the discoverers of the continent, which excluded them from intercourse with any other government than that of the first discoverer of the particular section claimed. They could sell to the government of the discoverer, but they could not sell to any other governments or their subjects, as the government of the discoverer acquired, by virtue of their discovery, the exclusive pre-emption right to purchase and the right to exclude the subjects of all other governments, and even their own, from acquiring title to the lands.

"Enough has already been remarked to show that the lands conveyed to the United States by the treaty were held by the Cherokees under their original title, acquired by immemorial possession, commencing ages before the New World was known to civilized man. Unmistakably their title was absolute, subject only to the pre-emption right of purchase acquired by the United States as the successors of Great Britain, and the right also on their part, as such successors of the discoverer, to prohibit the sale of the lands to any other governments or their subjects, and to exclude all other governments from any interference in their affairs. (*Mitchel et al. vs. United States*, 9 Pet., 748.)

"Evidently, therefore, the Cherokees were competent to make the sale to the United States, and to purchase the lands agreed to be conveyed to them by the second article of the treaty. Both parties concede that the title of the United States to the tract known as the Cherokee neutral lands was perfect and complete, and that the tract includes the land in controversy.

"Title to that tract was acquired by the United States as a part of the Louisiana purchase from the French Republic. By the treaty between the United States and the French Republic of April 30, 1803, the chief executive officer of that republic ceded the said territory to the United States, with all its rights and appurtenances, forever. (8 Stat. at Large, 200.)

"When the President took possession of the territory the absolute fee-simple title and right of sovereignty and jurisdiction became vested in

the United States as the successor of the original discoverer, subject only to the Indian title and right of occupancy as universally acknowledged by all the departments of our government throughout our history. All agree that this land then, and for many years thereafter, was occupied by the Osage Indians. On the 2d of June, 1825, the Osage tribes, by the treaty of that date, ceded to the United States all their right, title, interest, and claims to the lands lying * * * west of the State of Missouri, with such reservations and for such considerations as are therein specified, which, it is conceded, extinguished forever the title of the Osage Indians to the neutral lands. (7 Stat. at Large, 240.)

"Prior to the treaty of the 8th of July, 1817, the Cherokees resided east of the river Mississippi. Pursuant to that treaty they were divided into two parties, one electing to remain east of the Mississippi and the other electing to emigrate and settle west of it, and it appears that the latter made choice of the country on the Arkansas and White Rivers, and that they settled there upon the lands of the United States described in the treaty. (7 Stat. at Large, 157.)

"Possessed as the United States were of the fee-simple title to the neutral lands, discharged of the right of occupancy by the Osage Indians, it was clearly competent for the proper authorities of the United States to convey the same to the Cherokee Nation. Subsequent acts of the United States show that the stipulations, covenants, and agreements of the treaty in question were regarded by all the departments of the government as creating binding obligations, as fully appears from the fact that they all concurred in carrying the provisions into full effect. (*Minis vs. United States*, 15 Pet., 448; *Porterfield vs. Clark*, 2 How., 76.)

"Appropriations were made for surveys, and surveys were ordered and plats were made, and on the 1st of December, 1838, a patent for the land promised was issued by the President, in full execution of the second and third articles of the treaty. Among other things it is recited in the patent that it is issued in execution of the agreements and stipulations contained in the said several treaties, and that the United States do give and grant unto the Cherokee Nation the two described tracts of land, as surveyed, containing the whole quantity therein mentioned, to have and to hold the same, together with all the rights, privileges, and appurtenances thereto belonging, to the said Cherokee Nation forever, subject to certain conditions therein specified, of which the last one is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the premises.

"Objection is made by the appellant that the treaty was inoperative to convey the neutral lands to the Cherokee Nation, which may well be admitted, as none of its provisions purport, *proprio vigore*, to make any such conveyance. Nothing of the kind is pretended, but the stipulation of the second article of the treaty is that the United States covenant and agree to convey to the said Indians and their descendants, by patent in fee-simple, the described additional tract, meaning the tract known as the neutral lands; and the third article of the treaty stipulates that the lands ceded by the treaty, as well as those ceded by a prior treaty, shall all be included in one patent, to be executed to the Cherokee Nation of Indians by the President, according to the provisions of the before-mentioned act of Congress. (*Gaines vs. Nicholson*, 9 How., 356; *Insurance Company vs. Canter*, 1 Pet., 542.)

"Suppose that is so, still it is insisted that the President and Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States with-

out the consent of Congress, which cannot be admitted. (*United States vs. Brooks*, 10 How., 442; *Meigs vs. McClung*, 9 Cran., 11.)

"On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political. (*Wilson vs. Wall*, 6 Wall., 89; *Insurance Co. vs. Canter*, 1 Pet., 542; *Doe vs. Wilson*, 23 How., 461; *Mitchel et al. vs. United States*, 9 Pet., 949; *United States vs. Brooks et al.*, 10 How., 460; the *Kansas Indians*, 5 Wall., 737; 2 Story on Const., sec. 1508; *Forster et al. vs. Neilson*, 2 Pet., 254; *Crews et al. vs. Burcham*, 1 Black, 356; *Worcester vs. Georgia*, 6 Pet., 562; *Blair vs. Pathkiller*, 2 Yerger, 439; *Harris vs. Burdett*, 4 Blackf., 369.)

"Much reason exists, in view of those authorities and others which might be referred to, for holding that the objection of the appellant is not well founded, but it is not necessary to decide the question in this case, as the treaty in question has been carried into effect and its provisions have been repeatedly recognized by Congress as valid. (*Insurance Co. vs. Canter*, 1 Pet., 511; *Lawrence's Wheat*, 48.)

"Congress, on the 2d of July, 1836, appropriated four million five hundred thousand dollars for the amount stipulated to be paid for the lands ceded by the Cherokees in the first article of the treaty, deducting the cost of the land to be conveyed to them west of the Mississippi under the second article of the same treaty, which is the precise amount stipulated to be paid for the concession, deducting the considerations which the Indians agreed to allow for the neutral lands. Appropriations were also made by that act to fulfill and execute the stipulations, covenants, and agreements contained in the fourth, eleventh, seventeenth, and eighteenth articles of the treaty, and for the removal of the Cherokees, and for surveying the lands set apart by treaty stipulations for the Cherokee Indians west of the Mississippi River. (5 Stat. at Large, 73.) * * *

"Two objections are made to the title of the appellee as affected by that treaty, in addition to those urged to show that the prior treaty between the same parties was inoperative and invalid. It is contended by the appellant that the Cherokee possessory right to the neutral lands was extinguished by the seventeenth article of the treaty, which undoubtedly is correct, but the conclusion which he attempts to deduce from that fact cannot be sustained, that the Cherokee Nation abandoned the lands within the meaning of the last condition inserted in the patent by which they acquired the same for the United States.

"Strong doubts are entertained whether that condition in the patent is valid, as it was not authorized by the treaty under which it was issued. By the treaty the United States covenanted and agreed to convey the lands in fee-simple title, and it may well be held that if that condition reduces the estate conveyed to less than a fee, it is void; but it is not necessary to decide that point, as it is clear that if it is valid, it is a condition subsequent, which no one but the grantor in this case can set up under any circumstances." (4 Kent Com., 127-130; *Cooper vs. Roberts*, 18 How., 181; *Keneeth vs. Plummer*, 28 Mo., 146.)

As bearing further upon this question of title, your attention is also invited to a clause in the 16th article of the treaty of 1866. The Cherokees alienated none of their lands within the Indian Territory, so as to become what are commonly denominated "public lands of the United States," by that treaty. They simply agreed that the United States might settle friendly Indians upon that portion of them named in the

16th article, upon the explicit stipulation that they should be conveyed to the Indians in *fee-simple*, to be held in common or in severalty, as the United States may decide. It is left to the discretion of the United States to say whether the Osages, the Kaws, the Pawnees, and other Indians located on these Cherokee lands shall hold them in common or in severalty—but not as to the character of their title; it must be conveyed to them in *fee-simple*. And why? Because the Cherokee Nation regarded that as the character of her own title, and she was willing to part with her lands for the settlement of Indians only within the Indian Territory whose tenure should be equally valid with her own, and for the evident purpose of retaining them as Indian lands. Lastly, as bearing directly upon these and other provisions of not only the Cherokee treaties from which I have been quoting, but upon all other Indian treaties, I desire to repeat the *proviso* to the act of March 3, 1871, which prohibited the negotiation of further Indian treaties. It is in these words: “*Provided*, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any Indian tribe.” And that is the character of the twenty-one treaties made with the Cherokee Nation from 1785, under the Confederation, to 1868, under the Constitution.

ALLOTMENT OF LANDS.

In regard to the allotment of the lands of the Cherokee Nation, that is a question disposed of by the treaty of 1866, and is equally removed from the authority and interference of Congress as their title itself. On this subject the language of the 20th article of the treaty 1866 is in these words:

“Whenever the Cherokee National Council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them at the expense of the United States.”

The Cherokee National Council, the legislature of the Cherokee Nation, consisting of the Senate and Council, and composed of the representatives of the Cherokee people, possessing the qualifications required by their constitution and laws, is the authority, the only authority, invested with power to act upon the subject of allotment. Nothing can be plainer than that the whole question is removed from Congress. Before applying these facts to the particular inquiry intrusted to this committee in respect to the legal effects of allotment upon the conditional grants of lands made to the railroad corporations which have entered the Cherokee country with their lines of road, I desire to present the relations existing between

THE CHEROKEE NATION AND RAILROADS.

In order that there may be no misapprehension on this head, I will again speak from the record.

Here it is in the words of article 11, treaty of 1866 (page 89, Rev. Indian Treaties):

“The Cherokee Nation hereby grant a right of way not exceeding two hundred feet wide, except at stations, switches, water-stations, or crossing of rivers, where more may be indispensable to the full enjoyment of the franchise herein granted, and then only two hundred additional feet shall be taken, and only for such length as may be absolutely

necessary, through all their lands, to any company or corporation which shall be duly authorized by Congress to construct a railroad from any point north to any point south, and from any point east to any point west of, and which may pass through, the Cherokee Nation. Said company or corporation, and their employes and laborers, while constructing and repairing the same, and in operating said road or roads, including all necessary agents on the line at stations, switches, water-tanks, and all others necessary to the successful operation of a railroad, shall be protected in the discharge of their duties, and at all times subject to the Indian intercourse laws now or which may hereafter be enacted and be in force in the Cherokee Nation."

The attention of the honorable committee is invited to these observations, in passing on the provisions of this article, the only one which in any way connects the Cherokees with the subject of railroads:

1. The Cherokee Nation has granted simply the *right of way*, not of title to land, to only two roads—one from north to south, the other from east to west across her domain.

2. They grant only such privileges as may be necessary for operating these roads.

3. The employes of the roads are to be subject at all times to the laws of the United States regulating "intercourse" with the Indians.

There is no grant of lands to these corporations; no authority for either of the roads to enter and establish a terminus within the country; no other laws or form of government authorized or contemplated for the protection of the roads and their employes than laws regulating intercourse with the Indians, and which have a distinctive and well-defined character among the laws of the United States.

FUNDS.

The 23d article of the treaty of 1866 respecting the funds of the Cherokee Nation is in these words:

"All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States as hereinbefore provided for, shall be invested in United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee Nation, and shall be applied to the following purposes, to wit: Thirty-five per cent. shall be applied for the support of the common schools of the nation and educational purposes, fifteen per cent, for the orphan fund, and fifty per cent. for general purposes, including reasonable salaries of district officers."

It is respectfully submitted that this stipulation was evidently designed to secure and does secure these objects: the investment of the funds of the nation in the safe and productive stocks of the United States, instead of allowing it to be done in the unsafe and non-paying stocks of individual States as had been the case, and the full control of all her funds by the Cherokee Nation. The agreement is that their funds shall be invested in United States registered stocks, and that the interest on all such funds shall be paid semi-annually on the order of the Cherokee Nation. There is no qualification, no limitation. Any clause in any previous treaty in conflict with the agreement must yield. This is the rule of construction everywhere in regard to statutes. And surely where the parties to both treaties are the same, the later agreement must prevail.

The inquiry under this head has been confined to the school funds of

the Cherokees. The resolution applies only to the use of school funds in the support of delegations; the investigation was allowed a much wider range. While we have shown that the treaty requires the payment of all funds as they become due to the Cherokee Nation, the officials report of the treasurer of the Cherokee Nation show that there has been no application of the school funds to the purposes specified in the resolution of the Senate and none to any other purpose in such manner as to constitute a misapplication of these funds. More than half the annual income of the nation from its funds held in trust by the Secretary of the Interior, is applied to educational purposes. By the operations of the treaty of 1866 that income has been largely increased within ten years. Had the school funds borne a reasonable share of the expense incurred in effecting that increase, it should not have been reasonably alleged to constitute a misapplication of them. But such has not been the case, the national fund having borne the burden itself of defending and advancing all the rights and interests of the Cherokee Nation. And the condition of the educational interests of the Cherokee people may justly challenge the sympathy and encouragement of every heart alive to the improvement of their children and youth, and hopeful of the elevation and perpetuation of their race.

I do not claim perfection or exemption from error for the authorities of the Cherokee Nation in their system of education and the management of their schools any more than on other heads in the administration of their affairs. Mistakes may have been made and errors may exist, but statistics show that but very few States of this Union are expending according to population more of their funds and educating more of their children than the Cherokees. Having been the president of their board of education during the last year, I desire to confirm the correctness of the report of John L. Adair, secretary, now on file before this committee, in regard to the schools of the nation, to bear my testimony to the character and qualifications generally of the teachers employed, both white and native, and hereto bid them God-speed in the noble work in which they are employed, whether it be in the log-cabin by the side of a clear stream among the hills, or in a clump of trees looking out upon the prairies, or in the more substantial edifices appropriated to our orphan and high schools. The ruthless hand of man may destroy their work, but never the impress of their influence and spirit. They are the great instruments of civilization, the trusty helpmates of humanity, the quiet workers working out the solution of the Indian problem.

An aggregate attendance of more than 2,800 children last year in their orphan asylum, male high school, female high school, and seventy-eight primary schools, indicates a condition of education among them of which they are not ashamed.

FREEDMEN.

Although not specifically enumerated in the resolutions of the Senate, the condition of freedmen in the Cherokee country formed a part of the investigation of the subcommittee on their visit in November to the Indian Territory. In order to place this subject upon its proper foundation, it is necessary to refer once more to the treaty of 1866. Here is the language of its 9th article:

"The Cherokee Nation having voluntarily, in February, eighteen hundred and sixty-three, by an act of their National Council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the

punishment of crime, whereof the party shall have been duly convicted in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion and are now residents therein, or who may return within six months, and their descendants, shall have all the right of native Cherokees: *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated."

The stipulations respecting freedmen in the Cherokee Nation have, in the main, been carried into effect. Not less than one thousand and seven hundred of them have been recognized as citizens and are treated as such. They cultivate all the land they desire, locate where they please, and are generally orderly, contented, and prosperous. Seven primary schools, with eight teachers, established by the nation and supported from the common funds for their special benefit, are in operation. The directors of these schools are all colored men. One of the teachers is also of the same race. He was subjected at the same time to the examination imposed on other applicants for schools, and stands in all respects as other teachers of the same grade. 'I admit their children have not been received into the orphan and high schools, and that there are those who have not participated in the benefits of the common schools. But such is the case with many native Cherokees in regard to the orphan and primary schools. It is impossible to locate a school at every man's door. I offer no excuse for delay in according every right that may be lawfully claimed by every colored citizen in the nation, and am willing and desirous that they shall have them to the fullest extent. But while I believe that there are some of this class of persons in the country whose rights have not been determined as properly as they should have been, it is equally due to truth to state that complaints under this head come largely from those who are barred by the limitation prescribed by the treaty of 1866.

Whatever may be my sympathies in their case, the question involved, in the first place, is one of law, and in the second place, one of economy, in the admission of several hundred persons to equal rights and participation in the lands, funds, and franchises of the nation. The letter of William H. Leeds, Commissioner of the Indian Bureau (page 523), will show the views of the department in regard to the status of those colored persons in the nation who fall within the limitation of the treaty, while the statement of John F. Lyons, attorney on behalf of the nation before the commission to settle questions of Cherokee citizenship, on pages 592-596 of your printed testimony, show the proceedings of the commission in these cases, and the provisions of the act creating it. The commission has been in session several months, and is still under authority to do justice to these colored claimants and all others to citizenship in the nation. It is a subject which legitimately belongs to it, and which a reasonable regard for their own rights and interests requires the Cherokees to retain and exercise with discretion as well as justice. The belief that there is value attaching to citizenship has brought to the surface an unknown quantity of claimants to Indian blood, and a few of whom it is believed are ready to resort to unfair means to gain their end.

The pertinency of this and other quotations made from the treaties between the United States and the Cherokee Nation, constituting as

they do a part of the "supreme law of the land," will be evident in their application to the subjects of inquiry embraced in the resolutions of Mr. Voorhees, and to which my closing remarks will be directed.

RAILROAD BONDS.

The first of the resolutions of Mr. Voorhees instructs the committee to ascertain whether the railroad companies, therein referred to, have issued bonds of any kind, predicated upon the conditional land-grants of the lands of the Indians of the Indian territory, claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are and for what purpose. The evidence taken by the committee establishes the fact that bonds have been issued by the two companies who have railroads in the Cherokee Nation—the Atlantic and Pacific road, incorporated under "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and the Missouri, Kansas, and Texas Railway, successor to the Kansas and Neosho Valley Railroad, and the southern branch of the Union Pacific Railway. By the former company, as will be seen from the testimony of James Baker, esq., attorney for the road bonds were issued in 1871 to the amount of \$1,200,000 on the road, and \$500,000 upon land upon the side of the road, making the sum of \$1,700,000, and which were sold to raise funds with which to build the road in the Indian Territory, which is thirty-six or thirty-seven miles in length, but where they are does not appear, further than that they seem to be in various hands.

It further appears, from the statement of the same gentleman, that his road has failed to comply with the requirements of its charter in the time allowed for its construction, and that the "Franklin bill" to organize the Territory of Oklahoma contained a proposition which he proposed to have incorporated in the "Craven's bill," of the same general character as the other, offering to relinquish their conditional land grants in case the Indian Territory shall be opened to settlement. The issue of bonds and the connection of that company with bills to organize a Territorial form of government by Congress over the Indian Territory are thus established, and show one source of the agitation of this question before Congress. The testimony of Mr. G. D. L. Huilier, secretary of the bondholders, establishes the fact that \$14,600,000 of bonds (first mortgage), worth forty-two or forty-three cents on the dollar, were issued by the Missouri, Kansas and Texas Railway on their road from Sedalia, Missouri, to Denison, Texas, a distance of between 500 and 600 miles, and 250 miles of which are in the Indian Territory, extending over the lands of the Cherokees, the Creeks, the Choctaws, and the Chickasaws. These bonds are held in Amsterdam, London, Paris, and New York. The attorney of their holders has been active in parts of this investigation, pushing Territorial schemes upon the attention of Congress, and making complaints of the expenditure of their own money by the tribes of the Indian Territory in resisting these schemes of aggression and spoliation.

In view of these proven facts, how hollow and hypocritical are the outpourings from such sources of Indian rings, Indian expenditures, Indian intimidation, and Indian corruption will be shown by reference to statements about the securities of the *Missouri, Kansas and Texas Railway*, which do not appear in the evidence, but are germane to the investigation.

STOCK AND BONDS OUTSTANDING.

Stock	\$21,405,000
First mortgage, gold, sinking fund on road and land	2,433,000
First mortgage, gold (Tebo and Neosho)	349,000
Consolidated mortgage, 7 per cent., gold	14,752,000
Second mortgage income (for \$10,000,000) issued	6,025,500
Hannibal and Central Missouri, first mortgage	800,000 00

Total	45,764,500
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The net earnings, 1875*	\$1,360,000
The net earnings, 1876	1,371,883
The net earnings, 1877	1,048,664

According to a statement published in the New York Daily Tribune, the gross earnings of the road were—

For the year ending July 31, 1877	\$1,684,058
For the year ending July 31, 1878	1,475,686

Showing a decrease of	208,372
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The following table shows the highest and lowest quotations of each kind of securities for each of the last six months of 1878, according to the excellent authority of the Financial Chronicle (January 4, 1879):

Month.	Stock.		Assented bonds, 7 per cent.		Second-mortgage bonds.	
	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.
July	3	2 $\frac{1}{8}$	42	40	Not quoted.	
August	2 $\frac{1}{8}$	2	40	39 $\frac{1}{2}$	Not quoted.	
September	4 $\frac{1}{8}$	2 $\frac{1}{2}$	41 $\frac{1}{2}$	39 $\frac{1}{2}$	11	10
October	4 $\frac{1}{8}$	3 $\frac{1}{8}$	43 $\frac{1}{2}$	42 $\frac{1}{2}$	11	10 $\frac{1}{2}$
November	7 $\frac{1}{8}$	4 $\frac{1}{8}$	53 $\frac{1}{2}$	42 $\frac{1}{2}$	18 $\frac{1}{2}$	10
December	7 $\frac{1}{8}$	5	55 $\frac{1}{2}$	47 $\frac{1}{2}$	19 $\frac{1}{2}$	14 $\frac{1}{2}$

The advance which took place in all classes of securities of this road in the month of November cannot fail to be noticed, notwithstanding the falling off of the net and aggregate receipts.

The stock, which was at 4 $\frac{1}{8}$, advanced to 7 $\frac{1}{8}$, or exactly 75 per cent.; assented bonds rose from 42 $\frac{1}{2}$ to 53 $\frac{1}{2}$, or nearly 25 per cent.; and the second-mortgage bonds advanced from 14 $\frac{1}{2}$ to 19 $\frac{1}{2}$, or more than 37 per cent.; making an average increase on the several securities of *nearly 46 per cent.*

The amount of sales increased in a still more remarkable ratio.

According to the money-market reports of the New York Daily Tribune, from the 2d to the 12th of September, both inclusive (10 days), only seven hundred shares of the stock of this road changed hands, though it was quoted at 2 to 2 $\frac{1}{2}$; from September 19 to 28, both inclusive (8 days), the sales amounted to 10,803 shares, the quotations ranging from 3 $\frac{1}{2}$ to 4; while in ten business days of November (16th to 27th) the amount of sales were 25,263 shares, from 4 $\frac{1}{8}$ to 7 $\frac{1}{8}$.

In the same period, according to the same authority, the sales of

* Year ending December 31.

assented bonds were as follows: September 2d to 12th, \$15,000, at 39½ to 42; September 19th to 29th, \$86,000, at 43 to 44; November 16th to 27th, \$531,900, at 42½ to 53½.

According to the same authority and for the same periods the sales of second-mortgage bonds were as follows: September 2 to 12, *none*; September 19 to 29, \$12,500, at 10 to 11; from November 16 to 27, \$550,500, at 14½ to 19½.

The Tribune's money article of November 20, 1878, said: "The Missouri, Kansas, and Texas securities were higher to-day." That day \$71,000 of second-mortgage bonds sold at 14½ to 16. Two days before (November 18) \$61,000 sold at 11½ to 12½.

In the Tribune's money article of November 21, 1878, I find: "Railroad bonds again demanded attention. Missouri, Kansas, and Texas firsts and seconds were especially prominent, at an advance to 47½ and 16, respectively."

These figures tell their own tale. They show a remarkable advance in all the securities of the road and remarkable increase in their sales, especially during the month of November. They show that the advance and increase occurred in the face of diminished earnings. And they show another important fact worthy of the consideration of this committee, and that is, the advance mentioned exceeds in amount the total value of the securities held in trust by the Secretary of the Interior for the Cherokees. It was doubtless predicated upon the possible action of this committee and this Congress in changing the condition of the Indian Territory. And if possibility produces such remarkable results, what would not reality produce? Truly, indeed, one can but be impressed with the conviction "that there are millions in it." Well may the Indians stand appalled before this startling exhibit of the power that may be brought to bear down upon them with the overwhelming destruction of an avalanche. Well may they implore this honorable committee, and through it the Senate of the United States, to stand as it has always stood, and as the civilized world expects it to stand, the refuge of the weak and the bulwark of justice.

Well may the company be willing to relinquish all pretension to grants upon these lands to effect the opening of the Territory to settlement for the purpose of creating business for their road. The philosophic resignation to accept "a half loaf rather than no bread at all," if it fail to remove the popular belief that "corporations have no souls," establishes beyond controversy that they have at least stomachs, moved by the gnawings of hunger, and perhaps the cravings of thirst.

The Cherokees are not opposed to progress and improvement, nor the enemies of these corporations; but they dare stand in respectful defense of all that is clearly their own. They will not meekly surrender their homes and their institutions, their hopes and aspirations for their children, to swell the coffers and enhance the material values of the capitalists of New York, Paris, London, and Amsterdam. They have complied in good faith with all their obligations to these corporations, fulfilling their own duties, and neither endangering nor disturbing their privileges nor property; and the suggestions of wisdom and of humanity should move them to co-operate in the legitimate improvement of the people, and stay the hand of aggression.

ALLOTMENT.

So far as the allotment of Cherokee lands would affect the validity of the railroad grants, I care but little for the legal question it presents.

I have shown you that the Cherokee Nation occupies her own lands; that she holds a patent for them from the United States; that the manner of tenure in which they see proper to hold them, whether in common or in severalty, is left entirely to their option. They are in no sense a party to any agreement, direct or implied, with any railroad corporation, which vitiates or impairs or endangers their own rights, nor are they to be compromised by any between the United States and these corporations by their charters of 1866. They never imposed any obligations on the Cherokees, but even according to the modern doctrine, as claimed for the opinion of the Supreme Court in the Cherokee tobacco case, which the untutored intellects of the Indians regard as attenuated law and shadowless justice, the subsequent legislation of Congress in 1871 reaffirms all their rights in the premises. So far, then, as these grants can affect the question of title which vests in the Cherokees, they are utterly void and worthless, and are worthy of consideration by the Cherokees only so far as they furnish a lever to be used in unsettling their condition. The Atlantic and Pacific Company is shown by its attorney to have failed to comply with the terms of their incorporation, and thus to have forfeited its charter, and their road constitutes to-day an unlawful trespass upon every foot of Cherokee soil upon which it rests. Their right is the right of way from a point east to a point west of the Cherokee country. It is across the country, but not into the country, and there to fix a terminus to be used as a basis of attack upon all the rights and privileges, the very existence, of the nation itself.

INTIMIDATION.

The plea of intimidation put up by some of the advocates of change in the condition of the Territory signally fails of proof. My hasty examination of the evidence has failed to reveal the name of a native-born Cherokee who urged it; while the insignificant number of whites who did so must have impressed the committee with evidence of their insincerity and of their purpose to invest themselves with an importance which does not attach to such persons, even in the Cherokee Nation. Whatever may be the sentiments of disapprobation felt indiscriminately by red, white, and black, for the conduct of three or four white men, who have made themselves citizens of the Cherokee Nation by the liberal provisions of her laws on the subject of marriage, who receive the protection of its laws, who participate in its funds, who educate their children at the public expense, who cultivate all the soil their aversion to labor allows, who vote at elections, and who cling with the tenacity of barnacles to the sides of the vessel that they would scuttle and sink for prospective gain, without contributing a farthing for the privileges they enjoy, and whose examples and sentiments tend only to evil and demoralization, there is no instance where one of them has been personally injured on account of his views. True, they may be despised, but by none so much as by themselves. Conscious of self-abasement, they do become objects of pity in the minds of the humblest of their fellow-men, but never of harm or violence.

Passing over the statements of these persons, among which I include that of Edgar Poe Harris, M. D., a man of prostituted culture and genius, whose pretense to citizenship was denied by the supreme court of the nation several years ago, and who made his appearance at a camp of Confederate Cherokees shortly after the terrible Quantrell massacre at Lawrence, Kans., and in consequence of which, as I have been informed, he was ordered away by the commanding officer, I desire to

call the attention of the committee to the carefully-prepared statement of the Rev. S. W. Marston, D. D., late United States agent for the Union Agency. The prominence of this witness in the ministry and in official dignity invests his views with an importance they might not otherwise merit. The statements of Dr. Buckner and Rev. W. S. Robertson, who have spent very many more years of ministerial life in spreading education and religion among the Indians than Dr. Marston has in office-holding among them, would amply reply to him; but I prefer to bring forward a more material witness for the purpose in hand than either of those veterans in Indian civilization in refuting the statements he made at Fort Scott, and which can but be regarded as derogatory to the condition, character, and prosperity of the Indians so recently under his charge. Dr. Marston states that but few whites leave the Territory who once enter its charmed circle. He acknowledges himself to be of the number, and anticipates the Indian by describing himself as an intruder, and who, I may add, while junketing through the Indian country with the distinguished gentlemen who accompanied your "special," smiled upon the "natives," and

Promised fair and performed but ill.

In his annual report of September 11, 1878, Agent Marston said: "My work has not been to protect these tribes from cold and hunger by furnishing them with clothing and food (they are not supplied by the United States Government) as much as it has been to protect them in their treaty rights against the impositions and craftiness of dishonest white men. I would not intimate by this remark that there are no real good and honest white men among these tribes; there are very many, but those who are unscrupulous, selfish, unprincipled, and *indolent* far outnumber them." In his Fort Scott statement, when making out a case against the habits of the Cherokees, he says: "That during two consecutive months of this year, prior to the abolishment of the agency, I issued, at the request of the Cherokee citizens, about six hundred permits to white men to reside among the Cherokees as their employés or renters. These United States citizens, with their families, are employed as farmers and mechanics, and once in the country they usually remain." If the bad white men in the country were so numerous, why did not Agent Marston remove them, and why did he use his official privileges to swell the number at the rate of four or five thousand per annum, most of whom he believed, would remain? Was it a part of the programme thus to overrun the country and give strength to the plea that the number of whites within it is so large that the extension of United States law is necessary for their protection and government?

Again: "As I remarked in my last report, 'Each tribe or nation has a constitutional government, with legislative, judicial, and executive departments, and conducted on the same plan as our State governments, the entire expenses of which are paid out of their own funds, which are derived from interest on various stocks and bonds, the invested proceeds of the sale of their lands, and held in trust by the Government of the United States, which interest is paid the treasurers of the different nations semi-annually, and by them disbursed on national warrants issued by the principal chief and secretary, and registered by the auditors.'"

Except among the Seminoles, none of the money thus paid is used "*per capita*," but is devoted exclusively to carrying on the government and the support of schools. The amounts thus received and disbursed are, Cherokees, \$160,000; Creeks, \$75,000; Choctaws, \$60,000; and Chickasaws, \$60,000.

The Cherokees are well advanced in civilization, and are an intelligent,

temperate, and industrious people, who live by the honest fruits of their labors, and seem ambitious to advance, both as to the development of their lands and the conveniences of their homes. In their council may be found men of learning and ability; and it is doubtful if their rapid progress from a state of wild barbarism to that of civilization and enlightenment has any parallel in the history of the world. What required 500 years for the Britons to accomplish in this direction, they have accomplished in 100 years.

They have ample provisions for the education of all their children to a degree of advancement equal to that furnished by an ordinary college in the States. They have seventy-five common day schools, kept open ten months in the year, in the different settlements of the nation. Then, for the higher education of their young men and women, they have two commodious and well-furnished seminaries, one for each sex, and in addition to those already mentioned, they have a manual-labor school and an orphan asylum.

All these buildings used for school purposes are of the best style of architecture, and all are equipped with furniture and fixtures of the latest and best manufacture. The cost of maintaining these schools the past year was, as reported by the superintendent of public instruction, \$73,441.65, of which \$41,475 was paid as salary to teachers and \$31,666.65 for other purposes.

LAW AND ORDER.

An appeal for legislation is made in behalf of law and order in the Indian Territory. I deny that there is an excess of crime in the Cherokee Nation or the Indian Territory, in comparison with many portions of the States. The records of the court for the western district of Arkansas do not conflict with this statement, when it is borne in mind that the jurisdiction of the court covers an area of more than 40,000 square miles and of all criminal cases arising between citizens of the United States and between such persons and Indians, and that all are arraigned at one place for trial. In a recent statement, which is apparently authentic, Judge Parker, who presides over that court, says:

"Still crime, especially of the higher grades, is decreasing. The law is vigorously executed in the United States courts, and many of the Indian courts show great energy in the enforcement of the local laws. Several of the tribes have each a code of laws, which provides for the punishment of all offenses against person or property among themselves."

To be sure, many murders have been committed there, but in no section of the country where animosities grew out of a divided sentiment and action during the late war has there been so little, and nowhere else have those animosities so generally disappeared. I do not claim exemption from crime, nor from errors in the administration of law and justice. I offer no justification for them, and deplore their occurrence; but such things occur elsewhere, everywhere, and in large sections of the country more frequently, to a larger extent, and with far greater impunity, than in the Cherokee Nation. Crime has diminished, crime has been punished, and the "uncertainty of law" is no more there than in communities subject to the Constitution and laws of both the United States and of individual States. The very existence of lawless men and of crime in that Territory is not for the want of law; not because the Indians obstruct the enforcement of law, but because your own officers fail in some instances to enforce your own laws.

Why are not the laws against intrusion and trespass enforced? Why is an agent allowed to introduce citizens of the United States at the rate of several hundred per month among the Cherokees, and then to place the results of his own act in support of an invasion of the rights of a people committed to his care and guardianship? I have always borne my testimony in defense of the great majority of white citizens of the Cherokee Nation against the sweeping charges made against their characters, knowing them to be as honest and law-abiding and as regardful of the rights of the Indians as other citizens. But if there be so many desperate refugees from justice as represented, where are they to be found? Who are they? I do not believe they exist to the number stated. If so, why are they allowed to remain? But will the number be diminished when the gates of protection are battered down and the present stream of influx is swollen into an irresistible and overwhelming flood? When the voice of the Indian is silenced in the assertion of his rights, his home invaded, his stock stolen, his manhood overpowered by violence, his schools destroyed, and when the sound of revelry echoes through the land, and he is driven to the hopelessness of despair like the Modoc, the Nez Percé, and the starved and frozen Cheyenne, whose deeds of rapine and murder I abhor, but for whose women and helpless children I cannot restrain my sympathy?

Rev. Henry Ward Beecher is reported to have declared in Plymouth Church recently that—

“Our only adversaries are the Indians, to whom we send the Gospel and with whom we make treaties, and then in our dealings with them we violate every principle of the Gospel. There never was a more ignominious policy than that pursued by this country towards the Indians; and both parties have manifested equal injustice. The nation has shown itself unable to take care of the Indians, and they are given over to the bummers of civilization, who provoke quarrels, and then we send out armed bands to destroy them. In the judgment-day not a nation will stand more infamous for atrocious injustice and blood-red, unprovoked cruelty, than this proud, liberty-boasting United States of America. The history of our dealings with the Indians ought to crimson the cheeks of every man who has regard for justice and religion.”

And you are urged, by every plea that cupidity and ingenuity and selfishness and ambition can urge, to swell the volume of this fearful array by trampling upon the rights of the people of the Indian Territory.

I entreat you not to do it. The Cherokee people, united with the entire Indian population of the Territory, raise their hands, in view of their past experience, and implore you not to tarnish the honor of this great nation by the violation of faith and the destruction of all they hold dear on earth. If there is ever to be an end to wrong and aggression upon the Indians, now is the time to fix it. No more convenient season, no stronger inducements, no greater occasion will ever arise for the accomplishment of that end than now. If you fail, so will fail those who follow. If you strike down existing guarantees, none others can be stronger or more sacred. The demand for the disregard of their rights comes not from the Indians, but from the influences which manifest themselves to every one at every stage of this contest, and which must impress themselves upon your minds as not calculated to preserve and elevate the Indians. The evidence before your committee in regard to the civilized tribes must satisfy your minds that they are contented, and progressive, and united in support of their homes and governments; while the evidence of the Board of Indian Commissioners shows that Indians less advanced are also improving in that Territory, and that the future is

not without promise of their conversion to habits of industry and of their eventual civilization.

The crown of Moytoy, the chief of the Cherokees, which was presented to his Majesty the King of Great Britain, consisted not of glittering diamonds and sparkling rubies, but of a few feathers from the wing of the imperial eagle. His messengers who bore it were dressed in skins and armed with bows and arrows. Their chief to-day appears before you a Christian gentleman, clad in a garb similar to your own. From then till now, amid all changes of time and seasons, they have existed as the Cherokee Nation, owning their own lands and living under their own laws and customs. Their history is recorded in your treaties, in your laws, and in your judicial rulings. Their language is perpetuated in your everlasting hills and ever-flowing streams. Their valor has been illustrated upon numerous battle-fields, from the great lakes to the coast of Florida, from the Monongahela to the farther sources of the Arkansas. From the conflicts of every great war within your limits they have come forth, diminished it may be in number, but resolute in spirit and unbroken in vitality. From rude savages they have become a civilized people. They have homes, houses, fields, orchards, schools, and churches. They are contented, happy, prosperous, and progressive. They are united as no other people were ever united in opposition to all schemes looking to their disruption and overthrow. They have demonstrated their capability of civilization, and are rapidly solving the problem of the so-called Indian question. Do not destroy them now; and soon the elevated, living Cherokee will blot from the page of history the barbarous sentiment that "the only good Indians are dead Indians!"

STATEMENT OF THE PRINCIPAL CHIEF AND CHEROKEE DELEGATION.

WASHINGTON, D. C., *January 24, 1879.*

Hon. J. J. PATTERSON, *Chairman, and Members of the Committee on Territories of the Senate of the United States:*

GENTLEMEN: At your regular meeting on the 17th instant (which was the first one available to us since our arrival in this city), we had the honor of calling your attention to some material omissions in the printed copies of the testimony relating to the Cherokees, taken during the course of your subcommittee's late investigation in the Indian Territory, touching the subject-matter of the resolutions of the Senate of the date of February 25, 1878. At your meeting referred to (which afforded our first opportunity of being heard on the subject), your honorable committee was pleased to accord to us the privilege of correcting the errors pointed out, or of obviating the defects to which your attention was called, by filing before you, to become a part of the record, the necessary statements, with such other pertinent and explanatory papers as would subserve the ends of justice. This we now respectfully ask leave to do. The defects alluded to in what purports to be the printed copies, now before you, of the original manuscript testimony, consist in the omission of the names of the Cherokee voters who signed a *remonstrance* to be presented and which was presented to your honorable committee, protesting against the organization of a Territorial government of the United States over the Cherokee Nation, and against the allotment of their lands until the same should be called for by the national council of the

Cherokee Nation, as provided for by treaty stipulations. A copy of this remonstrance appears on pages 658 and 659 of the printed copies of the testimony, and although it was signed by over 1,475 citizen voters of our nation, yet not a single name is attached to it, nor are there any printed indications showing the number of signers to it. Not only are the names left off of this important document, but the *certificates* of Allen Ross, clerk of the circuit and district courts, and of Charles Thompson, principal chief of the nation, giving *authenticity* to it, are also cut off from it, and are actually attached to another part of the testimony to which they never belonged, so that the voice of our people cannot be heard, nor their desires known on the matters involved, through their said remonstrance, because the same has been rendered *nameless* and *without authenticity* in the manner indicated.

We therefore ask that you add to this remonstrance the 1,475 names that are on the original manuscript, or indicate that number of names to it in its immediate connection. Also, we have an additional number of 1,404 names, to be appended to this remonstrance, of legal voters who did not reach Tahlequah, at our general convention, in November, in time to have their names subscribed to it. We have these names with us, and desire to present them at this our first opportunity to your committee, or to have their number noted, in connection with the others to said remonstrance, so that the aggregate number of names belonging to it will be 2,879, obtained in the brief notice of three days given to the Cherokee people, by your committee, in which to assemble and express their views on the questions of territorializing their country and allotting their lands, &c., submitted by your committee. We also invite the attention of your honorable committee to *omissions*, in connection with the protest of the Cherokee people, made in 1875 to the Congress of the United States, to be found on page 642 of your printed testimony, and which protests against any change of government whatever over the Cherokee Nation. This protest, when submitted to your committee, had 4,300 names attached to it. As it now stands printed before you it only has 1,284 names to it, showing that 3,016 names are omitted. Also, the official certificate verifying the protest is omitted. We desire to have the correct number (4,300) of names noted to this protest, as well as to have its certificate appended. Also, as necessarily connected with this subject, and as being pertinent to your investigation, and within the scope of, the character of, the testimony already taken and printed by your committee, we respectfully ask leave to submit, marked A, the accompanying copy of a joint resolution of the national council of the Cherokee Nation, *unanimously* adopted December 5, 1878, as expressive of the views of the Cherokee people on the questions of a change of government over them, and of the allotment of their lands, &c.; from which your honorable committee cannot fail to observe that the Cherokee people, through their legitimate exponent and supreme representative, their national council, or legislature, have expressed their desire that the allotment of their lands be subject to the will of their national council, as provided by our treaty of 1866, and have also entered their *protest* against any change of government. A careful review of the testimony, including also *ex-parte* statements, which constitute the mass of the proceedings of your subcommittee while in the West, shows that, in 1874, all of the Indian nations of our country—especially the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws—*protested* against any change of government (see printed proceedings, page 644); that in 1875, 4,300 of the qualified voters of the Cherokee Nation protested against any change of government (see printed proceedings

page 645); that during the late visit of your chairman, and on less than a week's notice (including the time occupied in the rapid transit of the committee on the railroad), 250 qualified voters of the Cherokee Nation protested at Vinita against any change of government (see printed proceedings pages 508 and 658), and that at Tahlequah, Cherokee Nation, last November, 2,879 qualified voters also remonstrated against any change—the protests aggregating 3,129 protestants; that of the Cherokee witnesses examined at Vinita and Muscogee, on the line of the railroad, 13 mixed-blooded Cherokees and 3 whites (adopted) were in favor of the allotment of lands, but opposed to any change of government; that but 5 mixed Cherokees, 4 whites (adopted), and 2 colored persons were in favor of both allotment of lands and a change of government; that 87 whites (adopted), 5 colored persons, and 61 Cherokees protested against both the allotment of lands and a change of government; all of which, being recapitulated, will stand as follows: Opposed to allotment of lands and change of government, 3,282; in favor of allotment of lands and opposed to a change of government, 16; in favor of both allotment of lands and a change of government, 11.

We respectfully submit that when your honorable committee shall have impartially considered the facts, as set forth and proven by the records before you, taken in connection with the resolutions of our national council (A), submitted, expressing the sense of the Cherokee people in the aggregate, you will find no grounds whatever upon which to hang even a doubt that both the Cherokee Nation, as such, and the Cherokee people are opposed to any change of government or infraction of their guaranteed rights, and desire the allotment of their lands only according to the will of our national council, as provided by our treaty of 1866; while the only opponents to these significant expressions of our national council, and 3,282 of our people, hastily assembled, are the 11 individuals already named, consisting of 5 mixed Cherokees, 4 whites, and 2 colored persons. Also, as being relevant to the issues before you and of the character of testimony already submitted, we ask leave to submit the accompanying protests, marked B, of the "General Indian council" of the 34 nations and tribes of the Indian Territory, which show conclusively that all the Indians of that country are opposed to any change of government, and desire that the railroad land-grants to the bands of the Indians, and now under your considerations, be repealed or canceled. They also serve to show, beyond doubt, that the proposed constitution projected by this council, but which was not adopted by the Indian tribes, and which is filed on pages 610 and 627 inclusive of your printed proceedings, was not designed by this council as a civil government of the United States, because, as you will discover, these protests *remonstrate against such a government*, and verify the statement made the undersigned, W. P. Ross, Cherokee delegate, in his speech before you, that this constitution—proposed according to our treaty of 1866—was designed as purely an Indian government, composed of Indian representatives, who have been declared by the Senate Judiciary Committee, in 1870, as not being citizens of the United States, but citizens of the Indian tribes, that are separate and distinct political communities from the United States. (See Senate Report No. 268, 41st Cong., 3d session, transmitted, marked C.) This council has been, as stated by Mr. Ross, organized seven or eight years, with the treaty of 1866 as its *organic law*, and only awaits the usual treaty appropriation of Congress for its seventh session.

Having shown by the proof referred to that all the Indian nations and tribes, as such, as well as their citizens, are opposed to the organi-

zation over them of a so-called "civil" or Territorial government of the United States, and to the allotment of their lands, except as provided by treaty, our opponents raise the hue and cry in this case, as they did (and were overruled by your honorable committee) in the matter of the disbursements of our funds, that our treaties are not an element to be considered in the premises.

We hold that your honorable committee will be consistent. On the question of the disbursements of our funds, raised in the Senate resolutions which constitute the measure of your present duties, you *ruled* that you *could not* investigate as to our disbursements of our general fund, but only in relation to our school and orphan funds, for the information of the President, because our treaties, as you construed them, required you to thus confine yourselves, regardless of abstract questions of *right* or *wrong*. In view of this precedent, which is a part of your proceedings, as also in respect to the good faith of the great government which you now have the honor of representing, we maintain and insist that you are bound to observe our treaty stipulations on the questions of establishing a government of the United States over us and of the allotment of our lands as you have in regard to our funds. This simple proposition of common justice and good faith will appear imperative, if not mandatory, to you, when you refer to that part of the said Senate resolutions which directs you to inquire "*whether a civil form of government [of the United States] cannot be organized over the Indian Territory, for the better protection of life and property.*" The question thus submitted to you by the Senate, whether a civil government *cannot* be organized over our nation, necessarily involves the *negative* of the question, *viz*, whether you *can* organize such a government over the Indians, in view of their treaties, *regardless of their consent*.

At the threshold of this question we meet you, as we met you (and were sustained) on the money question, *with our treaties*. These treaties, fully referred to and quoted by Mr. Ross in his speech before you (to which we refer you), fully sustain the negative of this question, *i. e.*, *that the United States cannot organize the "civil government" of the United States, to which reference is made in said Senate resolutions, over the Cherokees WITHOUT THEIR CONSENT*. Therefore, if you respect our treaties on this question as you did on the finance question, under the same resolutions of the Senate, your response to the Senate can only be that the "civil government" in question cannot be organized, in view of our treaties, because all the Indians to be affected *object to it*. On the other proposition of the said Senate resolutions, "*whether the lands now held in common by said Indian tribes [of the Indian Territory] cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations*, we meet you again with our treaty of 1866, which leaves the allotment of our lands *solely* to our national council, independent of the Government of the United States.

In this connection, we insist again that your honorable committee *stand by our treaties* as you did on the money question, and would again refer you to the treaty quotations of Mr. Ross's speech on this subject. In conclusion, we feel it our duty to respectfully refer to the incompetency and irrelevancy of much of the testimony before you. Passing by the fact that the greater portion of the testimony taken in the West was taken by a minority of your subcommittee, we ask leave to express our doubts as to the competency of *ex parte* testimony, such as the statements of Ex-Indian Agent Marston, E. C. Boudinot, W. P. Boudinot, E. Po. Harris, who were not subject to a cross-examination by the Indians, the party most interested; nor have the Indians had an opportu-

nity of rebutting the statements made by these witnesses. But supposing (which is not the case) that the statements of the witnesses referred to, as well as those of all the witnesses examined in and concerning the Indian Territory, had been taken according to standard rules of evidence, still this testimony has no legal bearing on the questions involved in the inquiries intrusted to your committee, because the *gist* of that testimony relates to the manner in which the Cherokees and other Indian nations of the Indian Territory have administered their own governments inside of their own jurisdiction and in regard to their own citizens, which is a matter, involving as it does the right of self-government belonging to our nations, that does not come within the purview of the Senate resolutions prescribing your duties.

This right of self-government is not only *not before your honorable committee*, but is a question, so far as the Senate is concerned, that was clearly settled by the Judiciary Committee of the Senate in 1870, as will appear patent to you by reference to (Senate) Report No. 268, Forty-first Congress, third session, already referred to and submitted. On page 14 of this able report may be found this significant language: "Their (the Indians') right of self-government, and to administer justice among themselves after their rude fashion, even to the extent of inflicting the death penalty, has never been questioned."

We hold, therefore, that all of the testimony before you relating to the manner in which our Indian nations administer their own laws, in regard to their own members and their property, inside of their own jurisdiction, is *irrelevant* and *foreign* to the issues intrusted to you, and ought not to be considered as of any value in making up your verdict under your resolution of instructions, and we protest against the consideration of such testimony as violative of our treaty rights of self-government.

We have the honor to be, with great respect, your obedient servants,

CHARLES THOMPSON,

Principal Chief.

W. P. ADAIR,

WILL. P. ROSS,

SAML. SMITH,

DANL. H. ROSS,

Cherokee Delegation.

JOINT RESOLUTION of the national council expressive of the views of the Cherokee people on the subject therein named.

Whereas a subcommittee of the Committee on Territories of the Senate of the United States, under instructions of that honorable body, have lately visited a portion of the Cherokee Nation contiguous to the railroads, for the purpose of ascertaining the views of the people of the entire Cherokee Nation upon the subject of *allotment of their lands* and of *establishing a United States Territorial government* over them;

And whereas the said committee were invited to leave the said railroads and visit this place, Tahlequah, the capital of the nation, while our national council was in session and our people were assembled, in order to ascertain the views of the people on the subject named, but failed to do so officially, only one of the Senators of the committee, Hon. Mr. Grover, accepting and complying with the invitation;

And whereas the national council did not, therefore, have an opportunity of publicly demonstrating to the said committee their views as representatives of the people on the questions alluded to: Therefore,

Be it resolved by the national council of the Cherokee Nation, That the national council, as the representatives of the people of the nation, protests:

1st. Against the allotment of the lands of the Cherokees, and insists that such allotment be not made until requested by the national council of the nation, as provided for under the twentieth article of the Cherokee treaty of 1866.

2d. Against the establishment by the Congress of the United States of any form of United States Territorial government over the Cherokees.

Be it further resolved, That the Senate and House of Representatives of the United States be, and they are hereby, petitioned in the name of the Cherokee people for the unconditional repeal and annulment of the land-grants provided for by the acts of Congress of July 25, 26, and 27, 1866, granted to any and all railroad companies that may, under any contingency, take effect on the lands of the Cherokees or those of any other nation or tribe of the Indian country; and the said Senate and House of Representatives of the United States are further petitioned to cancel any bonds or mortgages issued upon any of said lands by any railroad company.

Be it further resolved, That the principal chief be, and he is hereby, instructed to file copies of these resolutions, at his earliest convenience, before the said Committee on Territories of the United States Senate; before both houses of the Congress of the United States; before the President of the United States, and before the Secretary of the Interior and the Commissioner of Indian Affairs.

Tahlequah, December 5, 1878.

Approved.

CHARLES THOMPSON,
Principal Chief.

I do hereby certify that the foregoing three pages of a joint resolution is a true copy of the original, as per executive file of the same. This the 19th day December, A. D. 1878.

[SEAL.]

J. F. THOMPSON,
Executive Secretary.

B.

[House Mis. Doc. No. 85, Forty-third Congress, first session.]

Memorial of the general Indian council of the Indian Territory, established under the treaty of 1866, to the President and Congress of the United States, praying for the repeal of certain land-grants to the Indian lands granted by Congress to certain railroad companies in 1866.

JANUARY 22, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

OKMULGEE, C. N., December 5, 1873.

To His Excellency the President and the Congress of the United States:

Pursuant to a resolution of the general council of the Indian Territory of the 3d instant, your memorialists, the confederated nations and tribes in council assembled at Okmulgee, would respectfully, but earnestly, call your attention to the following facts:

1st. That Congress has power to make all needful rules and regula-

tions respecting the Territory and other property of the United States. (See United States Constitution, art. 4, sec. 3.)

2d. That in May, A. D. 1830, the United States were owners of and in undisputed possession of the country now known as the Indian Territory.

3d. That on the 28th day of May, 1830, Congress authorized the President to make treaties with the various Indian nations east of the Mississippi River for an exchange of lands, giving for lands east of the Mississippi River lands situated west of said river and *outside of any organized State or Territory*, and to grant *patents* to said Indians for said lands.

4th. That by authority of said act of Congress of May 28, 1830, the exchange of lands was made, and *patents* were issued to the several Indian nations now residing upon them.

5th. That the Supreme Court, in the case of *Joy vs. Holden*, has decided that these *patents* are valid *fee-simple* titles.

6th. That after said lands were sold to the said Indian nations for a valuable consideration and *patents* issued for the same to said Indians, the purchasers, acts were passed by Congress granting the same lands to aid in the construction of railroads, to wit, on the 25th, 26th, and 27th days of July, 1866, contingent upon the extinguishment of the said Indian titles.

Though the United States had *guaranteed* said titles *forever*, the corporations interested in the contingent land-grants have belabored Congress incessantly to take steps to break down the Indian nationalities to which the titles of these lands were made, in order to reach the lands. The corporations claim that, as the titles are made to these nations, a destruction of their identity as organized political communities is all that is necessary to complete their (the corporations') own *inchoate* titles. If the faith of the United States should prove weak enough to give way before these attacks of these corporations, these lands would go into their hands without consideration to the Indians, and settlers would get no interest in them, save at railroad prices. Can a great enlightened and Christian nation afford to enact so great an injustice? We, your memorialists, in full view of these above-stated facts and the experience of all Indians who have lost their lands and their homes; of the pauperism, the degradation, and ruin to our people which must follow such a disaster, *appeal to your sense of honor, as our only defense and only hope in this extremity, to repeal all clauses in the acts of Congress above referred to, or any other acts making grants of lands situated in the Indian Territory to aid in the construction of railroads*, by passing House bill 1132, Forty-second Congress, second session, introduced into the House of Representatives by Hon. J. P. C. Shanks, or some bill of similar import.

[House Mis. Doc. No. 88., 43d Congress, 1st session.]

Protest of the General Indian Council of the Indian Territory, organized under the treaties of 1866, to the President and Congress of the United States, protesting against a Territorial government being established over the Indians without their consent.

JANUARY 22, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

OKMULKEE, C. N., December 6, 1873.

His Excellency the President and the Congress of the United States :

We, your memorialists, representing the eighteen (18) nations and tribes assembled in this general council of the confederated tribes and

nations of the Indian Territory, would respectfully represent that the lands comprised in what is known as the Indian Territory were purchased from the United States, paid for in other lands, and *patents* covering the greater part of said lands issued to the Indians owning them; that, in addition to the patents which have been decided by the Supreme Court of the United States in a recent case of *Joy vs. Holden* to be valid *fee-simple* titles, the United States has given, repeatedly, the most solemn guarantees that the political rights of said nations should never be impaired, but that they should be protected forever in their rights of self-government. In conveying to the Cherokees the lands upon which they now reside, the United States gave a *pledge* that said lands should be to them "a permanent home, * * which shall, under the most solemn guarantees of the United States, be and remain theirs forever; a home that shall never, in all future time, be embarrassed by having extended around it the lines or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State." (See *preamble* and article 1st, Cherokee treaty, ratified May 28, 1828.) Again: "The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek, or Seminole tribes of Indians, and that no portion of either of the tracts of country, defined in the first and second articles of this agreement, shall ever be embraced or included within, or annexed to, any Territory or State; nor shall either, or any part of either, ever be erected into a Territory, without the full and free consent of the legislative authority of the tribe owning the same." (See Creek treaty, August 7, 1856, U. S. Stat., page 700; see also Choctaw and Chickasaw treaty of June 23, 1855.) These guarantees, of the right of nationality, are as important to these Indian nations as the title to their lands. The failure of either would be equally fatal to them. It has been well said, *there is no good government but self-government*. Self-government is a question of great interest to all people and nations; but to the Indians all experience demonstrates it to be a question of *existence*. The unrestrained commingling of Indians and whites, in the same community and under the same laws, has always been followed by one *unvarying* result, that of the rapid degradation and extermination of the Indians. While this has been the testimony of the great mass of the Indian population in the United States, and they have wasted away tens of thousands per year, the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, when not decimated by great national misfortunes, such as the forced removal from the east to the west of the Mississippi River, accompanied with the devastating ravages of small-pox and other contagious diseases, and by the ravages of the late war, have advanced in population and civilization as rapidly as any white race ever did under any circumstances. All of our tribes and nations here represented, as we learn from the various reports just received, are at peace with all men and are increasing in prosperity, and are all improving in farming and stock-raising and the other habits of civilized life; and without exception, all are making efforts to educate their children. No change in their government or relations with the United States is required, by any Indian interests, but their most important interests forbid it. The sacred obligations of the United States forbid it. Territorial government is demanded only by the interests of railroad corporations and by those who have been misled by the sophistry and misrepresentations of those thus interested, and cannot be effected without bad faith and the infliction of a great wrong, the beginning of a near end to the Indians. But these

corporations, and those working in their interests, assert that several of the nations concerned agreed to a Territorial government by terms of treaties made in 1866. Such is not the fact. They agreed to an international "council" and government; but they never intended that it should be any other than an Indian government. In all the treaties agreeing to the establishment of this council there are provisions wherein the United States stipulate to keep white persons out of the country—a rather strange Territory of the United States, certainly, into which her own citizens are forbid to go or remain, both by treaties and acts of Congress, save by express permission of the government or its agents. The council provided for by the treaties has been established and in operation about four years, and is, under said treaties, invested with power ample to develop and maintain a government of Indians, sufficient for the interests of the confederated tribes and nations.

Your memorialists are the members of this "general council" representing the nations confederated in said government. The United States have recognized this government for four years past, by making, annually, appropriations to defray the expenses thereof, in accordance with the treaties of 1866, above referred to. This government can soon be developed into all that is required by Indian interests if permitted. There would have been much more progress had it not been from the continual dread of Congressional interference. This council has already been the means of saving a hundred times its cost to the government by its influence in preserving peace on the plains, and we are confident of its ability for great usefulness in the same field in the future. All of our tribes are competent and are willing to control and govern their own citizens, and this council is well fitted to harmonize and regulate all international affairs. But we are told there is no adequate means of punishing white desperadoes who take refuge in this country. This difficulty is already provided for by the treaties, in authorizing the establishment by the United States of a court or courts in this Territory to enforce the "Indian-intercourse laws," and any other laws of Congress in force here. That such courts do not exist, is *not the fault of the Indians*. We are told continually that throughout the West and at Washington the cry of the corporations interested, as it were, fills the heavens with demands that a Territorial government be placed over us, and that the United States Government certainly will give way before the pressure, and that already many good men express a desire that Congress should yield to these demands. We cannot believe it will be done. We hope we commit no offense and are not in error when we place unreserved confidence in the honor and the integrity of the American Congress and government. A free republican government should be a fair representation of the aggregate honesty and moral sentiment of the whole people, and is properly looked to as an index of standard of morality among the masses. A great national crime therefore reacts directly upon the nation.

C.

[Senate report No. 268. Forty-first Congress, third session.]

Mr. CARPENTER, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, who were instructed by resolution of the Senate of April 7, 1870, "to inquire into and report to the Senate the effect of the fourteenth amendment to the Constitution upon the Indian tribes of the country; and whether by the provisions thereof the Indians are not citizens of the United States, and whether thereby the various treaties heretofore existing between the United States and the various Indian tribes are or are not annulled," respectfully report:

That, in the opinion of your committee, the fourteenth amendment to the Constitution has no effect whatever upon the status of the Indian tribes within the limits of the United States, and does not annul the treaties previously made between them and the United States. The provisions of the amendment material to this question are as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the States wherein they reside.

"Representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, *excluding Indians not taxed.*"

The question is whether the Indians "are subject to the jurisdiction" of the United States, within the meaning of this amendment, and the answer can only be arrived at by determining the status of the Indian tribes at the time the amendment was adopted.

The European nations when first settling the American continent regarded discovery as the foundation of their relative rights; that is, they claimed the sovereignty of the country, including the right to extinguish the aboriginal title by purchase or conquest, without interference from any other European nation, as a consequence of discovery; but it was never pretended that discovery had any other effect as against the Indian nations inhabiting the country. Whatever may be thought of the Christianity of the Christians who established this principle, and in pursuance of it proceeded to exclude the Indians from the sovereign control of the country in which they were born, and which they and their ancestors had occupied and enjoyed, it is now too late to question its soundness, because in the condition of things which has grown up under its operation its renunciation would be productive of far more harm than good. The white man's treatment of the Indian is one of the great sins of civilization, for which no single generation or nation is wholly answerable, but which it is now too late to redress. Repentance is all that is left for us; restitution is impossible. But the harsh treatment of the race by former generations should not be considered a precedent to justify the infliction of further wrong.

The principle must now be recognized and acted upon, that the Indians, after the European discovery and settlement of their domain, lost all sovereignty over it, retaining only the right of occupancy until their title to that should in some way be extinguished, and the right to regulate, without question, their domestic affairs, and make and administer their own laws, provided in the exercise of such right they should not endanger the safety of the governments established by civilized

man. Beyond this limit the pretensions of European settlers never extended; but to this extent the principle referred to was recognized and enforced; and although the Indians were thus overshadowed by the assumed sovereignty of the whites, it was never claimed or pretended that they had lost their respective nationalities, their right to govern themselves, the immunity which belongs to nations in the conduct of war, or any other attribute of a separate political community.

By no nation was this doctrine more clearly declared than by England, and the English colonists immediately entered into treaties with the tribes, waged war and concluded peace with them, and in every respect recognized and treated with them in their collective and national capacity. During the Revolution, Congress manifested great solicitude as to the course which might be pursued by the different Indian nations, and aimed to secure their co-operation against the British forces. And after the establishment of our independence, the same principle, as controlling the relations of the government to the Indian tribes, was asserted and steadily maintained by the Congress of the Confederation, as it has been by the United States under our present Constitution. (Johnson vs. McIntosh, 8 Wheat., 543.)

One of the earliest official acts of the United States in relation to the Indians was the treaty concluded with the Delawares September 17, 1778, entitled "Articles of agreement and *confederation* made and entered into by Andrew and Thomas Lewis, esqs., commissioners for and on behalf of the United States of North America, of *the one part*, and Captain White Eyes, Captain John Kill Buck, jr., and Captain Pipe, deputies and chief men of the Delaware nation, of *the other part*." The provisions of this treaty are worthy of consideration, as showing the light in which the Indian tribes were then regarded.

"ARTICLE 1. That all offenses, or acts of hostility, by one or either of the contracting parties against the other, be mutually forgiven and buried in the depth of oblivion, never more to be held in remembrance.

"ARTICLE 2. That a *perpetual peace* and friendship shall from henceforth take place and subsist *between the contracting parties aforesaid*, through all succeeding generations; and if either of the parties are engaged in a just and necessary war with any other nation or nations, that *then each shall assist the other*, in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation; and that if *either of them* shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect."

By the third article, the Delawares granted free passage *through their country* to the troops of the United States on their way to some of the forts held by British forces.

"ARTICLE 4. For the better security of the peace and friendship now entered into by the *contracting parties* against all infractions of the same *by the citizens of either party* to the prejudice of the other, neither party shall proceed to the infliction of punishment on the citizens of the other otherwise than by securing the offender, &c.

"ARTICLE 5. Whereas the *confederation* entered into by the Delaware Nation and the United States renders the first dependent on the latter for all the articles of clothing, utensils, and implements of war, and it is judged not only reasonable but indispensably necessary that the aforesaid nation be supplied with such articles, from time to time, as far as the United States may have it in their power, by a well-regulated trade, under the conduct of an intelligent, candid agent, with an adequate salary, one more influenced by the love of his country and a constant

attention to the duties of his department, by promoting the common interest, than the sinister purposes of converting and binding all the duties of his office to his private emolument; convinced of the necessity of such measures, the commissioners of the United States, at the earnest solicitation of the deputies aforesaid, have engaged, in behalf of the United States, that such a trade shall be afforded said nation, conducted on such principles of mutual interest as the wisdom of the United States, in Congress assembled, shall think most conducive to adopt for their mutual convenience.

"ARTICLE 6. Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians and take possession of their country; to obviate such false suggestion, the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their Territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they, the said Delaware Nation, shall abide by and hold fast the chain of friendship now entered into. And it is further agreed on between the *contracting parties*, should it for the future be found conducive for the mutual interest of both parties, to invite any other tribes who have been friends to the interest of the United States to join the present *confederation*, and to form a State, whereof the Delaware Nation shall be the head, and have a representation in Congress; provided nothing contained in this article to be considered as conclusive until it meets the approbation of Congress. And it is also the intent and meaning of this article that no protection or countenance shall be afforded to any who are at present our enemies, by which they might escape the punishment they deserve."

This treaty is quoted from at considerable length, not only because it is the first entered into by this government with any Indian tribe, but because it is believed to illustrate the relations which the government has always claimed to maintain toward the Indian tribes.

The dependence of the tribe upon the United States is fully recognized by the fifth article of the treaty; but this was not regarded as depriving the tribe of their character as a nation or political community, because the treaty stipulates for many acts to be thereafter performed by the Delawares, which can only be performed by a separate community, independent of external municipal jurisdiction. Indeed such dependence is in no way incompatible with the idea of separate nationality. Sovereign states may be bound together by treaty alliances very unequal in their terms, and still remain sovereign states. (Vat., B. 1, ch. 16, § 194.)

The next treaty was concluded with the Six Nations, October 22, 1784, after the independence of the United States had been recognized by Great Britain. The supremacy assumed by the United States in this treaty, and the lofty tone of its provisions as compared with those of the treaty with the Delawares, indicate the different circumstances under which the two treaties were made. Yet the treaty with the Six Nations is made as with an independent state.

"The United States of America give peace to the Senecas, Mohawks, Onondagas, and Cayugas, and receive them into their protection upon the following conditions, &c."

The treaty provides that the Oneida and Tuscarora Nations should be secured in the possession of the lands on which they were settled;

and fixed the boundaries of country to remain to the Indians, they releasing to the United States all outside of the limits agreed upon.

Then followed the treaty with the Wyandotts, Delawares, Chippewas, and Ottawas, concluded January 21, 1785; the treaty with the Cherokees, concluded November 28, 1785; the treaty with the Choctaws, concluded January 3, 1786; the treaty with the Chickasaws, concluded January 10, 1786, and the treaty with the Shawnees, concluded January 31, 1786, all prior to the adoption of the Constitution. In each and every of these treaties, the Indians are treated as states, or communities capable of entering into and performing the duties imposed by treaty obligations. They are treaties of peace; and made to cement friendship between the United States and *the parties of the other part, respectively.*

Then came the Constitution ratified by New Hampshire, the ninth State, June 21, 1788, which contained the following provisions:

Article 1, section 2, clause 3: "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, &c., excluding Indians not taxed," &c.

Article 1, section 8, clause 3: The Congress shall have power "to regulate commerce with foreign nations, and among the several States, *and with the Indian tribes.*"

Article 2, section 2: The President "shall have power, by and with the advice and consent of the Senate, to make *treaties*, provided two-thirds of the Senators present concur."

Article 6, clause 2: "All treaties *made*, or which shall be made, under the authority of the United States, shall be the supreme law of the land," &c.

The treaty with the Six Nations of New York, which was concluded January 9, 1789, was submitted to the Senate, and President Washington issued his proclamation September 27, 1789, declaring that the treaty had been duly ratified.

On the 7th day of August, 1790, a treaty was concluded with the Creek Nation, entitled "A treaty of peace and friendship, made and concluded between the President of the United States of America, on the part and behalf of the said States, and the undersigned, kings, chiefs, and warriors of the Creek Nation of Indians, on the part and behalf of the said nation."

The preamble of this treaty is as follows:

"The parties being desirous of establishing permanent peace and friendship between the United States and the Creek Nation, and the citizens and members thereof, and to *remove the causes of war* by ascertaining their limits, and making other necessary, just, and friendly arrangements, the President of the United States, by Henry Knox, Secretary for the Department of War, whom he hath constituted with the full powers for this purpose, *by and with the advice and consent of the Senate of the United States*, and the Creek Nation by the undersigned kings, chiefs, and warriors, representing the said nation, have agreed to the following articles, &c.:

"ARTICLE 1. There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals, *towns, and tribes* of the Upper, Middle, and Lower Creeks, and Seminoles, composing the Creek Nation of Indians."

Other articles acknowledged this nation to be under the protection

of the United States, fixed the boundaries of their country, which the United States guaranteed to them, and further provided as follows :

"ARTICLE 6. If any citizen of the United States, or any person not being an Indian, shall attempt to settle on any of the Creeks' lands, such person shall forfeit the protection of the United States, and the *Creeks may punish him or not, as they please.*

"ARTICLE 10. In cases of violence on the person or property of the individuals of *either party*, neither retaliation nor reprisal shall be committed by the *other*, until satisfaction shall have been demanded of the *party* of which the aggressor is, and shall have been refused."

The ratification of this treaty was proclaimed by President Washington August 13, 1790.

The treaty with the Cherokees, concluded November 28, 1785, contains the following :

"ARTICLE 1. The headmen and warriors of all the Cherokees shall restore all the prisoners, citizens of the United States, &c.

"ARTICLE 2. The commissioners of the United States, in Congress assembled, shall restore all the prisoners taken from the Indians during the late war to the headmen and warriors of the Cherokees, as early as is practicable.

"ARTICLE 8. It is understood that the punishment of the innocent, under the idea of retaliation, is unjust, and shall not be practiced *on either side*, except where there is a manifest violation of this treaty; and then it shall be preceded first by a demand of justice, and if refused, then by a *declaration of hostilities.*"

And from that time to the present similar treaties have been negotiated, entered into, and ratified by the Senate, with all the considerable tribes of Indians dwelling within the limits of the United States; and hardly a session of Congress is held that such treaties are not submitted to the Senate for their approval and ratification. During all this period, it has never been questioned that such treaties were properly made by the President, by and with the advice and consent of the Senate, exercising the treaty-making power conferred by the Constitution; and millions of dollars have been appropriated by law to discharge national obligations thus created.

This subject has frequently been considered by the State and Federal courts, and in every instance the exemption of the tribes from municipal jurisdiction has been recognized and declared.

In *Jackson vs. Goodell*, 20 John., 193, the court, Kent delivering the opinion, say:

"The Oneidas, the tribes composing the Six Nations of Indians, were originally free and independent nations, and it is for the counsel who contend that they have now ceased to be a distinct people, and become completely incorporated with us, to point out the time when that event took place. *In my view they have never been regarded as citizens, or members of our body-politic.* They have always been, and still are, considered by our laws as *dependent tribes*, governed by their own usages and chiefs; but placed under our protection, and subject to our coercion so far as the public safety required it, and no further. The whites have been gradually pressing upon them, as they kept receding from the approaches of civilization. We have purchased the greater part of their lands, destroyed their hunting-grounds, subdued the wilderness around them, overwhelmed them with our population, and gradually abridged their native independence. *Still they are permitted to exist as*

distinct nations, and we continue to treat with their sachems, in a national capacity, and as being the lawful representatives of their tribes. Through the whole course of our colonial history, these Indians were considered dependent allies. The colonial authorities uniformly negotiated with them, and made and observed treaties with them as sovereign communities exercising the right of free deliberation and action, but, in consideration of protection, owing a qualified subjection, in a national capacity, to the British Crown. *No argument can be drawn against the sovereignty of these Indian nations from the fact of their having put themselves and their lands under the protection of the British Crown.* Such a fact is of frequent occurrence between independent nations. One community may be bound to another by a very unequal alliance and still be a sovereign state. (Nat., Book 1, chap. 16, sec. 194.) *The Indians, though born within our territorial limits, are considered as born under the dominion of their own tribes. There is nothing in the proceedings of the United States during the revolutionary war which went to impair and much less to extinguish the national character of the Six Nations and consolidate them with our own people. Every public document speaks a different language, and admits their distinct existence and competence as nations, but placed in the same state of dependence, and calling for the same protection which existed before the war. In the treaties made with them we have the forms and requisites peculiar to the intercourse between friendly and independent states, and they are conformable to the received institutes of the law of nations. What more demonstrable proof can we require of existing and acknowledged sovereignty?"*

In 1831, in *The Cherokee Nation vs. The State of Georgia*, 5 Peters, 1, Chief Justice Marshall says:

"Is the Cherokee Nation a foreign state in the sense in which that term is used in the Constitution? The counsel for the plaintiff have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States, by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of the government plainly recognize the Cherokee Nation as a state, and the courts are bound by those acts. And again, though the Indians are acknowledged to have an unquestionable and, hitherto, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of position when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relations to the United States resemble that of a ward to his guardian."

Mr. Justice Johnson, who delivered a separate opinion in this case, thus states the condition of the tribes:

"I believe in one view, and in one only if at all, they are or may be deemed a state, though not a sovereign state, at least while they occupy a country within our limits. Their condition is something like that of the Israelites when inhabiting the deserts. Though without land which they can call theirs in the sense of property, *their right to personal self-government has never been taken from them; and such a form of government may exist, though the land occupied be in fact that of another.* The right to expel them may exist in that other, but the alternative of departing and retaining the right of self-government may exist in them. *And such they certainly do possess;* it has never been questioned, nor any attempt made at subjugating them as a people, or restraining their personal liberty, except as to their land and trade."

The court held the Cherokee Nation not to be a *foreign state*, and consequently not capable of suing in the courts of the United States; but Mr. Justice Thompson delivered a dissenting opinion, in which Mr. Justice Story concurred, maintaining that the Cherokees were a foreign state within the meaning of the Constitution, and capable of suing in the Federal courts.

In *Worcester vs. The State of Georgia* (6 Pet., 515) Chief Justice Marshall again reviewed, in his clear and masterly style, the relations existing between our government and the Indian tribes, examined history, treaties, laws, usages, and every other source of information, and deduced the conclusion, which it is believed no man acknowledging the authority of reason can gainsay, that the States had no authority or dominion over the Indian tribes within their limits, and demonstrated that the United States had no such jurisdiction. Referring to history, he says:

"Certain it is that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the Crown to interfere with the internal affairs of the Indians, further than to keep out the agents of foreign powers who, as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell at a price they were willing to sell, but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies, but never intruded into the interior of their affairs, or interfered with their self-government, so far as respected themselves only. .

"The general views of Great Britain with regard to the Indians were detailed by Mr. Stewart, superintendent of Indian affairs, in a speech delivered at Mobile in presence of several persons of distinction soon after the peace of 1763. Toward the conclusion he says:

"Lastly, I inform you that it is the King's order to all his governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly, all individuals are prohibited from purchasing any of your lands, but as you know that as your white brethren cannot feed you when you visit them unless you give them ground to plant, it is expected that you will cede lands to the King for that purpose. But whenever you shall be pleased to surrender any of your territories to His Majesty, it must be done for the future at a *public meeting of your nation*, when the governors of the provinces, or the superintendent, shall be present and obtain the consent of all your people. The boundaries of your hunting grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with your people will be faith-

fully kept, so it is expected that you, also, will be careful strictly to observe them."

Again, speaking of the relation of the Cherokee Nation to the United States under the treaties made with them, he says:

"This relation was that of a nation claiming and receiving protection of one more powerful; *not that of individuals abandoning their national character and submitting as subjects to the laws of a master.*"

Again:

"From the commencement of our government Congress has passed acts to regulate trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States."

And again at page 559:

The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentates than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently *admits their rank among those powers which are capable of making treaties.* The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense.

And again:

"The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States."

The doctrine of these decisions, like most of the legal and constitutional principles settled by the greatest of our Chief Justices, remains the unquestioned law of the court to-day, as may be seen by the recent case, *The Kansas Indians*, 5 Wallace, 737, where it was held:

"If the tribal organization of Indian bands is recognized by the political department of the national government as existing, that is to say, if the national government makes treaties with and has its Indian agent among them, paying subsidies, and dealing otherwise with 'headmen'

in its behalf, the fact that the primitive habits and customs of the tribe when in a savage state have been largely broken into by their intercourse with the whites, in the midst of whom, by the advance of civilization, they have come to find themselves, does not authorize a State government to regard the tribal organization as gone, and the Indians as citizens of the State where they are, and subject to its laws."

The legislation of Congress is based upon the same view of the relations which exist between the government and the Indian tribes, and shows that Congress has uniformly respected the right of the Indians to govern themselves. A few instances only need be cited.

Chapter 13, laws of 1802, section 14 (2 Stats. at Large, 143), provides:

"That if any Indian or Indians, belonging to any tribe in amity with the United States, *shall come over or cross the said boundary-line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose, who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which such Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent, or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury; and in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured an eventual indemnification: *Provided always*, That if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge by crossing over the line on any of the lands, he shall forfeit all claim upon the United States for such indemnification: *And provided also*, That nothing therein contained shall prevent the legal apprehension or arresting within the limits of any State or district of any Indian having so offended: *And provided further*, That it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong."*

Chapter 92, section 1, laws of 1817, provides:

"That if any Indian, or other person or persons, shall, within the United States, and within any town, district, or territory belonging to any nation or nations, tribe or tribes of Indians, commit any crime, offense, or misdemeanor, which, if committed in any place or district of country under the sole and exclusive jurisdiction of the United States, would by the laws of the United States be punished with death, or any other punishment, every such offender, on being thereof convicted, shall suffer the like punishment as is provided by the laws of the United States."

for the like offenses, if committed within any place or district of country under the sole and exclusive jurisdiction of the United States."

Section 2 of the same chapter provides:

"That the superior court in each of the Territorial districts, and the circuit courts and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be first apprehended or brought for trial, shall have, and are hereby invested with full power and authority to hear, try, and punish all crimes, offenses, and misdemeanors against this act; such courts proceeding therein in the same manner as if such crimes, offenses, and misdemeanors had been committed within the bounds of their respective districts: *Provided, That nothing in this act shall be so construed as to affect any treaty now in force between the United States and any Indian nation, or to extend to any offense committed by one Indian against another, within any Indian boundary.*"

Chapter 131, laws of 1834, section 16, provides:

"That where in the commission by a white person of any crime, offense, or misdemeanor within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States: *Provided, That no such Indian shall be entitled to any payment out of the Treasury of the United States for any such property if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence: And provided also, That if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury, as aforesaid.*"

Section 17 of same act provides:

"That if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification: *Provided, That if such injured party, his representative, attorney, or agent, shall in any*

way violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: *And provided also*, That unless such claim shall be presented within three years after the commission of the injury, such claim shall be barred. And if the nation or tribe to which such Indian may belong receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom and paid to the party injured; and if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the Treasury of the United States: *Provided*, That nothing herein contained shall prevent the legal apprehension and punishment of any Indian having so offended."

Section 25 of same chapter provides:

"That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States shall be in force in the Indian country: *Provided*, That the same shall not extend to crimes committed by one Indian against the person or property of another Indian."

Chapter 83, Laws of 1839, was enacted to relieve the Brothertown Indians in the then Territory of Wisconsin, and provide for receiving them into citizenship. It provided for the division of a township of land among the members of the tribe, and that partition thereof should be made and a map thereof be filed in the proper department.

Section 7 provides:

"That the said report and map shall be filed with the secretary of said Territory, and in the clerk's office of said county, and shall also be transmitted to the President on or before the 1st day of January next; and after the same shall have been filed and transmitted to the President, as aforesaid, the said Brothertown Indians, and each and every of them, shall then be deemed to be, and from that time forth are hereby declared to be, citizens of the United States to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall in all respects be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs as such tribe, shall cease and determine: *Provided, however*, That nothing in this act shall be so construed as to deprive them of the right to any annuity now due to them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed."

From a perusal of these statutes it is manifest that Congress has never regarded the Indian tribes as subject to the municipal jurisdiction of the United States. On the contrary, they have uniformly been treated as nations, and in that character held responsible for the crimes and outrages committed by their members, even outside of their territorial limits. And inasmuch as the Constitution treats Indian tribes as belonging to the rank of nations capable of making treaties, it is evident that an act of Congress which should assume to treat the members of a tribe as subject to the municipal jurisdiction of the United States would be unconstitutional and void.

In the opinion of your committee, the Constitution and the treaties, acts of Congress, and judicial decisions above referred to, all speak the same language upon this subject, and all point to the conclusion that the Indians, in tribal condition, have never been subject to the jurisdiction of the United States in the sense in which the term *jurisdiction* is employed in the fourteenth amendment of the Constitution. The government has asserted a political supremacy over the Indians, and the treaties and laws quoted from present these tribes as "domestic, dependent nations," separated from the States of the Union within whose limits they are located, and exempt from the operation of State laws; and not otherwise subject to the control of the United States than is consistent with their character as separate political communities or states. Their right of self-government, and to administer justice among themselves, after their rude fashion, even to the extent of inflicting the death penalty, has never been questioned; and while the United States have provided by law for the punishment of crimes committed by Indians straggling from their tribes, and crimes committed by Indians upon white men lawfully within the reservations, the government has carefully abstained from attempting to regulate their domestic affairs, and from punishing crimes committed by one Indian against another in the Indian country. Volumes of treaties, acts of Congress almost without number, the solemn adjudications of the highest judicial tribunal of the Republic, and the universal opinion of our statesmen and people have united to exempt the Indian, being a member of a tribe recognized by, and having treaty relations with, the United States from the operation of our laws, and jurisdiction of courts. Whenever we have dealt with them, it has been in their collective capacity as a state, and not with their individual members, except when such members were separated from the tribe to which they belonged; and then we have asserted such jurisdiction as every nation exercises over the subjects of another independent sovereign nation entering its territory and violating its laws.

It is worthy of mention that those who framed the fourteenth amendment and the Congress which proposed it, as well as the legislatures which adopted it, understood that the Indian tribes were not made citizens, but were excluded by the restricting phrase, "and subject to the jurisdiction," and that such has been the universal understanding of all our public men since that amendment became a part of the Constitution. And in the opinion of your committee, the second section of the amendment furnishes conclusive evidence of this fact, and settles the question. It provides "representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." The original Constitution determined the basis of representation, "by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." That is, three-fifths of the slave population were to be added to the number of free persons. The fourteenth amendment, section 1, further provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

During the war slavery had been abolished, and the former slaves had become citizens of the United States; consequently, in determining the basis of representation in the fourteenth amendment, the clause "three-fifths of all other persons" is wholly omitted; but the clause "excluding the Indians not taxed" is retained.

The inference is irresistible that the amendment was intended to recognize the change in the status of the former slave which had been effected during the war, while it recognizes no change in the status of the Indians.

They were excluded by the original Constitution, and in the same terms are excluded by the amendment from the constituent body—the people. Considering the political sentiments which inspired the amendment, it cannot be supposed that it was designed to exclude a particular class of citizens from the basis of representation. *The Indians were excluded because they were not citizens.*

For these reasons your committee do not hesitate to say that the Indian tribes within the limits of the United States, and the individuals, members of such tribes, while they adhere to and form a part of the tribes to which they belong, are not, within the meaning of the fourteenth amendment, "*subject to the jurisdiction*" of the United States; and, therefore, that such Indians have not become citizens of the United States by virtue of that amendment; and if your committee are correct in this conclusion, it follows that the treaties heretofore made between the United States and the Indian tribes are not annulled by that amendment.

To maintain that the United States intended, by a change of its fundamental law, which was not ratified by these tribes, and to which they were neither requested nor permitted to assent, to annul treaties then existing between the United States as one party and the Indian tribes as the other parties respectively, would be to charge upon the United States repudiation of national obligations, repudiation doubly infamous from the fact that the parties whose claims were thus annulled are too weak to enforce their just rights, and were enjoying the voluntarily-assumed guardianship and protection of this government.

Although your committee have not regarded the questions proposed for their consideration by this resolution of the Senate as at all difficult to answer, yet respect for the Senate which ordered the investigation, and the existence of some loose popular notions of modern date in regard to the power of the President and Senate to exercise the treaty-making power in dealing with the Indian tribes, have induced your committee to examine the question thus at length, and present extracts from treaties, laws, and judicial decisions; and your committee indulge the hope that a reference to these sources of information may tend to fix more clearly in the minds of Congress and the people the true theory of our relations to these unfortunate tribes.

It is pertinent to say, in concluding this report, that treaty relations can properly exist with Indian tribes or nations only, and that, when the members of a tribe are scattered, they are merged in the mass of our people, and become equally subject to the jurisdiction of the United States. It is believed that some treaties have been concluded and ratified with fragmentary, straggling bands of Indians, who had lost all just pretensions to the tribal character; and this ought to admonish the treaty-making power to use greater circumspection hereafter.

ARGUMENT OF ELIAS C. BOUDINOT, SUBMITTED TO THE
SENATE COMMITTEE ON TERRITORIES JANUARY 17,
1879.

Mr. Chairman and Gentlemen of the Committee:

In the discussion of the questions involved in the resolution of Mr. Voorhees, I shall endeavor to confine myself to the evidence bearing upon them. This evidence is voluminous, as you see, comprising more than 800 pages of printed matter. Much of it, however, is irrelevant, and seems to have been injected into this investigation for the purpose of distracting attention from the real points at issue.

The resolutions of Mr. Voorhees are in these words:

On motion by Mr. Voorhees :

"Resolved by the Senate, That the Committee on Territories be, and the same is hereby, instructed to ascertain, at its earliest convenience, whether or not the railroad companies referred to by the acts of the Thirty-ninth Congress, approved respectively July 25, 26, and 27, 1866, and entitled respectively 'An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River'; 'An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas'; and 'An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast,' have issued bonds of any kind predicated upon the conditional land grants of the lands of the Indians of the Indian Territory claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are, and for what purpose.

"Resolved further, That said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school funds of any of such tribes; and if so, what legislation is necessary to prevent, in future, the diversion of such school funds from their legitimate purpose.

"Resolved further, That said committee be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations.

"Resolved further, That said committee, in the discharge of its duties aforesaid, be authorized to send for persons and papers, to employ a stenographer, and, when necessary, to compel the attendance of witnesses in its investigation, and to report the result of said investigation to this body during the present session of Congress."

There are several things I was in great hopes would be settled by this investigation.

It has been asserted so often and so loudly that certain railroad com-

panies have issued more than \$14,000,000 of bonds "predicated upon" their conditional grants of land in the Indian Territory, that a great many worthy people had come to believe it.

It had been darkly hinted too, that some of these bonds had been placed "where they would do the most good" in procuring the passage of a Territorial bill which would rob the Indians of 23,000,000 acres of land.

The vigor and persistency of these assertions have led many members of Congress to look with suspicion and prejudice upon any proposed legislation for the Indian Territory.

Hence, I rejoiced at the prospect of ascertaining officially and definitely just how much truth there was in these statements.

A great many intelligent Cherokees have complained that the delegations from their nation have squandered the funds of the people, and, under the guise of patriotism, have even laid their hands upon the school funds. It has been declared that within the last five years the Cherokee delegation has spent over \$150,000 of the general fund of the nation, and more than \$50,000 of the school fund, in the heroic and patriotic endeavor to defeat legislation by Congress which might possibly deprive the Cherokee Nation of their signal and disinterested services. Accurate information upon these points, I hoped, would be developed in the course of this investigation.

There were also two questions of law submitted to this committee for inquiry and report, which for ten years I have been anxious to have authoritatively settled. They are these:

1st. Can a civil form of government be organized over the Indian Territory without confirming the conditional grants of land to the railroads?

And 2d. Can the lands now held in common by the Indian nations be divided in severalty among the members of the tribes without confirming the said land grants?

For ten years I have argued the affirmative of these propositions; while, at a cost to the Cherokees alone of more than \$200,000, the patriotic delegations have maintained the contrary. It is with the most intense satisfaction to me that these questions are to be officially and definitely decided by this committee.

If they shall be determined against me, I shall be ready to acknowledge my error, and bow to the superior wisdom of these Indian delegations. If I am sustained, however, I shall have a right to expect hereafter to be exempt from the charge that I am in favor of giving the Indian lands to railroads because I advocate a civil form of government for the Indian Territory, and a division of the lands in severalty.

RAILROADS.

Section 2 of the act incorporating the Atlantic and Pacific Railroad Company (July 27, 1866) contains this paragraph:

"The United States shall extinguish as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act, and acquired in the donation to the road named in this act."

Sections 8 and 9 of this act read as follows:

"SEC. 8. *And be it further enacted*, That each and every grant, right, and privilege herein are so made, and given to, and accepted by said Atlantic and Pacific Railroad Company upon and subject to the follow-

ing conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the 4th day of July, A. D. 1878.

"SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and that the said A. & P. R. R. Co. accept the same upon the further condition that, if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

In a message of Charles Thompson, principal chief of the Cherokee Nation, to the Cherokee council, in November last, he says this grant is conditional upon the voluntary consent of the Indians, and, therefore, not dangerous; for it is not presumable that the Cherokees will give such voluntary consent. (See page 666 of evidence.) Now as to the other grants which this high authority thinks are dangerous.

The eight, ninth, and tenth sections of the acts of July 26, 1866, under which it is claimed the Missouri, Kansas and Texas Railroad claims an interest in conditional land-grants in the Indian Territory, are submitted:

"SEC. 8. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, is hereby authorized and empowered to extend and construct its railroad from the southern boundary of Kansas south through the Indian Territory, with the consent of the Indians, and not otherwise, along the valley of Grand and Arkansas Rivers to Fort Smith, in the State of Arkansas; and the right of way through the Indian Territory is hereby granted to said company, its successors and assigns, to the extent of 100 feet on each side of said road or roads, and all necessary grounds for stations, buildings, workshops, machine-shops, switches, side-tracks, turntables, and water stations.

"SEC. 9. *And be it further enacted*, That the same grants of land through said Indian Territory are hereby made as provided in the first section of this act [this first section grants five alternate sections per mile on each side of the road], whenever the Indian title shall be extinguished by treaty, or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands become a part of the public lands of the United States.

"SEC. 10. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, shall have the right to negotiate with and acquire title to land for railroad purposes from any Indian nation or tribe authorized by the United States to dispose of lands, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the United States, or from any company or parties incorporated or authorized for such purposes, by such nation or tribe, or which such parties may have acquired under the laws of the United States."

This is all the legislation relating to railroads which concerns the Indian Territory.

The testimony shows that there are two railroads which have been constructed in the Indian Territory, viz, the Atlantic and Pacific, and the Missouri, Kansas and Texas. The former has been built a distance of 37 miles in the Territory, crossing the Missouri line in the southwest part of the State and terminating at Vinita, in the Cherokee Nation;

while the latter road crosses the Southern Kansas line, and has been built entirely through the Territory, a distance of 250 miles.

Judge Baker, the attorney for the Atlantic and Pacific Road, testifies that \$1,700,000 in bonds have been issued on the 37 miles built in the Territory; that these bonds are worth now five cents on the dollar; and that if Congress could and would confirm the conditional grant to this road it would be entitled to 460,800 acres.

This road was chartered by Congress in July, 1866, which promised to give it a certain amount of land in the Indian Territory, subject, however, to conditions. What were those conditions?

1st. That the company should build not less than 50 miles every year, after two years had elapsed from the date of the charter; or, in other words, 50 miles of the road must be built every year from July, 1868.

2d. The entire road to the Pacific Ocean must be built by July, 1878.

3d. Congress must then extinguish the Indian title, but only by the voluntary cession of the Indians.

In the event of the failure of the road to build 50 miles every year, and finish the entire line to the Pacific Ocean by July, 1878, the charter of the road, with all its prospective franchises and grants of land in the Indian Territory or elsewhere, was to be forfeited.

Fifty miles of this road have *not* been constructed every year. July, 1878, has come and gone, and the Atlantic and Pacific Railroad is built only to Vinita, in the Indian Territory, leaving nearly 2,000 miles to the Pacific Ocean unfinished to this day. The forfeiture has taken place.

If the Indian title to every acre in the Territory should be extinguished to-day, and the voluntary cession of the Indians obtained, the Atlantic and Pacific Railroad would be entitled to 460,800 acres, and no more. This is the full extent of the danger, so far as the Atlantic and Pacific Railroad is concerned.

Now, how is it with the Missouri, Kansas and Texas Railroad Company? This road was chartered (or rather succeeded to the rights of another road which *was* chartered) in July, 1866; it has complied with the terms of such charter, having built the line from north to south, through the Indian Territory, a distance of about 250 miles.

The act of Congress of July, 1866, gives a conditional grant to this road of ten alternate sections per mile, with the authority to construct a branch to Fort Smith, Ark., a distance of about 83 miles.

If the fears of the Indian delegates should ever be realized, and it were possible for Congress to do such a wicked and unjust thing as to confirm every acre this road could claim under the terms of its charter, the road would get 1,065,100 acres. Add to this 460,800 acres, all that the Atlantic and Pacific Road could claim, and we find, if the Indians are in danger of losing any land at all through the machinations of railroad corporations, they could be robbed of just 1,525,900 acres of land.

I have been thus particular in estimating the amount of land embraced in these conditional grants, because it has been asserted on the floor of Congress, and throughout the country, that the pending Territorial bills were cunning devices of these railroad companies to steal 23,000,000 acres of land from the Indians.

What *has* the Missouri, Kansas and Texas Railroad Company mortgaged? The following, copied from one of the bonds, will show:

"Now, therefore, this indenture witnesseth that the said party hereto of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party hereto of the second part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, hath granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant,

bargain, sell, assign, transfer, and convey unto the party of the second part, its lawful successor or successors in the trust hereby created, and assigns—

“First. All and singular the railroad, as the same is constructed, extending from Junction City, in Davis County, State of Kansas, down the valley of the Neosho River, through the counties of Davis, Morris, Lyon, Coffey, Woodson, Allen, Neosho, and Labette, to a point in the southern boundary-line of said State between the Neosho River and the western boundary of Labette County, a distance of one hundred and eighty-two miles, more or less.

“And also all the right, title, and interest which the party of the first part has, by reason of the construction of said line of said road to and in any land or lands heretofore granted by any act of Congress to the State of Kansas, to aid such construction, the said lands being the same, or so much thereof as remain unsold, which were granted by acts of Congress to the State of Kansas, and by said State to the Union Pacific Railway Company, southern branch, above mentioned; and also all the right, title, and interest of the said party of the first part in and to the proceeds of such of said lands as may have been sold which heretofore belonged to the said railway company, or in which the said company was in any way interested; and also all the right, title, and interest of the said party of the first part in and to any proceeds of lands granted to the State of Kansas by act of Congress entitled ‘An act to appropriate the proceeds of the sale of public lands and to grant pre-emption rights,’ approved September 4, 1841, and heretofore sold by said State under and by virtue of an act of the legislature of the State of Kansas entitled ‘An act providing for the sale of public lands to aid in the construction of certain railroads,’ approved February 23, 1866; and also all the right, title, and interest of the party of the first part in and to such of the lands granted by the act of Congress aforesaid, which were heretofore sold and conveyed by the State of Kansas to the Land-Grant Railway and Trust Company, and by said company to the party of the first part; together with all and singular the tenements, hereditaments, rights, privileges, easements, income, advantages, and appurtenances to the said land and premises belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, property, claim and demand whatsoever at law or in equity of the said party of the first part of, in, and to the same, and any and every part or parcel thereof (the extent and aggregate area of the lands to which the party of the first part is so entitled being estimated at 1,200,000 acres of land) situate in the State of Kansas.

“Second. All the privileges and franchises acquired by the said party of the first part under and by virtue of two several acts of Congress, approved July 25 and July 26, 1866, and the order and approval of the President of the United States thereupon, to extend, construct, and operate the said railroad from the said southern boundary-line of the State of Kansas, southerly through the Indian Territory, to the northern boundary-line of the State of Texas, to a point at or near the town of Preston, in said State, a distance of two hundred and fifty miles, more or less; and also the right, title, and interest which the party of the first part now has, or may hereafter acquire, by reason of constructing the extension of the said line of railroad through the Indian Territory, in and to any land or lands granted by the acts of Congress aforesaid, or which the said party of the first part now has, or may hereafter acquire, under and by virtue of any treaty or treaties from any Indian nation or tribe, or

otherwise, howsoever appertaining to the aforesaid extension, together with all the rights, privileges, tenements, hereditaments, and appurtenances that may belong or appertain thereto, the land granted under said acts of Congress being ten alternate sections of land on each side of said railroad, reserving therefrom any right, franchise, or privilege, or land appertaining thereto, under the acts of Congress aforesaid, to extend said road or construct a branch thereof through a portion of the Indian Territory to Fort Smith.

"Third. All and singular the railroad as the same is now constructed, extending from Sedalia, in Pettis County, in the State of Missouri, to the western boundary of said State, a distance of one hundred miles, more or less, being the railroad acquired by the party of the first part by purchase from the Tebo and Neosho Railroad Company, as hereinbefore mentioned.

"Fourth. All and singular the railroad which the Labette and Sedalia Railway Company were authorized to construct and operate, as hereinbefore mentioned, and which is now being constructed by the party of the first part from the town of Parson, in Labette County, in the State of Kansas, on the main line of the railroad of the party of the first part, northeasterly through Labette, Neosho, Crawford, and Bourbon Counties to the boundary-line between the States of Kansas and Missouri, and to the point in said boundary-line where the same intersects the railroad acquired by the said party of the first part from the Tebo and Neosho Railroad Company, as aforesaid, a distance of sixty miles, more or less.

"Fifth. And also all the following property, real and personal, now owned, or which may be at any time hereafter acquired, by the party of the first part, for the use of any or all the railroads above described, including the said extension of the main line of said railroad and thereto belonging, namely, all the lands, tenements, and hereditaments, and right of way, and all lands appropriated, or which may hereafter be appropriated, for depots, superstructures, buildings, erections, and fixtures; and also all tracks, bridges, viaducts, culverts, fences, and other structures; depots, engine-houses, car-houses, freight-houses, wood-houses, and other buildings, and all machine-shops and other shops; and also all locomotives, tenders, cars, and other rolling-stock or equipments; and also all machinery, tools, implements, fuel, supplies, and materials for constructing, operating, repairing, or replacing the said railroads, or any or either of them; and also all corporate and other franchises, powers, rights, and privileges now held and owned, or which may be hereafter acquired, by the party of the first part, connected with or relative to the said railroads, or any or either of them: To have and to hold all and singular the above-mentioned and described premises, rights, franchises, railroads, and real and personal property, unto the said party of the second part, its successors or successors and assigns, in trust, and for the uses, interests, and purposes hereinafter expressed and declared of and concerning the same."

But Congress did wrong in promising these railroads one single acre of Indian lands on any contingency whatever. This wrong should be righted without further delay. No vested rights to lands in this Territory has attached to either of these roads, and that portion of the acts of Congress which relates to the conditional grants ought to be instantly repealed. I sincerely hope this Congress will not adjourn without doing so. These conditional grants are regarded by the Indians as a standing menace to their rights and interests, and have proved the most serious impediment to the establishment of a civil government over the

Indian Territory. But it is a fact that no bill pending in Congress extinguishes the Indian title.

To illustrate the method adopted by opponents of Congressional legislation to prejudice the minds of the Indians against the propositions to organize a civil form of government and allot the lands in severalty, I will quote an extract from the message of Charles Thompson, Cherokee chief, to the Cherokee legislature, November, 1878:

"Our political relations with the United States deserve your special attention. That the Government of the United States, and the great masses of its people, if properly enlightened on the Indian question, will keep good faith with us, I have no doubt. Also, that there is a class of the people of the United States, embracing a powerful minority, chiefly speculators, that have but little, if any, respect for our national or individual rights, and who lust for our lands, I have no doubt.

"This last-named class is led not only by wealthy men, but also by men of very strong ability, who by their shrewdness have managed to occupy the chief seats of financial and political power in the United States, and have, through Congressional legislation and otherwise, preyed upon the people of the United States as long as they will submit, and have now turned eyes upon the lands of the Indian nations and tribes of the country. These cunning adventurers in 1866, while the attention of the Congress of the United States was absorbed in healing up wounds of the war of the rebellion, slipped through Congress three railroad bills, the benefits of which are now claimed by the railroad corporations known as the Missouri, Kansas and Texas, and Atlantic and Pacific companies.

"These acts of Congress provide for two series of land grants of the Indian nations of this country. The first are conditioned upon the voluntary consent of the Indians, and are not of themselves dangerous, because our Indian nations will not squander their lands; and it is not, therefore, so material to us to have this class canceled by Congress as the second class, or larger grants, because these last-named are conditioned substantially upon two contingencies that may be forced upon us by the arbitrary action of Congress: First, that our lands become the public lands of the United States by reversion or extinction of title; second, that they be embraced within a State or Territory of the United States. If we are not disturbed in our present situation, these grants cannot take our lands from us, because our lands belong to us, and are not public lands of the United States, and at present are not included in any State or Territory of the United States. But if Congress should pass a Territorial bill, throwing our lands *within* an organized Territory of the United States, and at the same time robbing us of the title of our lands, and vesting it in the United States, by special declaration or by reversion, through the extinction of our nation, then so much of our lands (being several millions of acres) as would be required to fulfill the last-named land grant would revert, in spite of our objections, to the railroad corporation for whose benefit they were granted by Congress.

"That you may fully understand and appreciate the great danger threatening our people from territorialization with these railroad land grants hanging over them, I will state that developments made during the last session of Congress, before the honorable Committee on Territories of the United State Senate, in its investigation, show that the Missouri, Kansas and Texas, and Atlantic and Pacific companies, whose lines of road run through our country, have mortgaged the entire lines (real and prospective) of their road, and have filed these mortgages in the Interior Department at Washington, and have already issued and sold, chiefly to foreigners and New Yorkers, about sixteen million three

hundred thousand dollars in *bonds* on these mortgages, or on the lands belonging to our people, but claimed by these companies. In other words, these railroad companies have sold the finest portion of our country, and are endeavoring to make these sales valid by throwing our lands into a Territory of the United States, and robbing us of our title through the passage by Congress of a suitable territorial bill." (See page 666 of printed testimony.)

Now, what are the facts?

THE BONDS OF THE M., K. & T. R. R.,

Which you have been told are "predicated upon" the conditional grants of land in the Territory, I have shown are based upon a more substantial foundation.

They amount to \$14,600,000, and are held in Amsterdam, London, Paris, and New York. The testimony shows that the bonds of both of these roads are held and owned by legitimate purchasers. Not a shadow of proof appears that any portion of them have at any time or in any manner been used or promised to secure Congressional legislation for the Indian Territory.

These bonds are said to be worth forty-three cents on the dollar. Does the conditional grant of lands in the Territory give them this value? Not at all. The bonds cover the road "from Sedalia, Mo., down to Denison, Texas." (See page 26.)

Fourteen millions of these bonds are secured by all the property of the road in the States of Missouri and Kansas *and* the Indian Territory. Should the conditional grants be repealed, it is not likely these bonds would be depreciated in value a particle.

In short, the security pledged for these bonds, it will be seen, consists—

1st. Of all and singular the railroad from Junction City, in the State of Kansas, down to the southern line of the State, a distance of 180 miles. The land grant of this part of the road amounts to 1,200,000 acres, all in Kansas.

2d. Of all the franchises and privileges, &c., of the road, from the southern boundary of the State to the Texas line, a distance of 250 miles, through the Indian Territory, together with any right, title, and interest in any lands in the Territory which such road "may hereafter acquire," by treaty or otherwise.

3d. Of all and singular the railroad from Sedalia, Mo., to the western boundary of the State, a distance of 100 miles.

4th. Of "all and singular" the railroad from Parsons, Kansas, to the eastern line of the State, where it connects with the road from Sedalia.

5th. Of all the property of every description *owned* by the railroad company in Missouri, Kansas, Texas, and the Indian Territory. (See pages 50 and 51 of the printed testimony.)

So much for the railroad branch of this investigation. I have shown from the testimony that all the railroads could possibly claim from their conditional land grants in the Indian Territory amounts to 1,525,900 acres; that \$1,700,000 in bonds have been issued "predicated upon" these conditional land grants by the Atlantic and Pacific Railroad, and that that is all that *have* been issued upon the basis of these grants; and that Cherokees admit that there is no danger of this grant affecting their landed interests.

But it is said the railroads are interested in legislation which will op-

erate to open this Territory to settlement, and therefore they must have designs upon the lands of the Indians.

Of course they are interested, and I can show you a very good reason why they should be. The Kansas Agricultural Report of 1876 shows that the single county of Labette, lying on the Cherokee border, produced 2,900,000 bushels of small grain in that year. Other counties contiguous produced about the same quantity.

Labette County, in Kansas, with an area of land not so large by 40,000,000 acres as the Indian Territory, and with poorer land, and one-half the population, produces a half million of bushels of small grain *more* than the whole Indian Territory. In confirmation of this I refer you to a speech of Hon. Mr. Neal, of Ohio, delivered in the House of Representatives on the 27th of May, 1878, and the Agricultural Report of the State of Kansas for 1876.

Now, why should the small county of Labette, with one-half of the population of the Indian Territory, and with not one acre in forty of the Territory, produce more grain?

There *can* be no reason, except that in Labette County, Kansas, the farmers own their lands in severalty; their titles are secure; they are protected by the laws as citizens of the United States; and they can and do labor with a consciousness that they will be permitted to reap the fruits of their enterprise and industry.

These privileges and inducements to labor are denied the member of the Cherokee Nation. I have selected Labette County as an illustration because it is on the line of the Missouri, Kansas and Texas Railroad, and is a fair subject of comparison with the Territory.

Instead of encouraging the cultivation of our rich domain, it is the stupid policy of the Cherokee authorities to prevent it.

Let me read to you a law of the Cherokee legislature, recently passed (and to the everlasting shame of the Cherokee chief approved), which makes it a crime, for instance, for a widow to employ, for herself or her orphan child, a citizen of the United States to cultivate her land, unless she pays a tax of \$25 a month for the privilege. Should she fail to do this, she is to be fined \$100, and failing to pay the fine must be imprisoned for twelve months.

Is there no limit to the madness, meanness, and stupidity of a Cherokee legislature? But here is the law:

PENAL LAW.

[Published by authority.]

AN ACT for the protection of the public domain, and in relation to intruders upon the same.

Be it enacted by the National Council, That the principal chief is authorized and hereby directed to order the sheriffs of the several districts of the Cherokee Nation to assist the officers of the United States court for the western district of Arkansas in the arrest of all persons charged with trespass upon the public domain of the Cherokee Nation; and it is hereby made the duty of the sheriffs of several districts of the Cherokee Nation to arrest and deliver to the authorities of the United States representing the said western district of Arkansas any and all persons found trespassing upon the public domain of the Cherokee Nation, whether the same be in removing timber, salt, coal, wood, lumber, or mineral of any kind, when such removal is not authorized by the laws

of the Cherokee Nation: *Provided*, That in all cases where such trespass shall be committed by a citizen of the Cherokee Nation, he or she so trespassing shall be held for trial before the circuit court for the district in which the offense is alleged to have been committed; and upon conviction of the same, the person so convicted shall be, in addition to other penalties already imposed by law, imprisoned in the national prison for a term not less than twelve months, at the discretion of the court trying the same.

Be it further enacted, That it shall be the duty of the principal chief to report all intruders who may so be declared by the national council, or by the solicitors of the various districts of the nation, or by any court acting under the authority, or by virtue of an act of the national council, to the Commissioner of Indian Affairs, and ask the removal of such intruders: *Provided*, That in case the Commissioner of Indian Affairs fails to remove intruders so declared by the first day of August, 1879, it is hereby made the duty of the principal chief to remove beyond the limits of the Cherokee Nation any and all persons who may be residing in the Cherokee Nation, who may be declared intruders as above provided, for which purpose he is hereby authorized to call upon the sheriffs of the several districts of the nation: *Provided*, That the solicitors of the several districts shall report on the fifth day of July, 1879, to the principal chief all persons who are intruders in their respective districts, and any solicitor so failing to report shall be removed without further process by the principal chief.

Be it further enacted, That from and after the passage of this act it shall not be lawful for any citizen of the Cherokee Nation to employ any citizen of the United States not a citizen of the Choctaw Nation (school teachers, ministers of the gospel, and missionaries following their professions excepted), in any capacity, except mechanics working as such, unless such citizens desiring to employ a citizen of the United States other than as herein provided, shall pay to the clerk of the district in which such citizen may live twenty-five dollars per month in advance for every citizen of the United States, and not a citizen of the Cherokee Nation, so to be hired; and the clerks of the several districts of the nation are hereby directed to keep a record of all persons so hiring citizens of the United States, as above provided, and report the same monthly to the solicitors of the districts in and for which they are clerks: *Provided*, That all moneys so received by the clerks shall be transmitted monthly to the treasurer of the nation, and any citizen of the Cherokee Nation violating the provisions of this act shall, upon conviction of the same before the district court of the district in which the offense may be alleged to have been committed, be deemed guilty of a misdemeanor and be fined one hundred dollars, and upon failure to pay said fine be imprisoned in the national prison for a period of not less than twelve months, at the discretion of the court trying the same; and it is hereby made the duty of the solicitors of the several districts to prosecute all violations of this act, and all laws and parts of laws conflicting with this act (are) hereby repealed.

TAHLEQUAH, C. N., Dec. 12th, 1878.

CHARLES THOMPSON,
Principal Chief.

Comment is unnecessary upon this most infamous and malicious law. Unless the Government of the United States stamps its worthless life out, as it did two years ago a similar law in the Chickasaw Nation, it will be productive of untold misery and trouble. If the law is enforced,

four-fifths of the lands now in the Cherokee Nation in cultivation will go to waste this year; for it is well known that little reliable labor can be obtained from among the members of the nation. In this connection I incorporate in my remarks extracts from letters recently received from several of the most prosperous and enterprising farmers in the Cherokee Nation.

Letter addressed to a member of Congress:

“CHEROKEE NATION, *December 23, 1878.*

“I presume you are flooded with letters from this country in regard to a law recently passed by the council of the Cherokee Nation, in regard to the employment of white men to labor in this country. There is great excitement in regard to it, and there is reason to be if the law is enforced, which it will be unless there can be brought influence enough at Washington to put a stop to it. They are determined and have only made a beginning, and, if successful, will no doubt go so far as to disfranchise and confiscate the property of certain citizens. The enforcement of this late law will certainly bring suffering to a great many families in this Territory, citizens as well as men living here, and have been, some of them, over twenty years. It will drive out all the good of the white population, leaving only those that we would be glad to get rid of, who are law-proof in any country. Hundreds of men have wheat crops sown, which if they have to leave will be an entire loss, to say nothing of the various other sacrifices they will have to make, and when times are so hard that it is hard for them to secure the very commonest necessities of life. To be moved at this time will completely break them up; and then, on the other side, hundreds of widows and orphans, who have nothing but their improvements, will be brought to absolute want, for they have neither the means to hire help nor the teams and implements to cultivate their farms. Besides, there is no reliable labor in this country, from the fact that land is common property, and all who will work at all work for themselves. The long and short of it is, that thousands of acres will grow up in grass and brambles, and the enforcement of the law one year will put this country back at least ten years, if not more. I see Senator Garland has introduced a resolution looking to a revision of the intercourse law. That thing is badly needed, and a law should be enacted giving any citizen of any of the tribes or nations the right to hire all the labor he may need. If that law had always existed, the Cherokee Nation to-day would have been fifty years in advance of what it is; and, more than that, all Indians should be compelled to own their land in severalty. No one can know but those living amongst them what a great drawback this community interest in land is. I hope you will excuse me for troubling you; as an excuse, this law will simply ruin me. I have worked hard, and was beginning to get so that I could live, and to see it all swept away at one stroke is pretty hard. If this law is carried out, hundreds are as badly ruined as I am. What we want is, if there is any power in the President or any of his Cabinet to annul or suspend this law, to do it, and for Congress to pass some law that will relieve the intelligent and enterprising citizens of this country, and put this labor question forever at rest, so that a man can make some calculations for over a year ahead; then you will see these people improve more in ten years than they have in thirty heretofore. I tell you there must be something done. If there cannot be anything done in regard to it, then I would like to get some permits from the Secretary of the Interior or Commissioner of Indian Affairs,

or whoever has this matter in charge. I would like to have them, although the authorities here say they will not regard a permit granted by the United States Government. I will inclose a list of names I want permits for. If you will urge upon the government to take some action in regard to this matter, you will confer a great favor on your many friends in this Territory, besides many of your constituents living along the line. If you can spare the time, I would like to hear from you on these matters, and if anything of interest in regard to Indian matters comes before Congress, so as to give the people some little liberty, I do hope it will receive the support of at least all the members of the Western States." * * *

"CHEROKEE NATION, 19th Dec., 1878.

"Col. E. C. BOUDINOT, Washington, D. C.:

"Although a stranger to you, I take the liberty to drop you a line in regard to an act of the last Cherokee Council, as I am a citizen of Delaware district.

"They passed a law requiring their citizens to pay \$25 per month for white labor, or \$300 per annum, for one citizen of the United States to work twelve months. If they fail to pay the \$25 as above, they are subject to at least \$100 fine and twelve months' imprisonment in the "national prison," so called. This law will, if strictly enforced, cause ninety per cent. of the improved land of the nation to lie idle for the next year; for, as you well know, the full-bloods will not work on a farm. Now, if we have to submit we are ruined, as many of us have spent thousands of dollars in improvements that must, under this "breach-clout" legislation, grow up in briars and brush.

"Our council of last year (1877) repealed or killed the permit law, allowing our citizens to hire or rent to whom they saw fit, and as many as they wanted, without any tax. The consequence was we got good men in my neighborhood, who have contracted and sown wheat for next year (1879). Now, to move these people at this unseasonable time of the year, after making their contracts in good faith, is no more nor less, in my opinion, than robbery. They can't sell what they have here to live on for anything, and can't take it with them; nor can they live where they go without it.

"No one here is in favor of the law but the 'dirt-eating, lick-spittle, politicians, and a few slick-shins. It is a death-blow to the progressive part of our community. Will a permit from the Secretary of Interior secure us from a prosecution in our courts? Or, in other words, have we any remedy; and if so, what is it? Several of my neighbors are anxious to know your views as to what we shall do. If it is not asking too much of your valuable time, please point out what to do in the premises at your earliest convenience.

"P. S.—Would this law be regarded as an *ex-post-facto* law by the authorities at Washington?" * * *

I have other letters of like character which I might submit.

Now, any legislation by Congress which will protect labor in the Territory, and result in the cultivation of the lands to the same extent as less valuable lands are cultivated in the adjoining States, will be of the greatest interest to the railroads in the Territory, although they should never acquire a single acre of the land.

CRIME.

There is more crime in the Indian Territory, in proportion to its population, than in any other State or Territory in the United States. These

delegates may talk as loud and long as they choose to the contrary; the records support me in this assertion.

The committee has in its possession a statement of the clerk of the United States district court for the western district of Arkansas, which shows that there have been 914 indictments found by the grand jury in that court during the last five years, and that of these, *sixty-nine* cases of murder, *twenty-four* cases of manslaughter, *one hundred and one* cases of assault with intent to kill, and *four hundred and thirty-one* cases of larceny have been tried in that court during that period. Every one of these crimes was committed in the Indian Territory. Match it if you can in any community in the country of seventy-five thousand souls.

It must be borne in mind that that court has jurisdiction only in cases where one of the parties is not an Indian. Add to this appalling list as many more which the court has no jurisdiction over, and it will appear that life and property are not as safe in the Indian Territory as elsewhere. On page 758 of the printed testimony we have the statement that there have been more than fifty murders "perpetrated within twenty miles of Caddo, Choctaw Nation, within the last three years, and not a single murderer was ever punished." I am informed that since this committee was in the Territory there have been seven murders committed there; one at Delaware Bend, one in Panola County, Chickasaw Nation, two at Colbert's Station, Chickasaw Nation, one at Stringtown, one near McAllister, and one at Muscogee, Creek Nation. Besides these, several are reported killed in the Cherokee Nation.

SOVEREIGNTY.

The argument of these delegates that their nations are independent is not sustained by facts. Should Mr. Ross raise tobacco on his farm in the Cherokee Nation, and manufacture and sell it to Mr Adair without paying a tax to the United States, he would be liable to trial and punishment in the United States courts. How absurd to talk about the sovereignty of these nations.

Allow the civilized Indian to become a citizen of the United States, and give him his land in severalty, and the land which in 1876 produced 2,000,000 bushels of grain would in 1886 produce 50,000,000 bushels; all other products would be increased in proportion; and, in the proportionate increase of carrying freight and passengers, the railroads would be benefited.

PLUNDERERS OF THE SCHOOL FUND.

I have little to say respecting the second resolution of Mr. Voorhees, which relates to the amount of money belonging to the general and school fund which the delegates from these nations have expended during the last five years to defeat legislation by Congress which looked to the organization of a Territorial government.

This committee decided, early in the investigation, that the disposition of the general fund of the Cherokee Nation was a matter beyond its control, and the failure to get a glimpse of the treasurer's books has left the committee quite as much in the dark as to the amount of the school funds annually squandered by the Cherokee delegation.

I wish to record myself, however, as one who ridicules as a contemptible subterfuge the excuse of the delegates for declining to make an exhibit of their extravagant expense account. It is not because they have such a chivalrous regard for the "rights and privileges and dignity" of

the Cherokee Nation, so much as it is a desire to hide from their people the fact that they have expended during the last five years more than \$200,000 of the general and school funds of the Cherokee people under a hypocritical pretense that they were moving heaven and earth to prevent railroad companies from stealing the lands of the Cherokees. The Cherokee Nation is now \$200,000 in debt, and the wicked extravagance of the Cherokee delegation is responsible for it. This could have been abundantly proven if an opportunity had been permitted.

THE LEGAL QUESTIONS.

The third and last resolution of Mr. Voorhees requires you to report whether or not a civil form of government can be organized by Congress over the Indian Territory without confirming the conditional land grants; and, also, whether the lands now held in common by the Indians can be divided in severalty without confirming such grants.

These are purely questions of law, and I shall not presume to instruct members of this committee, who are much more learned in the law than I am, how they should decide them.

It is worthy of note, however, that while these Indian delegates contend that their nations have an absolute fee-simple title to their lands, they denounce with great strength of lung the attempt of soulless corporations to steal their lands.

If my nation has a fee-simple absolute title to ten million acres of land, I am unable to understand how Congress can take it away. Or if we held merely a right of occupancy, and not the fee, I cannot see how legislation by Congress which will establish a civil government over the Territory could affect in the least this right of occupancy.

If it is possible, through an act of Congress, to exchange my right in common to 10,000,000 acres of land for 160 acres in severalty, and that I can be invested with an absolute title to such 160 acres, it passes my comprehension how I could be deprived of it by any act of Congress, or other power, and why I should not be just as safe in my homestead as you are in yours.

But I will not consume time in arguing these questions of law. I affirm these two propositions, and will endeavor to sustain them:

1st. A civil form of government is expressly provided for in the treaties of 1866 with the Cherokee, Creek, Seminole, and Choctaw and Chickasaw Nations, and is absolutely necessary; and

2d. The division of the lands in severalty is essential to the prosperity and advancement of the civilized Indians.

The treaties stipulate for the organization of a civil form of government over the Indian Territory.

CHOCTAW AND CHICKASAW TREATY OF 1866.

The seventh article of the Choctaw and Chickasaw treaty of 1866 reads as follows:

"The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of persons and property within the Indian Territory: *Provided, however,* Such legislation shall not in any wise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations, respectively."

This article alone gives authority for Congress to legislate as it may deem necessary for the better administration of justice, &c., subject only to the proviso that such legislation shall not interfere with their tribal organizations, &c. This article of the Choctaw and Chickasaw treaty is ample authority for any kind of a Territorial government which will not interfere with the tribal organizations. But the parties to this treaty defined explicitly what kind of a Territorial government should be established in the Indian Territory. I submit the eighth article in full to show this:

"ART. 8. The Choctaws and Chickasaws also agree that a council consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory may be annually convened in said Territory, to be organized as follows:

"1. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe, lawfully resident in said Territory, shall be taken under the direction of the superintendent of Indian affairs, by competent persons to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior and paid by the United States.

"2. The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations respectively who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the number and proportions indicated.

"3. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate, but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

"4. The general assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said Territory; the arrest and extradition of criminals escaping from one tribe to another; the administration of justice between members of the several tribes of the said Territory and persons other than Indians and members of said tribes or nations; the construction of works of internal improvement; and the common defense and safety of the nations of said Territory. All laws enacted by said council shall take effect at the time therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organiza-

tion, laws, or customs of the several tribes or nations, except as herein provided for.

"5 Said council shall be presided over by the superintendent of Indian affairs; or, in case of his absence from any cause, the duties of the superintendent, enumerated in this article, shall be performed by such person as the Secretary of the Interior shall indicate.

"6. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all proceedings of said council, and to transmit a true copy thereof, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior, immediately after the session of said council shall terminate. He shall be paid five hundred dollars, as an annual salary, by the United States.

"7. The members of said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles, going and returning therefrom, by the most direct route, to be certified by the secretary of said council and the presiding officer.

"8. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory, with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

"9. Whenever Congress shall authorize the appointment of a delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in the said council.

"10. And it is further agreed that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of 'Governor of the Territory of Oklahoma,' and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belongs to an executive officer charged with the execution of the laws which the said council is authorized to enact under the provisions of this treaty; and that, for this purpose, he shall have authority to appoint a marshal of said Territory, and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

"11. And the said marshal and the said secretary shall each be entitled to a salary of five hundred dollars per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior; it being understood that the said fee-lists may at any time be corrected and altered by the Secretary of the Interior as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be \$500, to be paid in like manner by the United States.

"12. And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations, the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations.

"13. *And whereas*, It is desired by the said Choctaw and Chickasaw Nations that the said council should consist of an upper and lower house, it is hereby agreed that, whenever a majority of the tribes or nations rep-

resented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house, consisting of one member from each tribe entitled to representation in the council now provided for, the relations of the two houses to each other being such as prevail in the States of the United States, each house being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerks of each house to make out and transmit to the Territorial secretary fair copies of the proceedings of the respective houses immediately after their respective sessions, which copies shall be dealt with by the secretary as is now provided in the cases of copies of the proceedings of the council mentioned in this act. And the clerks shall each be entitled to the same per diem as members of the respective houses, and the presiding officers to double that sum."

THE CHEROKEE TREATY OF 1866.

Article 12 of the Cherokee treaty of 1866 agrees to a general council, consisting of delegates to be appointed in the same way as is provided in the eighth article of the Choctaw and Chickasaw treaties. I quote the article in full:

"The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.

"First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

"Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article; and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior, whenever in his judgment the interest of said tribes shall require such special session.

"Third. Said general council have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory; the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes or nations, and the common defense and safety of the nations of said Territory.

"All laws enacted by said council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States, nor shall said council legislate upon matters other than those above indicated: *Provided, however,* That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

"Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

"Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

"Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes respectively from said council, to be certified by the secretary and president of the said council."

Article 13 of the Cherokee treaty reads as follows:

"The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided,* That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."

The tenth article of the Creek treaty, and the seventh article of the Seminole treaty of 1866, contain similar stipulations. It is not necessary to read them.

No one can read these articles of the treaties of 1866 without seeing at once that these five nations have in the most formal and official manner consented to the establishment by Congress of a civil government over their territory.

They have consented to the organization of a general council, with legislative powers specifically defined. This council is to have authority to pass *laws*. Of what possible use would be a legislature to pass laws, when there is no judiciary to consider, or executive authority to execute them?

Several things could be done and *have* been done by the Secretary of

the Interior and by the Indians to carry out the stipulations of these treaties.

1st. The enumeration of each tribe has been taken under the direction of the Commissioner of Indian Affairs, and the general council or legislature for the Territory has been convened and organized, and appropriations for its expenses have been made for six consecutive years. All this is provided for in the treaties, and has been done. Now, if Congress will establish a United States court in the Territory, and provide for a Delegate to Congress, it will give force and effect to the stipulations of these treaties.

I wish this committee to bear in mind that there are very important propositions in relation to the Indian Territory, upon which there is no difference of opinion between these Indian delegates and myself. Indeed, it will astonish you, when you come to figure it down, to find how nearly we agree.

These Indian delegates wish Congress to repeal the conditional railroad land grants.

So do I.

They wish Congress to establish United States courts, as provided for by the treaties of 1866.

So do I.

They wish to preserve the organization of the general council.

So do I.

They "adhere firmly to the provisions of their treaties with the United States." (See p. 508, Vinita protest.)

They can't adhere to the treaties any closer than I.

Upon these points there is the most affectionate and cordial unity between these delegates, the people they represent, and myself.

Upon these four propositions there is perfect accord between us. I beg them here and now to correct me if it is not so. The committee well know that the 800 pages of testimony fully sustain me.

The questions upon which we do *not* agree are—

The election of a Delegate to a seat on the floor of Congress;

A law which will enable civilized Indians to become citizens of the United States; and

The division of the lands in severalty among the Indians.

These are the only matters about which we differ. I would surrender my views upon them at once, and join with these delegates in opposing them, if I did not honestly think they would greatly tend to elevate and improve the condition of my people.

Let us, for the sake of civilized argument, take it for granted this morning that these delegates are as honest in their convictions as I am in mine, and let us reason together.

DELEGATE TO CONGRESS.

Nearly one hundred years ago the United States offered the Cherokees the privilege of sending a Delegate to the American Congress.

Article 9 of the treaty made with the Cherokees in 1785 provided, "That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress."

Surely, if the Cherokees were worthy of this distinguished honor a century ago, we must be well qualified now.

Again, in 1835, thirty years before the colored brother was received

in full fellowship upon the floors of Congress, the Cherokees were promised representation in Congress.

Article 7 of the Cherokee treaty of 1835 reads as follows:

"The Cherokee Nation having already made great progress in civilization, and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition as well as to guard and secure in the most effectual manner the rights guaranteed to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the Government of the United States toward the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the same."

It is provided in the ninth section of the eighth article of the Choctaw and Chickasaw treaty of 1866 that "Whenever Congress shall authorize the appointment of a Delegate from said Territory [the Indian Territory], it shall be the province of said council to elect one from among the nations represented in said council."

From a report of the House Committee on Indian Affairs, made in the Forty-fourth Congress, but printed in the first session of the Forty-fifth Congress (Mis. Doc. No. 18), I quote this paragraph, referring to the Cherokee Nation:

"It also appears that an expenditure, which sometimes reaches \$25,000 a year, is made by this nation in the support of delegates at Washington. Notwithstanding the large fund derived from the United States, which is increased by various taxes, this nation has incurred a debt of several hundred thousand dollars, whose evidences in different shapes are sold from twenty-five to fifty cents on the dollar.

"No accounts are ever furnished to the Commissioner of Indian Affairs of the manner in which the money is expended nor are any accounts published in the nation.

"The knowledge, therefore, of the manner in which all these trust funds are expended is limited to a very few persons, most of whom are officers of the nation, drawing salaries from this fund."

This report, which recommends the organization of a territorial government over the Indian Territory, is signed by A. M. Scales, chairman, W. W. Wilshire, A. R. Boone, Wm. A. J. Sparks, Chas. E. Hooker, C. H. Morgan, J. H. Seelye, H. F. Page, John Q. Tufts.

The forty-fourth article of the treaty made by the so-called "Confederate States" and the Cherokee Nation provided for the election of a Delegate from the Cherokee Nation to Congress.

Article 44 of the treaty with the "Confederate States," which Mr. William P. Ross helped to make, provided that—

"In order to enable the Cherokee Nation to claim its rights and secure its interests without the intervention of counsel or agents, it shall be entitled to a delegate to the house of representatives of the Confederate States of America, who shall serve for the term of two years, and be a native-born citizen of the Cherokee Nation over twenty-one years of age, and laboring under no legal disability by the law of the said nation; and each delegate shall be entitled to the same rights and privileges as may be enjoyed by delegates from any Territories of the Confederate States to the said house of representatives."

This treaty is signed by John Ross, principal chief; William P. Ross, executive counselor, and others.

Mr. William P. Ross, one of the delegates from the Cherokees, who is

here to-day opposing propositions which will allow his nation a Delegate on the floor of Congress, was one of the signers of this treaty.

Why the privilege should be such a good thing under the Confederate Government, and such a dangerous one under this government, perhaps he can explain. I confess my inability to do so. The treaties of the Creeks and Choctaws and Chickasaws with the "Confederate States" contained similar provisions, and delegates were elected and took their seats in the Confederate Congress. I know this to be so, for I was one of them myself.

There could be no violation of any treaty in offering the civilized tribes the privilege of sending a Delegate to Congress. It would rather be a tardy fulfillment of the stipulations of treaties.

Mr. W. P. Ross, in reply to a question asked him by the chairman of the House Committee on Indian Affairs, said that the Cherokee delegation to Washington cost the Cherokees about \$20,000 annually. In response to this statement I said:

"I have received information from parties, who speak advisedly, that these delegates cost the Cherokees much more.

"For the first session of the Forty-fourth Congress the delegates cost our people \$30,000; for the second session of the Forty-fourth Congress, \$29,000; for the called session of the Forty-fifth Congress, for only a month and a half, they cost us \$7,464; making an aggregate in two years, for the Cherokee Nation alone, of \$66,464."

This has never been denied, here or elsewhere.

In September, 1874, this same Mr. Ross, in a carefully-prepared speech delivered at Vinita, Cherokee Nation, which he afterward printed, in reply to a speech which I had made at the same place, alluding to the Cherokee delegation to Washington, said:

"These delegations are a useless and an unnecessary expense. They are a cancer, which should be cut out by the roots."

It is well to remark that Mr. Ross was not at that time one of the delegation, and his prospects were gloomy that he ever would become one.

I agree with his declaration, the delegations are a "cancer" on the Cherokee body-politic; it has eaten its way into the vitals of the Cherokee Nation, until the nation is at this day more than \$200,000 in debt, and sinking deeper and deeper every day.

The Cherokee Nation, with a population of about 18,000 souls—less than a small county in one your States—has representing her this winter five delegates, at an expense of not less than \$50 a day.

I have no doubt the expense of the delegations representing the five civilized nations now in this city is costing their people more than \$100 a day.

I am honestly and sincerely of the opinion that one Delegate on the floor of Congress would cost the Indian nations \$100 a day less, and wield a great deal more influence than the ten or twelve delegates now here, with all their concentrated wisdom.

Passing from the proposition to give the civilized Indians representation in Congress, let us examine the second point of difference between these delegates and myself.

I am in favor of investing the civilized Indians with all the privileges and responsibilities of American citizenship. Why not?

I am clearly of opinion that all the Indians in the United States were made citizens by the 14th amendment of the Constitution. Such high authority as ex-Senator Carpenter, in a report from the Senate Judiciary Committee a few years ago, decided that the 14th amendment did not

make the Indian a citizen, for the reason that he was *not* subject to the jurisdiction of the United States. This report was made, however, before the decision of the Supreme Court in my tobacco case. (11 Wallace, p. 616.) That decision establishes the fact that Indians *are* subject to the jurisdiction of the United States, and liable to taxation as citizens.

But however this may be, it is true that the Indian is not treated in all respects as a citizen while he remains upon the reservation of his tribe. I believe every Indian in the United States should be declared a citizen, and that he should have the protection as well as the responsibilities of such. In Canada the Indian is a subject of the Queen, and is punished for crime and protected in his person and property just like any other subject. With one-third the number of Indians you have in your dominions, outbreaks and raids and wars are unknown. The wars and rumors of wars which disturb this country are unknown in Canada. If the policy of making the Indian a citizen and giving him the impartial protection of the laws has worked so well in Canada, is not the experiment worth trying in the United States?

But if this is too radical a suggestion, why not give the educated and civilized Indian the opportunity to become a citizen if he wants to be?

It is true that any Indian who will leave his home, sever his relations with his tribe, and go into a State, may, after the lapse of sufficient time, become a citizen of such State and the United States; but to do this he would have to give up his home and commence life anew among strangers. He should be allowed to become a citizen, if he wishes, without abandoning his home.

These delegates assert that their people are almost unanimously content with the lovely condition they are in to-day, and earnestly protest against any change. If this be so, no great harm could result in giving me and a very few other persons (according to the assertions of the delegates), who think as I do, the chance of becoming citizens of the United States. This government took from me some \$75,000 worth of property because I did not pay taxes *in* the Indian Territory. In doing this it even abrogated a positive stipulation of the Cherokee treaty. Now, if I am to be punished for not paying taxes to support this government, must I be blamed if I ask the protection of its laws?

To illustrate: My life and my property would be much safer in the Cherokee Nation if I were a citizen of the United States than they are now; because *then* the United States court, having jurisdiction over the Territory, would take cognizance of offenses against my person and property committed by anybody. Now, such court can take jurisdiction only over such offenses if committed by a citizen of the United States.

I ask the attention of the committee to a law of this country which offers a gratuity of 160 acres of land to *any* Indian, civilized or savage, who desires to become a citizen of the United States. This is a step in the right direction, but it is defective, and does not meet the requirements of the case.

The fifteenth section of the act of June 30, 1875, is as follows:

"SEC. 15. That any Indian born in the United States, who is the head of family, or who has arrived at the age of twenty-one years, and who has abandoned, or who may hereafter abandon his tribal relations, shall, on making satisfactory proof of such abandonment, under rules to be prescribed by the Secretary of the Interior, be entitled to the benefits of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 28, 1862, and the acts amendatory thereof, except that the provisions of the eighth section of the said act shall not

be held to apply to entries made under this act: *Provided, however, That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor: Provided, That any such Indian shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations; and any transfer, alienation, or incumbrance of any interest he may hold or claim by reason of his former tribal relations shall be void.*"

Under this law, any Indian in the Territory may go into Kansas or elsewhere and take a homestead. He may sever his relations with, and abandon his tribe, and after all that "*be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations.*"

Now, if you are willing to give the Indian 160 acres of land and protect him in all his property rights as an Indian, what can be the objection to allow a civilized and educated Indian to become a citizen without forfeiting his home and property?

In an official letter of the Commissioner of Indian Affairs, dated January 14, 1878 (see evidence, page 632), it appears that there were at that date 8,767 white and black citizens of the United States in the Indian Territory who are also members of the Indian tribes.

From the testimony of negroes in the Choctaw and Chickasaw Nations, there are in those nations nine thousand negroes who are rightfully living there who are not members of any Indian nation.

The letter of the Commissioner of Indian Affairs, referred to, further shows that there are 1,885 Ottawa, Pottawatomie, and Wyandotte Indians living on reservations in the Territory who are citizens of the United States. Add to these, 3,000 railroad employés, and we see that there are more than 22,000 citizens of the United States who are permanently domiciled in the Indian Territory. This is more than one-third of the population of the five civilized tribes. A citizen of the United States who marries a Cherokee woman becomes thereby a member of the Cherokee Nation; yet he still remains a citizen of the United States, and the United States court at Fort Smith exercises jurisdiction over him for offenses committed in the Territory. The white man who marries a Cherokee woman has the same right to property in the nation, the same interest in the lands and money of the nation that I have; yet he is regarded as a citizen of the United States, and receives protection as such for his person and property. Would it be unfair or wrong to give me the same protection your government affords to him?

Now, as to the question of dividing the lands in severalty among the members of the Indian tribes, I wish to say that if such division will result in confirming the conditional land-grants, I am unalterably opposed to it. What suggestions I have to present upon this subject are offered upon the supposition that you will report that the lands can be allotted without confirming the grants.

There is nothing said in the Creek and Seminole treaties about the allotment of the lands.

Article 20 of the Cherokee treaty stipulates that—

"Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States."

More than one-half of the present territory of the Cherokees has already

been surveyed; the United States has reserved to itself, by treaty with the Cherokees, the right to allot the lands in severalty among the Indians who may be settled on Cherokee lands west of 96 degrees west longitude whenever it pleases. In proof of this, I refer you to article 16 of the Cherokee treaty of 1866:

"The United States may settle friendly Indians in any part of the Cherokee country west of 96 degrees, to be taken in a compact form, in quantity not exceeding 160 acres for each member of each of said tribes thus to be settled, the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee-simple to each of said tribes, to be held in common, *or by their members in severalty, as the United States may decide.*"

But the Choctaw and Chickasaw treaty of 1866 provided all the details for the survey and allotment of their lands in severalty. The representatives of the Choctaw and Chickasaw Nations in 1866 expressed their deliberate opinion "that the holding of their land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare and the best interests of their individual members." (See article 11 of the Choctaw and Chickasaw treaty of 1866.)

The Chickasaws have already acted, and the territory of that nation has been surveyed and sectionized.

I heartily concur in the declaration of the treaty, that the allotment of the lands in severalty will promote the general civilization of the Indians, and tend to their advancement and welfare. Even my venerable friend, Governor Pitchlynn, was of this opinion in 1866. He says he has changed his mind since then, because he understands that the experiment has been tried with the Pottawatomies and other Indians in Kansas, and has proved a failure (I have not been able to find wherein it has failed); and further, because since the date of his letter to his people, advising them to have their lands surveyed and allotted, Congress gave the railroads conditional grants of land in his nation. Now, that is one of the most important matters this committee is called upon to investigate and report. If you shall decide that the lands can be allotted without confirming these grants, you will allay the apprehensions of the governor and all the Indians.

I have endeavored to establish these points, viz:

That the sentiment of the Indians of the Territory is practically unanimous in favor of the repeal of the railroad land grants; in the organization by Congress of a United States court in the Territory, and the continuance of the general council, provided Congress legislates so as to carry out the intention and stipulations of the treaties respecting it; and that if the Indians are sincere when they assert so often that they "adhere firmly to the stipulations of their treaties," they will accept with pleasure the organization of a civil government over the Territory.

Twice have they, through their representatives in the general council, endeavored to organize a civil form of government over the Territory. One of the Cherokee delegates here to-day (Mr. W. P. Ross) was the author of the first constitution of the Indian Territory, which was adopted by the members of that council with but five dissenting votes. It is not a dazzling exhibition of statesmanship, but it proves that he, and a great many others, agree with me in the opinion that some kind of a general government should be established in the Indian Territory other than the existing tribal governments. I submit this constitution in full, for the information of the committee, as an appendix to my remarks.

This same Mr. Ross urged the adoption of this constitution by the

Cherokee council in an elaborate and well-prepared speech, in the course of which he said :

"Thus the grand council, as it stands under the treaties with the other parts of the government which the treaties imply shall be afterward created, of course by law of Congress, is nothing but a Territory of the United States, more dependent upon the Government of the United States than any other Territory of the Union.

"It is the treaties which, so far as they provide a government for this Territory, I allege, place the Indians under a Territorial government in fact."

Before the treaties of 1866 were made, and before the railroads were chartered, Colonel Adair, who is also here as one of the delegates, stood shoulder to shoulder with me in advocating the establishment by Congress of a civil government for the Indian Territory, as appears from the following extract from a memorial addressed by Colonel Adair and myself to Congress in 1866.

At that time there was pending in Congress a bill "to consolidate the Indian tribes and organize a civil government over the Indian Territory."

Colonel Adair and myself indorsed this Territorial scheme in this choice and positive language :

"The memorial is full of declarations entirely unsupported by facts, and many of them without the shadow of foundation in truth. We invite your attention to some of the most material. Concerning the 'bill to consolidate the Indian tribes and establish civil government in the Indian Territory,' it is asserted that it is the solemn conviction of the Cherokee people that if that bill becomes a law and is carried into execution it will crush us as a people and destroy us as a nation.

"By reference to the official report of the Commissioner of Indian Affairs for 1865, page 312, it will be seen that there are those among the Cherokees who do not entertain this solemn conviction nor indulge in such fearful forebodings; and that the grand scheme of the Secretary of the Interior, who is the author of the bill, may by reasonable modifications and amendments become acceptable to every lover of his people, and serve to accomplish the humane wishes of the government, which we know to be the enlightenment and elevation of our race."

Colonel Adair pronounced this Territorial project a "*grand scheme*" twelve years ago. Why should it appear to him so odious to-day?

Nearly 16,000,000 acres of land in the Indian Territory, more than one-third of the entire area, and larger than the combined States of Massachusetts, Rhode Island, and Connecticut, were, by the treaties of 1866, ceded and conveyed by the Indians to the United States; the consideration has been paid, and the lands belong absolutely to the United States. A law recently enacted forbids the removal of any more Indians from Colorado, New Mexico, or Arizona into the Indian Territory without an act of Congress authorizing it. This practically closes the Indian Territory against the removal of any more Indians into the Territory, and explodes that Utopian and absurd theory that the Indian Territory is specially and everlastingly devoted to the exclusive use of the Indians of the country. It was time to do this. In my candid judgment, there never was a more inhuman or ridiculous policy devised by the stupidity of man than the idea that this rich and great tract of country, in the very heart of the United States, was forever to remain closed against the civilization and progress of the white race. I have called it an inhuman policy. It is so. If the truth was known, it would be found that the Interior Department, in removing Indians into the Indian Territory,

have in the last three years killed more Indians—men, women, and children—than the armies of the United States have in the last ten years.

In nearly all the memorials and protests of these Indian delegates, it is declared that their people adhere firmly to the stipulations of their treaties, and only wanted such treaties carried out in good faith. Very well. By the fifth article of the Creek treaty of 1866, the Creek Nation agreed to sell to any road authorized by Congress to be constructed, north and south and east and west, through that nation, a belt of land six miles wide. Now, do Mr. Porter and Mr. Hodge, Creek delegates here, really wish this stipulation of their treaty carried out in good faith?

The testimony taken by this committee of teachers, ministers of the Gospel, and men of the highest character, whose friendship for the Indian is unquestioned, shows conclusively that the Indians of this Territory have improved most in civilization where he is brought into contact with civilization. As Professor Seelye well said in a report to Congress two years ago:

"The Indians are not likely to make any progress in civilization through their unaided efforts. No savage ever civilized himself. No partially-civilized people ever rose to a better state without help from a higher plane. Men always become worse instead of better, unless they can be held to their goodness and made progressive therein by other and better agencies than their own.

"Instead of the lower lifting itself to the higher, the historical fact has always been that the higher has had to descend upon the lower and breathe into it its own spirit before there could be any progress to a better state."

These are the views of as wise and pure a statesman and scholar as lives to-day in the United States, and they are eminently true of the Cherokee Indians.

I appeal to this committee, if it can be done without confirming the railroad grants of lands, to recommend the organization of a civil form of government upon the basis of the provisions of the treaties I have quoted, and at least to settle the question definitely and forever as to whether our lands can be allotted in severalty without confirming those grants.

Give every civilized Indian a chance to become a citizen of the United States, if he desires to become such.

You extend the strong arm of your law to tax him and punish him for offenses committed in his own territory. Let him understand that laws will protect as well as punish him, and that he may have, if he chooses, an equal chance in the race of life which you have granted all other classes of people in this country.

STATEMENT ON BEHALF OF THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY BEFORE THE HONORABLE COMMITTEE ON TERRITORIES OF THE SENATE OF THE UNITED STATES.

The inquiry directed by the first resolution has been fully answered by the testimony taken by the committee, showing that a mortgage was made by the Missouri, Kansas and Texas Railway Company, covering its whole line from Sedalia, Mo., to Dennison, Tex., to secure

\$14,000,000 of bonds. This mortgage covers all the property of the company, including its right of way, track, buildings, and lands owned or to be acquired in consequence of the construction of its road. Its right of way of two hundred and fifty miles through the Indian Territory is of course, a part of such property. No other bonds have been issued by this company which can be in any sense held to be "predicated" upon lands in the Territory; and the mortgage does not profess to claim that anything more than the right of way, track, and appurtenances is the property of the company. The language of the trust deed is, however, broad enough to include any lands the company may acquire in the Territory by purchase or grant. But so long as grants, by act of Congress, remain "conditional," the company can create no lien upon the lands. A mortgage upon property not owned by the mortgagee will not operate as an incumbrance, nor benefit the mortgagee in the courts.

The bonds issued and secured by the mortgage are held for investment in Amsterdam, London, Paris, and New York. A register of the names of the holders who have recently made an agreement with reference to the mortgaged property shows that nearly two thirds of the amount are held abroad.

II.

The railway company is interested in the third resolution, requiring the committee to "ascertain whether a civil form of government cannot be organized over the Indian Territory for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of land to certain railroad corporations."

The construction of this road through the Territory was permitted by the Indian treaties of 1866. By two of those treaties—that of the Creeks and the Choctaw and Chickasaws (14 U. S. Stat. at Large, 771, Art. 6, 787, Art. 5)—it was contemplated that the railroad company might become the owners of land and the Indians stockholders in the road. The tribes were looking forward at an early day to a division of their lands. The railroad was invited, not repelled. It has expended millions of dollars upon the two hundred and fifty miles of its road, and has brought into the Territory, as its employés, with their families, a population of several thousand. These people are citizens of the United States. No court possesses civil jurisdiction over them. In all their dealings with Indians they are totally without the protection of law. Crimes committed by or against them can only be redressed or punished by the United States district court for the western district of Arkansas at Fort Smith. In many instances distance is an effectual barrier to prosecutions. In their persons and property they are practically at the mercy of the Indians. That they are entitled to consideration and relief follows from their rightful presence and accumulation of property in the Territory. A tribunal which shall have civil and criminal jurisdiction, and protect the large investments of the railroad company made by the permission of the tribes, and the property of their employés, is a necessity of the most pressing character.

2d. We submit also to the committee that there is no obstacle to a division of the lands in severalty without confirming the conditional grants of lands.

The fee of the soil is in the United States, and the Indians have only a right of occupancy or possession, which is in some instances fortified by

a patent from the government. The patents, however, are not in *fee-simple absolute*, but are qualified by a restriction that the lands shall "*inure to them while they exist as a nation and live on it*, liable to no transfer or alienation except to the United States or with their consent."

Since these patents were made the Indians of the five tribes have ceased to be nomads and become farmers. They call themselves civilized. They have "houses, and fields, and orchards, and flocks." Of the twenty-one millions of acres of lands claimed by them, they "live on" and occupy less than one million. As to the twenty millions of acres, an empire in itself, they have ceased to comply with one of the terms of their tenure by patent. They do not live on them. All the lands they can occupy were explicitly secured to them while continuing their tribal existence; but the inference may well be drawn that when they ceased to use it their title was intended to fail.

Considering, however, that their right of possession covers the whole territory claimed by the tribes, a division of the lands may be made among the individual members, and the whole title vested in them. By uniting the fee with the possession, the entire estate would pass to the Indians, and the grants referred to could not become operative. It is a necessary preliminary to the confirmation of the grants that the lands along the line of the railroad should become public lands of the United State—should become subject to entry and sale under the laws of the United States. This can never occur if the course suggested is pursued. An absolute title in fee would be secured to the Indians.

On behalf of the company, we beg leave to urge upon the committee such action as is necessary to convert this possessory title of the Indians into a perfect fee. It is believed that the time for a division, which it was expected was not far distant in 1866 has now arrived. The ownership of their lands in severalty will be an advantage to the Indians, and to the whites of the Territory and the neighboring States. By securing to each member of the tribes a homestead or "head-right," which shall not be conveyed by deed or long lease, or sold for debt or for taxes, a provision can be made which will prevent the alienation of four million of acres of the selected lands of the Territory; a tract large enough to sustain a population of twenty times the 48,000 Indians by blood to whom it will be given.

The 16,000,000 of acres remaining can be sold under the supervision of the Interior Department at the government price, and the proceeds invested for the benefit of the members of the tribes and the income paid them so long as they continue "Nations"; and when they dissolve their tribes, the principal may be divided among them.

This recommendation of the company it is believed will convince your honorable committee that the company, in the expression of its views upon the questions submitted for consideration, is not engaged in an effort to obtain a confirmation of "conditional grants of lands," or secure a single advantage in the territory for which ample and more than adequate compensation is not made to the Indians.

H. M. RUGGLES,
Of Counsel for M., K. & T. Ry. Co.

WASHINGTON, D. C., *January 22, 1879.*

SIR: At your meeting of 17th instant it was ordered by your committee that parties interested should have the opportunity to submit a statement pertinent to the subject under investigation embraced by Senate resolution introduced last session by Mr. Voorhees. The resolution embodies three principal points, to which we desire briefly to reply.

First. *None* of the school funds of the Creek Nation have been used, at any time, to support a delegation to Washington City; nor have any part of them ever been applied to any use other than school purposes. The certified statement, to be found on pages 729 to 734 of your printed evidence, shows that our nation has expended \$170,165.03 in the last five years for school purposes, whereas the amount set apart by treaty for the same period is only \$65,000. The showing is that \$105,165.03 has been taken out of the general funds of the Creek Nation to maintain their schools and missions, beyond the amounts set apart by treaty, and out of their limited income, in the space of the last five years. This verifies the testimony of Mr. Stidham and others of us, that we make our school system the most favored object of our national care, and that we use all our available funds for school purposes, whether set apart for that purpose or not.

We beg leave respectfully to deny your right under treaty stipulations to make any inquiry into the manner in which we use our funds which are paid by your government to our national treasurer. We beg leave, in this connection, to quote article 7 of treaty of 1856, Revised Indian treaties, page 109:

"It being the desire of the Creeks to employ their own teachers, mechanics, and farmers, all of the funds secured to the nation for educational, mechanical, and agricultural purposes, shall, as the same become annually due, be paid over by the United States to the treasurer of the Creek Nation. And the annuities in money due the nation under former treaties shall also be paid to the same officer whenever the general council shall so direct."

Second. We claim that life and property are as fully protected by our national laws as they would be by any system your government could enforce upon us. The testimony taken by your committee in the Creek Nation fully sustains this assertion, omissions in your printed testimony and *ex parte* statements to the contrary notwithstanding. The unanimous testimony of the entire Creek people, given without intimidation and at your request, must satisfy the unprejudiced minds of honorable Senators of the United States. We thus refute the implied charge in the resolution creating the committee, that life and property are not enough secured by the government of the Creek Nation of Indians.

We beg leave to deny your right to inquire into the local administration of our affairs without being invited to do so by our government. We refer you to article 15, treaty August 7, 1856, revision Indian Treaties, page 111.

As to your right to establish any form of Territorial government over us, we hold you are prohibited by treaty stipulations. We refer you to article 4, treaty of 1856, Revised Indian Treaties, page 106: "The United States do hereby solemnly agree, and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without

the *full and free consent* of the legislative authority of the tribe owning the same."

Third. As to dividing our lands in severalty at your option and without our request, we have only to say, there is no provision of treaty authorizing you to do so. The Creeks, since their *bad* experience of "lands in severalty" in Alabama, have uniformly resisted the insertion of any clause in the several treaties concluded by them since that time which contemplated the division of their common domain in severalty. The testimony on record before your committee shows unmistakably that the Creeks to-day are *all* opposed to any change in their present tenure of lands. The Creeks hold, own, possess, and use their land by letters-patent signed by one of your Presidents, Millard Fillmore, of date August 11, 1852, and the record of that title is now in your General Land Office. That patent was issued under authority of law May 28, 1830, and in fulfillment of treaty concluded February 14, 1833. This parchment of title, issued in conformity with law and treaty, and signed by your Chief Executive, and sealed with the great seal of the United States Government, conveys by explicit terms, in fee simple, the domain which we now occupy, the conveyance is to the Creek Nation, as an entire community, and as long in tenure as we exist as a nation and continue to occupy the same.

In face of the foregoing records of your government with our nation we cannot understand why the Congress of the United States ever entertains for consideration any scheme for the subversion of its solemn treaties with a people who have given the United States so much and have themselves so little left. We have observed the scrupulous nicety of your treaty fulfillments with the great powers, and trust your government will be quite as exact with less potential nations, who have yielded you the threshold upon which to erect your fabric of American republican government. We are your allies by destiny and by treaty; when you have filled up your waste places by natural increase, and the oppressed of foreign nations, seeking a refuge under your benign institutions—when the exigency arises that our country is needed for the comfort and sustenance of a population that has nowhere else to rest, the Creek Nation will open its doors as freely as the Indians who received the adventurers who first landed in America. We have respectfully presented our case as we view it. We believe the people of the United States who are occupying happy homes in pleasant places where once the Indian loved to dwell will not sanction further invasion of our rights and liberties. Our progress has been retarded by the irritation of Territorial bills entertained by the Congress of the United States. We have our aims and know our needs, and in time, if encouraged, rather than as at present, discouraged by your government, we will attain that standard of usefulness and civilization that will redound to your national honor and make coeval in history the redemption of the Indian race from inhumanity.

We have placed before you our treaties—your laws; you have the testimony of your subcommittee. We ask you to weigh what the Indian has said in this question, and in making up your judgment we ask you to *put yourself in his place*.

G. W. STIDHAM,
D. M. HODGE,
PLEASANT PORTER,
Creek Delegates.

Hon. J. J. PATTERSON,
Chairman Senate Committee on Territories.

ARGUMENT OF B. F. GRAFTON, DELIVERED JANUARY 24,
1879, BEFORE THE COMMITTEE ON TERRITORIES OF THE
UNITED STATES SENATE,

In opposition to any legislation that will in anywise interfere with the five civilized tribes inhabiting the Indian Territory, or annul their present tribal organizations, or their respective legislatures or judiciaries, or their rights, laws, privileges, or customs, as solemnly guaranteed by treaty stipulations.

On the 25th day of February, 1878, the Senate of the United States passed the following resolution:

“On motion by Mr. VOORHEES,

“Resolved by the Senate, That the Committee on Territories be, and the same is hereby, instructed to ascertain, at its earliest convenience, whether or not the railroad companies referred to by the acts of the Thirty-ninth Congress, approved, respectively, July 25, 26, and 27, 1866, and entitled, respectively, ‘An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River’; ‘An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas’; and ‘An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast,’ have issued bonds of any kind, predicated upon the conditional land-grants of the lands of the Indians of the Indian Territory claimed by said companies under said acts. If it be ascertained that such bonds have been issued, then it shall be the duty of said committee to ascertain in whose possession the bonds are, and for what purpose.

“Resolved further, That said committee be instructed to ascertain what amount of money has been expended by the several Indian tribes of the Indian Territory in support of delegates to Washington during the past five years, and in opposing the organization of a civil government over said Territory; and whether any of such money has been taken from the school-funds of any of such tribes; and, if so, what legislation is necessary to prevent, in future, the diversion of such school-funds from their legitimate purpose.

“Resolved further, That said committee be instructed to ascertain whether a civil form of government cannot be organized over the Indian Territory, for the better protection of life and property; and whether the lands now held in common by said Indian tribes cannot be divided in severalty among the Indians without confirming the conditional grants of lands to certain railroad corporations.

“Resolved further, That said committee, in the discharge of its duties aforesaid, be authorized to send for persons and papers, to employ a stenographer, and, when necessary, to compel the attendance of witnesses in its investigation, and to report the result of said investigation to this body during the present session of Congress.

“Attest:

“GEO. C. GORHAM,
“Secretary.”

The first paragraph of this resolution required an investigation into the affairs of the Missouri, Kansas and Texas Railway Company, as to the amount of bonds issued by them, the security therefor, and by whom held. The second paragraph required an investigation into the expenditures of the Indians of the Indian Territory, relative to maintaining delegates in this city to oppose the erection of a territorial form of government over them, and whether such expenditures were from their school-funds.

The third paragraph required the committee to report upon a question of law, pure and simple.

Under this resolution, a large amount of testimony was taken in this city during the first session of the Forty-fifth Congress, amounting to 446 pages of printed matter. This consisted principally of an examination into the domestic affairs of the five civilized tribes inhabiting the Indian Territory, and everything that could throw any light whatever upon their civil polity was admitted. No evidence whatever was obtained showing or tending to show that any considerable amount of money had been diverted by any of these tribes from the school fund for the purpose of maintaining delegates here at Washington to oppose the various bills for the formation of a Territorial government attempted to be erected over them. It has been shown, however, that this agitation has had a very bad effect upon these Indians, and has hindered their civilization, and that they have spent reasonable sums of money to maintain delegates here to defeat these projects.

So far as the railroad company is concerned but very little testimony has been taken. It has been shown that \$14,600,000 of what is known as the first assented 7 per cent. bonds have been issued, covering by one blanket mortgage that portion of the road from Sedalia, Missouri, to Denison, Texas, a distance of between four and five hundred miles. No evidence has been taken to show the number of second assented bonds so issued or who are the owners of the same. As to the Indian tribes, great effort has been made by the railway company to smirch them in the matter of their civil affairs and to show that there is a sentiment among certain members of these tribes in favor of dividing their land in severalty and establishing a Territorial government.

The third paragraph of the resolution of the Senate clearly contemplates a report from this committee upon a question of law, but this has been lost sight of in the range of the investigation in the search on behalf of the railroad company for evidence to justify Congress in dividing their lands in severalty and organizing a civil government over the Territory which must necessarily abolish their laws, privileges, and customs, and in the end their nationality and deprive them of their country and their homes.

The case may, therefore, be more properly styled, The Missouri, Kansas & Texas Railway Company vs. The Cherokee, Creek, Choctaw, Chickasaw and Seminole Nations of Indians.

Of the 446 pages of testimony taken in this city there was but little, if any, tending to show a desire on the part of any citizens of these Indian nations for any change in their present form of government or their present title to these lands. Many witnesses were called on the part of the railroad company for the purpose of showing that the Indians inhabiting this territory are qualified in every respect to assume the responsible duties of citizenship under our form of government, and to show further that there is a desire among a great number of them to throw off their tribal relations and to have their lands and annuities divided in severalty and to become citizens of the United States. As an

expert on this point one J. Elliot Condict, a druggist from Philadelphia, was called on behalf of the railroad company, who testified at great length to the intelligence of the Choctaws and Chickasaws, whom he said he had visited as a gentleman of leisure.

It appears, however, from the testimony of Governor B. F. Overton (pages 442 and 443 of the record) that this man Condict once visited their council in the interest of a railroad company which desired to obtain from the Choctaws and Chickasaws a grant of land to aid in the construction of their road through their country from the East to West; that he visited the Chickasaw council during the year of 1872, when Governor Overton was a senator in that body. The governor testifies, on page 423, that Condict approached him and told him that if he would aid in the passage of his railroad bill that he would secure him a nice position on the road, to which he replied: "Mr. Condict, I am not an article of merchandise. I want you to understand that." Condict answered, "You do not understand me; I wish to present my friends with some presents." The governor replied, "Your company has not money enough for me to betray my people."

Governor Overton further testifies that Condict gave Mr. Boorland, a white man of influence, a nice set of harness which he said cost \$100. This Mr. Boorland was connected by marriage with Overton Love who was then a senator in the Chickasaw council. He further testified that Condict presented Mr. Reynolds with a six-shooter that cost \$35, and that Reynolds was then a member of the council, and that Condict lent some cash to other members of the council and gave other members pistols of a smaller kind. His bill was finally defeated.

In order to smirch, if possible, the late administration of Gov. B. F. Overton, of the Chickasaw Nation, a certain petition and papers consisting of letters and extraneous matter was called for by the Senate from the Interior Department, at the request of the counsel for the railroad company, and submitted in evidence before this committee. These papers, which consist in the main of certain petitions purporting to have been signed by certain members of the Chickasaw Nation, protesting against the enforcement of what was known in the Chickasaw country as the "permit law," have no value whatever as evidence in this cause. The history of the "permit law" is briefly this:

The Chickasaw council passed a law requiring every non-citizen to pay a license of \$25 per year for the privilege of living in their country, and all who refused to pay this license were ejected by Governor Overton, with the aid of the military authorities of the United States. This permit law was one of the laws of the Chickasaws, which Governor Overton, as chief magistrate, had taken a solemn oath to execute, and in accordance with that oath, he used his best endeavor to execute the same. Though the petition and papers submitted in regard to this permit law seem to be formidable, they only need to be punctured to be disposed of with a brevity always commendable in such cases. On an examination of the list of names signed to this petition and protest against the enforcement of the permit law, it was found that most of the petitioners were minors; that some of them had gone "to that undiscovered country from whose bourne no traveler returns" long before these petitions were prepared, and that the remainder, with one or two honorable exceptions, were in favor of the schemes presented by the railroad company for the allotment of the land in severalty. It is also a fact worthy of notice that, as shown by the testimony of Governor Overton, the class of men who were ejected from the country in the execution of the permit law belonged to that class who were generically termed in the

South, in the days of slavery, "poor white trash." They came into the Chickasaw country with small wagons, poor horses, or miserable steers, and took up their residence in old, abandoned cabins, or camped in the open country near some convenient stream of water. They would not work. They were not capable of teaching the Indians anything, as they were neither skilled in agriculture nor mechanics. They would thus hover about the country, producing nothing, and finally disappear, and with them, not unfrequently, valuable stock belonging to the Indians.

The allegation made by Lem. Reynolds and other white men, that thousand of acres of land grew up in weeds in the Chickasaw country by reason of the ejection of white people under the permit law, is without any foundation in fact. Indeed, the permit law became necessary as a measure on the part of the Chickasaw Nation to defend themselves against intruders from whom the United States, by treaty stipulations, had solemnly promised to protect them. It is true that the railway company and their friends desire to fill the Chickasaw country with white men, no matter what class, so that they can force them upon the Indians and thus gradually undermine their nationality and destroy them as a people, and whenever these Indians attempt to protect themselves against these schemes a great cry is made of maladministration against the authorities of the nation, who enforce such necessary and wholesome laws.

It must not be forgotten that a great majority of the white men in the Indian country are refugees from justice. Many of them, unfortunately, have married Indian women. Some have entered the country as school-teachers, boarding and lodging with families, and have succeeded in seducing Indian girls, just as such crimes are frequently committed under like circumstances with our own people; and the fathers, having a desire to maintain the good name of their families, compel these offending white men to marry their daughters at the mouth of a double-barrel shot-gun. Of course, such men have been diligent and untiring in their efforts to destroy the tribal relations of these Indians and to allot their lands in severalty, whereby they hope to sell the portions to which they will be entitled, and then abandon the Indian wife and children and flee to climes more genial. These are the characters who are found to be the willing tools of these corporations in their endeavors to open this country to settlement and to rob these people of their homes.

Valentine Dell, a citizen of Fort Smith, Ark., having been called on behalf of the railroad company to testify touching the condition of the Indians inhabiting the Indian Territory, testified as follows:

That the Indian Territory was a perfect pandemonium; that a large proportion of the citizens thereof desired a change in the government; that he could give the names of hundreds of persons who were in favor of changing the form of government, &c. On being cross-examined, however, it appeared that Colonel Dell, as he is called, was a sergeant in the Regular Army before the war, and stationed in the Chickasaw country; that from the beginning of the war to the time he testified before this committee he had never been in the Indian country more than ten or fifteen miles from Fort Smith except upon one occasion, when he went up the river with a picnic party.

When asked to give the names of some of the hundreds of persons who were in favor of establishing a Territorial government over the Indian country, he gave the names of two: a Mr. Welch, a white man who had married an Indian woman, and another, Jere Ward.

This testimony was given on the 19th of April, 1878, when Colonel

Dell excused his inability to give the names of more persons who were in favor of changing the government of the Indians to a Territorial government of the United States for the reason that he had the papers and data at his room, but if he had time to examine them he could furnish the names.

On the 26th day of April Colonel Dell appeared before the committee and moved to expunge from the record that portion of his testimony on page 166 of the printed record showing his inability to give the names of more than two persons who were in favor of the establishment of a Territorial government, on the ground, to use his own language, "as it is stated there, there is either not enough or too much. I could give a hundred names. I only gave two or three names to the committee, and as stated there it does not give my testimony the proper force it ought to have."

In order to give the witness an opportunity to make any correction in his testimony he might deem desirable, I again asked him to give the committee the names of any persons whom he knew to be in favor of a Territorial form of government being established over the Indian country, when he stated that he did not suppose he would be called upon to furnish the hundred names, and failed to give any additional names whatever (page 197). He also submitted in evidence certain petitions, and a memorial on behalf of the colored people of the Choctaw and Chickasaw tribes, presenting their grievances, &c., which he claimed in his examination in chief had been brought to him, and that he had been asked to come to Washington and have the same presented to Congress (pages 153 to 162, inclusive, of the testimony).

On cross-examination, however, it appeared that Colonel Dell had no personal knowledge whatever of any meeting ever having been held by the colored people as stated in these petitions and the memorial; that the papers purporting to be resolutions of the committees, &c., were communicated to him verbally (page 199) at his office in Fort Smith, Ark., and that he, in fact, at his office in Fort Smith, draughted all these papers himself. His testimony would not be considered as of any value before a justice of the peace in an ordinary *cow case*, and certainly it can have no value with this committee as furnishing any reason for the United States to violate its treaty obligations with *these* Indian nations.

THE COLORED PEOPLE OF THE INDIAN TERRITORY.

Their condition, as shown by the evidence, is briefly this: The Choctaws and Chickasaws have never adopted them as citizens of their nations. They are permitted, however, to have the use and occupancy of all the land they can till, and are permitted to own and enjoy all the personal property they can acquire. Their flocks roam at large on the prairies just as the flocks of the Indians do; and they are protected in all their rights of person and property the same as the Indians are. They have no taxes to pay whatever, and in these nations they are not permitted to vote or hold office.

The other nations, the Creeks and Cherokees, have adopted their former slaves as citizens; by virtue of which they are entitled to equal rights and privileges with the other members of the tribes. They vote and are eligible to office. Indeed many of them are elected to their councils. They have equal rights as to the schools, and their children enjoy the benefit of the school-fund of these nations just as the children of the Indians do. As to these two nations—the Choctaws and Chickasaws—their treatment of their former slaves is certainly a step far in advance

of the treatment of any slaves held by the people of any of the late insurrectionary States. While the United States has, in opposition to the will of the people of the late insurrectionary States, bestowed the right of suffrage on the freedmen, the people of the Southern States have nowhere permitted their former slaves to cultivate the soil without paying a fair rental for the same; nor have they failed to impose an equal burden of taxation on them.

In this regard, then, the Choctaws and Chickasaws are treating their former slaves much better than the people of any of the old slaves States, and there should be no ground for complaint against them on this score.

There is no evidence in the record showing or tending to show that any of these freedmen of the Choctaws and Chickasaws desire to become citizens of the United States. All they ask is that they may be made citizens of these nations and permitted to share the benefits of their trust-funds and to have their rights determined or established under the local laws of the Choctaws and Chickasaws.

One Edward Morris, jr., a white man residing in the Chickasaw country, having been called by the railway company, testified at considerable length touching the wrongs inflicted upon the freedmen by the citizens of the Chickasaw country, (page 772). The testimony of Esquire Wolf, Isaac Williams, Edward Cohee, and Philip Stevenson, freedmen citizens of the Chickasaw Nation, was taken by the committee at Colbert Station (pp. 786, 787, and 788 of the record). These freedmen testified that they are getting along nicely; that their children are being educated; that they desire to be adopted as citizens of the Chickasaw Nation, and that they further desire to have the land in common with the nation as at present; that they would rather live under the laws of the Chickasaws than under the laws of the United States, and further that the full-blooded Indians work and have good farms. They testified that the freedmen have a right to own property and to cultivate as much land as they want to; that the Chickasaws have treated them very well; that they could not expect anything better from them.

At the conclusion of the examination of Philip Stevenson (p. 788) the question was asked by the chairman of the committee if anybody had told him what to testify to before this committee, to which he answered, "No, sir; *they* have not." Whereupon the committee adjourned *sine die*.

From the testimony of these freedmen it would seem that the effort on the part of the railway company to furnish some reason for this violent legislation on behalf of the Congress of the United States so far as the freedmen are concerned, is sufficiently answered by the freedmen themselves.

In order to determine the value of the testimony given by white men living in the Indian Territory, touching a desire of a portion of the Indians to have their lands divided in severalty, I must next consider that of

S. W. MARSTON,

late United States Indian agent for the Union Agency, which embraces these five tribes. The following is a brief history of the manner in which his testimony was taken. Marston joined the committee that visited the Indian Territory at Vinita, in the Cherokee country, and went with it to Muscogee, where he now lives, and from Muscogee to Denison, Tex. His deposition might have been taken at Vinita or Muscogee, where an opportunity could have been afforded the Indian nations for cross-examination. But it did not serve the purpose of the railroad

company, or his friend Judge Sears, the attorney thereof, to take it at either point. So, after the committee had gone down from Denison, Tex., to Hot Springs, in Arkansas, and from there to Saint Louis, Mo., on their way to this city, they went back to Fort Scott, Kans., in order that Marston and others who lived in the Indian Territory near the line of the road, and who could all have been examined as the committee passed down the road, might have an opportunity of testifying.

The testimony of Mr. Marston, taken at Fort Scott, Kans., under these circumstances, favors the establishment of a Territorial form of government, and opening the uncultivated land lying in the Territory to settlement by the whites, and the establishment of United States courts; in short, the utter destruction of the right of self-government guaranteed to these Indians and the settlement of their lands by whites.

It is worthy of note that this testimony seemed to fill the full measure of desire of the learned counsel, Judge T. C. Sears, the senator from the railroad company, so completely, that he injected it into an Indian—Charlie Sheco—who swore to the same facts. The purpose of this was, doubtless, to give it full force, as coming from the Indians. But the official records of the Interior Department nowhere disclose that Charlie Sheco, the Indian, and Mr. Marston filled the same office at one and the same time by the appointment of the President by and with the advice and consent of the Senate. Yet these men solemnly swear that they did. Whom are we to believe? Marston, the preacher, or Sheco, the Indian.

It is curious to note the difference between the official reports of Preacher Marston, as Indian agent, under date of September 3, 1877 (page 107, Report of the Commissioner of Indian Affairs for that year), and his testimony in this cause at Fort Scott, Kans.

In his official report above referred to, in speaking of the relations existing between Indians and white men in the Territory, he uses the following language:

"My work has not been to protect these tribes from cold and hunger by furnishing them with clothing and food—these are not supplied by the United States Government—as much as it has been to protect them in their treaty rights against the impositions and craftiness of dishonest white men. I would not intimate by this remark that there are no real good and honest white men among these tribes. There are very many, but those who are unscrupulous, selfish, unprincipled, and indolent far outnumber them. And while the good and honest white people living here are slow to speak and act against the sins of the country, the latter are bold and reckless in their deeds of corruption; in fact, they control, to a large extent, the political and financial interests of the tribes; and the crimes charged upon the Indians in too many cases may be traced either directly or indirectly to the influence or acts of corrupt, designing white men."

In this same report (p. 108), in speaking of the government of these Indians, he says:

"As I remarked in my last report, 'Each tribe or nation has a constitutional government, with legislative, judicial, and executive departments, and conducted on the same plan as our State governments, the entire expenses of which are paid out of their own funds, which are derived from interest on various stocks and bonds, the invested proceeds of the sale of their lands, and held in trust by the Government of the United States, which interest is paid the treasurers of the different nations semi-annually, and by them disbursed on national warrants issued by the principal chief and secretary, and registered by the auditors.' Except among the Seminoles, none of the money thus paid is

used *per capita*, but is devoted exclusively to carrying on the government and the support of schools. The amounts thus received and disbursed are—Cherokees, \$160,000; Creeks, \$75,000; Choctaws, \$60,000; and Chickasaws, \$60,000.

"The population of each tribe, according to the last census taken, is as follows:

Cherokees	18, 672
Creeks	14, 000
Choctaws	16, 000
Chickasaws	5, 600
Seminoles	2, 443
Total	56, 715"

In speaking of the Cherokees he says:

"CHEROKEES.

"The Cherokees are well advanced in civilization, and are an intelligent, temperate, and industrious people, who live by the honest fruits of their labor, and seem ambitious to advance both as to the development of their lands and the conveniences of their homes. In their council may be found men of learning and ability; and it is doubtful if their rapid progress from a state of wild barbarism to that of civilization and enlightenment has any parallel in the history of the world. What required 500 years for the Britons to accomplish in this direction they have accomplished in 100 years."

As to the Creeks he says:

"The Creeks, during the past year, have made commendable progress in the ways and customs of civilized life. Their farms have in many cases been enlarged and better cultivated, and an abundant harvest, more than enough for home consumption, awaits the hand of the husbandman. Besides the cultivated crops, they derive, in a seasonable year, a profitable income from the pecan harvest. It is estimated that more than \$30,000 were realized from this source the past year, and present prospects are equally good this year." (p. 109.)

Of the Choctaws he says:

"The people, as a whole, are making commendable progress socially, intellectually, and religiously, but they seem to have lost sight, in some degree, of the importance of keeping their most intelligent and wisest men to the front, so indispensable to their progress and enjoyment of civilized life." (p. 110.)

Of the Chickasaws he says:

"This tribe possesses more wealth, in proportion to their numbers, than any other. With a soil unsurpassed in richness, adapted to the growth of cotton and all sorts of grain, large and small, they have increased their herds and permanent improvements very rapidly."

Of the Seminoles he says:

"They are making rapid progress in the accumulation of property, and their buildings and farms are being enlarged and improved each year. Being located on so small a territory, their habitations are comparatively near each other, and a stimulus is thereby exerted upon each one to appear as far advanced as his neighbor, and, their leaders being men of Christian character, the people follow as near as may be in the line marked out, and are consequently reaping benefits in improved

farms, increase of stock, and children growing up in intelligence. They have five schools and one academy, or boarding-school, under the supervision of the Presbyterian Board. They expend annually \$2,500 for the support of their schools. The Seminoles receive an annual annuity of \$25,000, which is divided among them *per capita*.

"There are about two hundred church organizations among the Indians of this agency, representing the Baptist, Methodist, and Presbyterian denominations of Christians, with an aggregate membership of over ten thousand; the fruits of the faithful labors of white missionaries, supplemented by that of the native preachers. The meeting-houses of the Indians are built usually of logs and similar in character to their neighborhood school-houses. During the past year the religious work of the different denominations has, by the grace of God, been prospered."

Of their schools he says, on page 109 of the report:

"Schools.

"They have ample provisions for the education of all their children to a degree of advancement equal to that furnished by an ordinary college in the States. They have 75 common day-schools, kept open ten months in the year, in the different settlements of the nation. Then for the higher education of their young men and women they have two commodious and well-furnished seminaries, one for each sex; and, in addition to those already mentioned, they have a manual-labor school and an orphan asylum. All these buildings used for school purposes are of the best style of architecture, and are equipped with furniture and fixtures of the latest and best manufacture. The cost of maintaining these schools the past year was, as reported by the superintendent of public instruction, \$73,441.65, of which \$41,475 was paid as salary to teachers and \$31,666.65 for other purposes.

"The Creeks have 28 public schools, with 28 teachers, to whom they pay \$11,200, and for other purposes \$1,800, inclusive of the salary of the superintendent of public instruction, making a total of \$13,000. Besides the public schools, they have two manual-labor schools, with conveniences for 160 boarding pupils for both sexes. These schools are under the care of the Presbyterian and Methodist denominations." (Report, p. 109.)

"The Muskogee Female Institute is a Baptist mission school of considerable note, with Rev. Joseph Perryman, a native Creek, as principal. Appropriations have been made by the council for two other mission schools, which will soon probably be opened. One of them is for the freedmen citizens of the nation, who share equally in all the rights and privileges of the tribe.

"Provisions were made at the last council for the support of eighteen young men while obtaining an education in the States. They are now pursuing their studies at different institutions."

Of the Choctaws he says:

"The Choctaws furnish ample provisions for the education of their children, having fifty-four day-schools, one boarding, and one manual-labor school, at which there are about twelve hundred pupils in attendance. These schools the past year have cost the tribe \$29,022.50, of which \$12,000 was paid to the teachers, while the balance was expended for other purposes.

"New Hope Seminary, a female boarding-school, located near Scullyville, close to the eastern boundary of their reserve, has about fifty pupils, for whose board and other expenses the council annually appropri-

ates \$5,000, while the Methodist Board of Missions pays the salary of the teachers and such other expenses as the amount appropriated by the council fails to meet."

"The Chickasaws have expended for schools the past year \$43,000, which is the amount available each year, being the interest on their invested funds set apart for school purposes. Their school buildings, with their fixtures, are valued at \$50,000. They have of late decided, and perhaps wisely, to educate their children at home, and to this end they have organized a complete system of public instruction within the reach of all the families. In addition to their common schools scattered judiciously over the country, they have established an academy or high school in each of the four counties of the nation, where students pursue their studies beyond the primary branches." (P. 110.)

"The leaders of the Seminoles, being men of Christian character, the people follow as near as may be in the line marked out, and are consequently reaping benefits in improved farms, increase of stock, and children growing up in intelligence. They have five schools and one academy or boarding-school, under the supervision of the Presbyterian board. They expend annually \$2,500 for the support of their schools. The Seminoles receive an annual annuity of \$25,000, which is divided among them per capita."

It will also be remembered by many who were present on New Year's day in this city in 1878, that Mr. Marston, who was then United States Indian agent for the Union Agency, made various official calls on that day with the delegates representing the five civilized tribes, and that their cards were beautifully arranged and tied together with ribbon, each containing some paragraph from their treaties guaranteeing to these nations the quiet and peaceable possession of their country. On the card of Dr. Marston will be found these words:

"The first thing necessary is that we should keep good faith with the Indians in every respect.—Secretary of the Interior."

Congress at its last session thought that an Indian agent was not necessary for these tribes, and therefore failed to make any appropriation for the office, and on the 30th June, 1878, Mr. Marston's official tenure ceased and determined.

Are we to believe the official statements of Dr. Marston, the Indian agent, or shall we believe the statements of Mr. Marston, the intruder? The two are in direct conflict, and so far as they are relied upon by the railroad company in this effort to establish a Territorial government for this people and to set aside their laws, privileges, and customs, his evidence is of no value whatever.

TITLE OF THESE NATIONS TO THEIR LANDS.

The patent issued by the President to these Indians for their lands is in the following words (page 71 of the Record):

"The United States of America, to all whom these presents shall come, greeting:

"Whereas, by the second article of the treaty begun and held at Dancing Rabbit Creek on the 15th day of September, in the year of our Lord 1830, as ratified by the Senate of the United States on the 24th of February, 1831, by the commission on the part of the United States, and Mingos, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that the United States, under a grant specially to be made by the President of the United States, shall cause

to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee-simple, to them and their descendants, to inure to them as long as they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source:

"Know ye, that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation, the aforesaid tract of country west of the Mississippi, to have and to hold the same, with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, as intended to be conveyed by the aforesaid article, *in fee-simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation, except to the United States, or with their consent.*"

From this it will be seen that the title by which these Indians hold their lands is not that of *occupancy alone*, as is generally supposed. It is a higher and better title than that of occupancy. The lands were ceded them, first, by treaty stipulations; second, by the solemn act of Congress, and third, by patents signed by the President of the United States.

It will be observed that this title is not in form a fee, but as to the beneficial interest in the land, it is the whole title. The difference between this title and the title that the wild Indians hold to their lands is briefly this: The wild Indians have the naked right of occupancy alone, and the United States has the right to acquire and extinguish this right of occupancy to the exclusion of all other nations, or of our own citizens. But these five civilized tribes, in addition to their natural right of occupancy, have the solemn guarantee by the treaty-making power of our government that they shall be permitted to enjoy the entire beneficial use of this land as long as they exist as nations, and live upon it. They have the solemn act of Congress authorizing and directing the Executive to issue patents to them containing the same guarantee. They have the patents issued to them by the President of the United States containing this guarantee. So that the sacred faith of our Government is pledged to them in the matter of these titles in every way that it is possible for a nation to give it.

General Jackson, who had great experience with these five tribes in peace and in war, when he became President of the United States, endeavored to secure for these nations a *permanent* home; one that could never be taken away from them. They were then occupying a large portion of the State of Tennessee and a part of Kentucky, as well as portions of the States of Mississippi, Alabama, Georgia, and Florida as at present organized. He also desired to provide means for the education of their children, and to promote their happiness in every way possible. He conceived the present tenure under which these nations hold their lands, and in doing so the Christian sentiment of the United States was considered, and it was determined to give to these people certain tracts of country lying west of the Mississippi, then a wilderness, so that each and every individual member of all these tribes should have an equal undivided interest in the whole, and the entire beneficial use of the land so long as they should exist as a nation and live upon it, liable to no transfer or alienation except to the United States or with their consent.

These limitations were deemed necessary at that time to prevent

the recurrence of what had transpired in regard to their lands in the States of Georgia, Mississippi, and Alabama, where the Indians had allotted their lands and the States had extended their jurisdiction over them and made them citizens.

It is plain that General Jackson's administration, in creating these titles to these Indians, aimed to place it beyond the control of railway magnates and frontier land grabbers to rob them of their homes, and if that stern old warrior could step out from his pictures on the wall he would cause the hot blush of shame to mantle the cheek of every man who is engaged in this unholy enterprise.

The result of which is thus graphically described by Colonel Pitchlynn in his testimony found on pages 358, 359, 360, 361 of the records, and is as follows:

"Q. Governor, do you think that the allotment of land in severalty among your people would tend to produce a greater incentive to industry than under your present system of government?—A. No, sir; I do not. I will give you the reason. The Choctaw law provides that the improvements are his who makes them; and when he locates on the land, the law protects him. It is his property; it is his home, just as much as it can possibly be if sectionalized and a patent was issued to him. For the last forty years, since we have been in that country west, the Choctaws have greatly improved in agriculture; they have their orchards, and they had just as good improvements before the war, had as good homes, just as much improved as if they had held their lands in severalty. You cannot dispossess a man of his home nor can you encroach upon his improvements. The law protects the timber around his farm.

"Q. Explain the principal workings of taking up a farm in your country?—A. We select a place or buy a place from a man who has before improved it.

"Q. Suppose you select one originally?—A. We select a place, locate on the land, and get boards, &c., and build the improvements.

"Q. Do you have it surveyed and make a return of it?—A. No, sir; we go into the country and take in as much land as we want.

"Q. And your inclosure marks the line?—A. Yes, sir; that is mine. We have a law to protect the timber; nobody dare touch my property. I have been eleven years from home, and yet my property stands there safe, and is now under the control and management of one of my children there.

"Q. How about the protection of person and property?—A. It is just as safe there as in Washington, and much more so. We speak in the treaty of the better protection of person and property. I do not see why that provision should have been put in the treaty, for life and property are just as safe there without it as if we had the laws of the United States placed over us. You cannot make laws to prevent men killing one another; you cannot make laws to prevent men from stealing; you cannot make laws to prevent them from committing assassination, or suicide, or any crime whatever. There never has been any law that would prevent murder, stealing, &c. There are examples of this in the State of Pennsylvania, and we have had examples of it here in the city of Washington. If a Territorial government is extended over that country and it is thrown open to white settlement, we will have fifty crimes where one is committed now.

"Q. What evils, if any, would fall upon your people if the lands were allotted in severalty?—A. Well, sir, just the moment the Indian land is allotted to him he would have a hundred white men striving to get it

from him. They would swear him out it. I will tell you what they did with the great chief of the Choctaws, Mooshilatubbe, who served with General Andrew Jackson in the war of 1812. He was sued for a debt which he did not owe, and by sharp practice and fraud he was deprived of a valuable section of land granted him by the treaty of 1830. He never could understand the processes by which he had been dispossessed, and used to say all a white man had to do to get an Indian's land was to put his mouth to a book and blow on it, and away went the land. That was the experience of the Choctaws in Mississippi and Alabama. Some man with a barrel of whisky across the line would find out where there was a man who had property, and he would get some one to swear against him, and then send the sheriff, and gather up his cattle and horses, and take them away.

"Q. In the light of that experience you do not want to make it possible to be repeated?—A. There would be no peace for a day in the Choctaw territory if you open that country to white settlement. They would be rooted out; they would be cheated out of the country by the white men. They would steal something and put it upon an Indian and go and hang him. In this day, particularly, when there is so much wickedness, and the whole world has got to stealing and robbing, just open that country to white settlement, and you will have a hundred thousand thieves there in less than six months. There would be no safety for life or property for the Indian. I do not speak this in prejudice, but this would be the working of extending a Territorial form of government over the country or on opening it to white settlement.

"Look at the Wyandottes: they were robbed of everything they had in Kansas. They have had to flee to the Indian Territory. There is no country now that the United States can point the Indians to west of the Mississippi. There is no west of the Mississippi any more for the Indians in the sense that term was formerly used. There is no place to fly to find an asylum. We are at the last resting-place. I wish to say one thing about the policy of the Government of the United States towards the Indians. It commenced before the year 1830. This country was given to be an exclusive home for the Indians by the treaties, and the facts of history bear testimony to my statement. It was General Jackson's policy, in order to give the Indians a permanent home. It was the great Democratic policy of 1830. It was carried out with the five civilized tribes who went there to secure a home. The treaties, correspondence, and all negotiations with the Indians express it most plainly. If the Territorial bills that I have seen were passed (I do not speak with enmity of the men who introduced them), there is not one of them that would benefit the Indians.

"Q. Was not that the reason why General Jackson changed his policy?—A. No, sir; General Jackson was out of office then.

"Q. Those who had their lands sectionalized and remained in the States had to give them up to go West afterward?—A. Yes, sir.

"Q. The experiment was a complete failure?—A. Yes, sir; a complete failure with few exceptions.

"Q. Were you present when the treaty of 1866 was made?—A. Yes, sir; I signed it as one of the witnesses.

"Q. You were a chief at the time?—A. Yes, sir.

"Q. Was it not the understanding of all the parties that made that treaty, that it did not authorize the establishment of a territorial government over that country; but that it provided for the establishment of a grand Indian council to be composed of all the Indian tribes?—A. That was the understanding of the delegates. It was so understood

at the time, that it was not to be a Territory of the United States, but an Indian council. That is in the seventh article of the treaty of April 28, 1866 (14 U. S. Stat., p. 771).

"Q. It was understood at the time that it was to be a confederation of all the tribes?—A. That was what was understood and expressed by he treaty.

"Q. And that the Indian council provided for was to be an Indian organization?—A. Entirely so.

"Q. And was not this completed in 1869?—A. Yes, sir; the Choctaws had been sending delegates to that council until the United States failed to make the necessary appropriation to run it.

"Q. And all this time it has not been a Territory of the United States?—A. No, sir; not a Territory of the United States.

"Q. Did not that treaty provide that it could not be made a Territory without the consent of the Choctaw Nation?—A. The treaty provides that.

"Q. You did not consider, at the time, that the Choctaws in the treaty of 1866 gave their consent to the establishment of a Territory proper of the United States?—A. No, sir.

"Q. But that it was understood to be an Indian council?—A. That is the way the treaty was understood, and hence my opposition to these bills. They are bills establishing a Territory of the United States and not an Indian council or confederation.

"Q. Congress had made appropriations ever since 1869, to pay the expenses of this general council?—A. With the exception of a year or two past.

"Q. Don't you think the general council has proved a great benefit to the Indians, and has been the means of civilizing the wild Indians?—A. I think it has been a great benefit to the wild Indians by bringing them into our councils, and by bringing them into the society and into contact with the civilized tribes. It has certainly had a salutary influence over the wild tribes and has been a benefit to them. They all speak a different language, and they come together and form a brotherhood and get acquainted with each other.

"Q. This confederation established under the auspices of the treaty of 1866 is an Indian organization, and the doors of that country are left open for the reception of friendly Indians?—A. That is what the treaty provides.

"Q. The Cherokee treaty provides for the same thing?—A. Yes, sir.

"Q. And the object was to bring other Indians into the country according to the established policy inaugurated by General Jackson and perfected by the subsequent administrations of the government?—A. That has been the understanding of the Indians.

"Q. That is the way you understand all the Indian treaties?—A. Yes, sir; that is the way I understand it, and I understood it was contemplated by the Government of the United States to be for the benefit of the Indians.

"Q. Has not the President of the United States understood it that way as is evidenced by the establishment of the council?—A. Yes, sir; and everybody else understood it so, as carrying out the true intent of the treaty.

"Q. Has not every Congress since the year 1870 taken that view of the subject?—A. Yes, sir.

"Q. That it is not a Territory of the United States, but a confederation of Indians?—A. Yes, sir; a confederation of the tribes; and there is a provision as to how the smaller tribes shall come in.

"Q. So it seems the Indians understood the treaty of 1866 as Congress and the President have understood it since, as is evidenced by making appropriations, &c.?—A. Yes, sir; it cannot be understood otherwise.

"Q. By a fair construction?—A. Yes, sir; by a fair construction.

"Q. If you put any other construction upon it it will be an admission that the President and Congress have all been fools?—A. Yes, sir; and we the most deceived people in the world.

"Q. As to the establishment of a court, the people generally are in favor of being cut off from the western district of Arkansas and having a judicial district established according to the treaty?—A. Yes, sir.

"Q. Inside of the Territory?—A. Yes, sir.

"Q. Don't you think the interest of the Indians would be promoted by the United States Government making provisions to pay the Indians what they owe them? And if so, state your reasons why. And does not the government owe the Choctaws a great deal of money? And if so, state how much and on what account.—A. The Choctaws have a very large claim against the Government of the United States, which they have sent me here to secure for them. I have failed ever since, excepting one year. They paid a portion of the claim in 1861. Since then they have not paid anything.

"Q. About how much does the government owe the Choctaw Nation, according to a fair statement?—A. They owe the Choctaw Nation, interest and all, nearly five millions of dollars. The United States forced us to give up over ten million acres of land, to leave our cultivated and improved farms; we lost all our stock, had to give up everything, and move into the western wilderness and commence life anew. By the treaty of 1855, article 11, the United States agreed to submit our claims for losses to the Senate for final adjudication; and in 1859 we were awarded the net proceeds of the sales of our lands, and an account was stated showing the United States to owe the Choctaws over two millions of dollars, of which only \$250,000 has been paid; the balance, with interest from the date of the award, is still due. But five millions would not pay us for our actual losses of property besides the afflictions and tribulations we suffered in moving.

"Q. Did you not lose about one-third of your people?—A. Yes, sir; about one-third. Many died on the journey. The climate of the new country for several years proved very sickly, and many died soon after reaching there.

"Q. How long have the Choctaws been trying to get the Government of the United States to pay that money?—A. They have been prosecuting the claim for more than forty years.

* * * * *

"Q. Do you recollect the provision which says the fee of the land is in the United States—that declaration assumes that the fee of the Indian land is in the Government of the United States?—A. Yes, sir.

"Q. The fee is not in the Government of the United States, but it is in the Indians, is it not?—A. They own every inch of that land. If there was only one Choctaw or Chickasaw living on it, according to the treaty he would own the whole of that country. If the Franklin bill passes it would be taking the fee out of the Indians and giving it back to the Government of the United States. The country is ours; we have paid for it and we hold a patent for it. The United States have guaranteed us self-government by the most solemn and repeated treaty stipulations. No change can be made without our consent, either in our lands or government. As soon as the Indian title is extinguished, the railroads would claim the contingent land-grants. I presume that is the reason

why such efforts are being made to transfer the title or fee from the Indians back to the government, and the main reason why these Oklahoma bills are being urged.

"Q. Do you not construe section eighteen of that treaty to mean that the fee belongs to the Indians, and not to the United States? Franklin's bill takes no cognizance in the world of the provisions of the Choctaw and Chickasaw treaty. Now, don't you remember that there is a provision in Franklin's bill which says nothing shall be construed to dispossess the Indians of the soil?—A. We would soon be dispossessed of our homes, our country, our money, and everything else. We would lose all. That would be the working of Franklin's bill in the Choctaw Nation. You would not find after five years an hundred Indians in that country. They would seek homes in Arkansas or in Mississippi and in the other States. That would be the workings of that bill if it passed. There would be no Choctaw Nation, no Chickasaw Nation, no officers, no chiefs, no Indians. It would be just such a nation as the Wyandottes were in Kansas—the Indians destroyed or driven out.

* * * * *

"By Mr. ADAIR:

"Q. Speaking about the policy of sectionalizing the lands in regard to the Indians, you alluded to the Pottawatomies, the Delawares, and Shawnee Indians having had their lands sectionalized in Kansas, and since that time have had to come into the Indian Territory?—A. Yes, sir; they had to flee from the country. The Ottawas had established for themselves a fine school in Kansas, worth over \$100,000. It was taken from them. Two acts of Congress have been passed to help them recover it—one June 10, 1872, and the other March 3, 1873. At the last account they had not recovered it. They had to flee to us. They have got their schools started again, and are doing well. They suffered when citizens of the United States, but since coming into the Indian Territory they have been prospering. And the other tribes you mentioned suffered in like degree. It seemed impossible for them to live among the whites, as citizens of the United States, and to prosper. The Indians can only live and prosper by retaining their tribal organization, holding their lands in common, and in being protected by the government in their treaty rights."

RESULT OF ALLOTING LANDS IN SEVERALTY.

On this point the testimony of Judge George W. Stidham, a Creek Indian, a man of unblemished character, fair education, and thoroughly honest, is of value. It cannot be stated better than in his own words:

"Q. I wish you would state to the committee what is the feeling of your people upon those subjects. I inquire more especially in reference to the division of the lands in severalty, the establishment of a United States court, and the formation of a Territorial government over your country upon the theory of the Oklahoma bills. State the sentiment of your people upon those different measures.—A. I certainly do know the sentiment and feeling of the Creeks, and I know they are unanimous against the establishment of a Territorial government upon any of the plans such as have been proposed all along for a great many years.

"Q. You have canvassed among your people on the matter?—A. Yes, sir; talked upon it a great deal. As to the courts, that is provided for in our treaties, and whether the people like it or prefer it or not, it is in the treaty and they will not object to it.

"Q. As to holding the land in severalty?—A. Well, that they are opposed to.

"By Mr. HUBBARD :

"Q. Why?—A. Well, we believe the safest plan for the Indian to have a home is to hold the land in common; a large portion of the people found their belief upon an experience that has been too well taught them to forget it so soon. The portion that remained in Alabama sold out in 1832 and took reservations. They were swindled out of nine-tenths of it; they never got five dollars for it. That is the experience a great many—a large portion of them had, and they have never forgotten it.

"Q. Have those matters been settled?—A. No, sir; a large portion remains unsettled. There are nearly nine hundred reservations remaining in the hands of the government for which they never have been paid.

* * * * *

"Q. You do not believe the United States can give a title that the Indians would not be swindled out of?—A. They would in a few years repeal it, if I may judge from the manner in which we have been treated.

"Q. Suppose Congress should give you and each individual of your nation his equal portion of that three millions and a half acres, amounting to about twenty-seven hundred acres, more or less, and give you and him a patent in fee-simple, and you and he own it by the same title that Governor Saunders owns his lands in Nebraska and Governor Garland owns his in Arkansas; do you believe, after you got such a title, another Congress could take it away from you?—A. They might not take it away from me, but what would become of the balance? You do not know anything about this sectionalizing business. In Alabama, while a man who owns the land was asleep, others were hired to personate him, and they went so far as to certify that he sold his lands. The agents were in these speculations, and they were swindled out of nine-tenths of their lands. Congress cannot secure it in such a way but that they will be swindled out of it.

"Q. Suppose the land were divided in severalty to-morrow, what proportion of your tribe would be able to take care of their land and manage their affairs solely for themselves as against the class of immigrants that would flow in there?—A. Not more than one-tenth.

"Q. Not more than one-tenth?—A. Yes, sir; not more than one-tenth.

"You think nine-tenths would be wild Indians within a few years?—A. Yes, sir; that would be the last Indian war; they would fall back upon the prairies west.

"Q. Then the government would have to support them by annuities or they would have to support themselves by the chase and by incursions into the States?—A. Yes, sir.

"Q. You believe, and your people look upon all this as an invasion of your present laws, privileges, and customs, or anything which is intended to destroy your present system of government, or destroy your present title to your lands as a cruel blow to the Indians?—A. A death-blow to the Indian race. I know we have some friends who think a change would be for the better. The reason why they advocate this is because they do not know what is to be the effect upon the Indians, and nobody can know but an Indian himself. They believe it might do some good, but I do not see how any Indian could honestly believe that such a thing as that can be a benefit to the people that inhabit the Indian Territory. I have grave doubts that any man believes such a thing can be a benefit to them in view of what has transpired before, and what effect

such a thing has had upon our people, and what must inevitably follow any change now."

On this subject the Commissioner of Indian Affairs, in his annual report for 1878, says:

"But after the issue of patents the difficulties surrounding them do not cease. A few, it is true, hold to their land and make rapid and encouraging progress in agricultural pursuits. The major portion of them, however, yielding to the pressure surrounding them, fall victims to the greed of unscrupulous white men, and, one by one, part with or are defrauded of their lands. Every means that human ingenuity can devise, legal or illegal, has been resorted to for the purpose of obtaining possession of Indian lands."

From this evidence it would seem that the tenure, devised by General Jackson, under which these nations hold is the best that human ingenuity can suggest.

RAILROAD LAND GRANTS.

The Indian title to these lands, as has before been shown, is in fee-simple, to them and their descendants; to inure to them as long as they shall exist as nations and live upon it; liable to no transfer or alienation except to the United States or with their consent. In addition to this, a patent of the United States has been granted them in pursuance of an act of Congress.

The treaty of June 22, 1855, between the Choctaws and Chickasaws, forever guaranteed the lands to these nations, and this title, which is granted them forever, is, as far as the enjoyment of the property is concerned, exhaustive and complete. It is true that these nations cannot sell their lands, and it is also true that the interest of the United States in these lands is little better than a reversion to take place at the end of eternity. The United States had no authority to grant land that did not belong to them. These grants must, therefore, be considered as null and void *ab initio*; and inasmuch as they are of no possible benefit to the railroad company, but are a continual cause of vexation and alarm on behalf of the Indians, it is hoped they will be promptly repealed.

HAVE THESE INDIAN NATIONS THE RIGHT OF SELF-GOVERNMENT?

The right of self-government in these nations is an inherent one. It was a right they possessed when this country was discovered. For more than ninety years the Government of the United States has treated with these Indian nations, and it has always *recognized*, not *conferred*, their governmental powers. If anybody shall maintain that any of their governmental powers were actually conferred or derived from the United States, it is a sufficient answer to say that such doctrine is inconsistent with all the treaties and the acts of Congress and judicial decisions growing out of or relating to such treaties.

The Supreme Court of the United States in the case of *Worcester vs. The State of Georgia* (6 Peters, 566), opinion by Chief Justice Marshall, enunciated the following doctrine:

"The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense. * * *

"These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recog-

nizes it; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence, its right to self-government, by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. 'Tributary and feudatory states,' says Vattel, 'do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state.' At the present day, more than one state may be considered as holding its right of self-government under the guarantee and protection of one or more allies.

"In the executive, legislative, and judicial branches of our government we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state or separate community; not a foreign, but a domestic community; not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation."

And in the same opinion the court expressed the following view:

The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed so soon as it shall be administered upon the enlightened principles of reason and justice?

The following are a few of the many treaty provisions made with the various Indian tribes, recognizing in them the right of self-government, and shows the policy of the United States toward the Indian tribes:

"Treaty with the Delawares, September 17, 1778.

"ARTICLE 2. That a perpetual peace and friendship shall from henceforth take place and subsist between the contracting parties aforesaid through all succeeding generations; and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation; and that if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect." (7 U. S. Stats., 13.)

"Treaty with the Wyandots, January 21, 1785.

"ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Wyandot and Delaware nations in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please." (7 U. S. Stats., p. 17.)

"Treaty with the Cherokees, November 28, 1785.

"ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary, which are hereby allotted to the Indians for their hunting-grounds, or having already settled and will

not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish them or not as they please: *Provided, nevertheless*, That this article shall not extend to the people settled between the fork of French Broad and Holstein Rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by." (7 U. S. Stats., 19.)

"Treaty with the Wyandots, January 19, 1789.

"ARTICLE 9. If any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said nation, he and they shall be out of the protection of the United States, and the said nations may punish him or them in such manner as they see fit." (7 U. S. Stats., 30.)

"Treaty with the Creeks, August 7, 1790.

"ARTICLE 6. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the Creeks' lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please." (7 U. S. Stats., 36.)

"Treaty with the Cherokees, July 2, 1791.

"ARTICLE 8. If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please." (7 U. S. Stats., 40.)

"Treaty with the Wyandots, &c., August 3, 1795.

"ARTICLE 6. If any citizen of the United States, or other white person or persons, shall presume to settle upon the lands now relinquished by the United States, such citizen or other person shall be out of the protection of the United States; and the Indian tribe on whose land the settlement shall be made may drive off the settler, or punish him in such manner as they shall think fit; and because such settlements, made without the consent of the United States, will be injurious to them, as well as to the Indians, the United States shall be at liberty to break them up and remove and punish the settlers, as they shall think proper, and so effect that protection of the Indian lands hereinbefore stipulated." (7 U. S. Stats., 52.)

"Treaty with the Choctaws, September 27, 1830.

"ARTICLE 4. The government and people of the United States are hereby obliged to secure to the said Choctaw Nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws, except such as from time to time may be enacted in their own national

councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as may and which have been enacted by Congress to the extent that Congress, under the Constitution, are required to exercise a legislation over Indian affairs." (7 U. S. Stats., pp. 333, 334.)

"Same treaty.

"ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them: *Provided, always,* That they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians, and, also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same." (7 U. S. Stats., 481.)

"Treaty with the Creeks and Seminoles, January 4, 1845.

"ARTICLE 1. The Creeks agree that the Seminoles shall be entitled to settle in a body, or separately, as they please, in any part of the Creek country; that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinction shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other." (9 U. S. Stats., 821.)

"Treaty with the Cherokees, August 6, 1846.

"ARTICLE 2. No one shall be punished for any crime or misdemeanor except on conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offense. And it is further agreed all fugitives from justice, except those included in the general amnesty herein stipulated, seeking refuge in the Territory of the United States, shall be delivered up by the authorities of the United States to the Cherokee Nation for trial and punishment." (9 U. S. Stats., 872.)

"Treaty with the Choctaws and Chickasaws, June 22, 1855.

"ARTICLE 4. The government and laws now in operation, and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

"ARTICLE 7. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chick-

asaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribes; and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agent (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals as are now or may be in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes." (11 U. S. Stats., 612, 613.)

"Treaty with the Creeks and Seminoles, August 7, 1856.

"ARTICLE 15. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; and all persons not being members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agents for said tribes, respectively (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals, with their families, as may be in the employment of the Government of the United States; all persons peaceably traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such persons as may be permitted by the Creeks or Seminoles, with the assent of the proper authorities of the United States, to reside within their respective limits, without becoming members of either of said tribes.

"ARTICLE 25. The Creek laws shall be in force and continue to operate in the country herein assigned to the Seminoles, until the latter remove thereto, when they shall cease and be of no effect." (11 U. S. Stats., 703, 704, 705.)

"Treaty with the Seminoles, March 21, 1866.

"ARTICLE 7. The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs." (14 U. S. Stats., 758.)

"Treaty with the Choctaws and Chickasaws, April 28, 1866.

"ARTICLE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* Such legislation shall not in anywise interfere with or annul

their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively. (14 U. S. Stats., 771.)

"ARTICLE 38. 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.

"ARTICLE 45. All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation theretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty." (14 U. S. Stats., 779, 780.)

"Treaty with the Creeks, June 14, 1866.

"ARTICLE 10. The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs." (14 U. S. Stats., 788.)

"Treaty with the Cherokees, July 19, 1866.

"ARTICLE 5. The inhabitants electing to reside in the district described in the preceding article, shall have the right to elect all their local officers and judges, and the number of delegates, to which, by their numbers, they may be entitled in any general council, to be established in the Indian Territory under the provisions of this treaty, as stated in article 12; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district not inconsistent with the constitution of the Cherokee Nation or the laws of the United States: *Provided,* The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district, as hereinbefore provided, and shall hold the same rights and privileges, and be subject to the same liabilities as those who elect to settle in said district under the provisions of this treaty: *Provided, also,* That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules and regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts are prohibited, and shall be void." (14 U. S. Stats., 800, 801.)

Whenever it is suggested that these Indian nations inhabiting the Indian Territory are *domestic dependent States*, and that Congress has no authority to pass any law violating our treaty stipulations with them, the famous Cherokee Tobacco Case (11 Wall., 616) is set up: That a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty; and that under this decision the Congress of the United States has the right to pass such laws as they may deem proper without regard to our treaty stipulations with these Indians.

The report shows that the Chief Justice, Justices Nelson and Field

did not hear the arguments in this case; that Justices Bradley and Davis dissented, so that this decision is that of a minority of four members of a court composed of nine. The broad doctrine that Congress can supersede a prior treaty and that a prior treaty can supersede an act of Congress cannot be true. The true doctrine would seem to be that under our system of government the treaty-making power and the legislative power are supreme within their respective spheres; that treaties and acts of Congress are alike the supreme law of the land; that where the treaty-making power attempts to invade legislative grounds it is vain and inoperative; such, for instance, as attempting to regulate the duty upon imports by treaty with any country. This power under our Constitution is delegated to Congress. Should Congress attempt to correct a boundary between our own country and a foreign power it would be vain and inoperative, because the power to do this is alone delegated to the treaty-making power of our government. Or should Congress attempt to provide for the extradition of criminals, citizens of the United States who have fled to foreign lands, the act would be vain, because the treaty-making power alone can do this.

Again in the case of *Holden vs. Joy* (17 Wall., 242), decided at the December term of 1872 (the Cherokee Tobacco Case was decided at the December term of 1870), the court overruled the doctrine laid down in the Cherokee Tobacco Case, in the following language:

"Indian tribes are states, in a certain sense, though not foreign states or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. They are not states within the meaning of any one of those clauses of the Constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are states, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible, in their political character, for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts." (*Holden vs. Joy*, 17 Wallace, 242.)

But some pretext for some kind of legislation that will in some way result in destroying the present tenure by which these Indians hold their lands, and in the end compel them to alien or abandon the same, is sought in the seventh and eighth articles of the treaty between the United States and the Choctaw and Chickasaw Nations, June 14, 1866.

All these articles, which delegate certain powers to the United States touching the matter of legislation by Congress over the Indians, contained a proviso to the effect that said legislation shall not in any manner interfere with or annul their present tribal organizations, rights, laws, privileges, and customs.

In the Choctaw and Chickasaw treaty the ninth article contains a proviso that such legislation shall not in any wise interfere with or annul their present tribal organizations or their respective legislatures, judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively.

And in the eighth article of the treaty just referred to, wherein the Choctaws and Chickasaws agreed that a United States court might be established in said Indian Territory, with such jurisdiction and organization as Congress may prescribe, there is a proviso which says that the same shall not interfere with the local judiciary of either of said nations.

If Congress in its wisdom can frame any bill establishing a Territorial form of government over these nations without annulling their present tribal organizations or their respective legislatures and judiciaries, or the rights, privileges, laws, or customs of these people, Solomon will no longer be regarded as the essence of wisdom, nor would the railroad companies or the foreign and domestic bondholders be at all satisfied with any legislation that would fall within the strict letter of these treaties.

UNITED STATES COURTS.

The real purpose of the effort to establish United States courts over this Territory and to make these Indians citizens of the United States is to force them to abandon their present tribal organizations, and in the end to allot their lands in severalty so that white men can get possession of them under color of legal title, and thus drive these Indians from their homes and settle the country with white people, in order to build up a local trade for the Missouri, Kansas and Texas Railroad Company, to the end that foreign and domestic bondholders may have their coffers filled with the income from their bonds. This railroad company is seeking to justify the wrong they are asking Congress to do, namely, to pass some bill that will in the end destroy the present form of government of these nations and to extinguish their title to these lands, by showing that a considerable number of these Indians are in favor of the allotment of the land in severalty.

To this end a large number of white men were called on behalf of the railroad company by the sub-committee of the Senate that visited the Indian Territory. These white men, as a rule, are engaged in selling drugs, which, being interpreted in the language of these nations, means "bad whisky" at medicinal prices.

The record does not disclose what their names were before they entered the Indian Territory, nor does it disclose the fact that these men had been carefully coached and well prepared by the agents of the railroad company who passed up and down the road a month or more prior to the time they were called to testify, and arrangements made whereby their evidence could be taken at obscure points along the railroad, without opportunity for the nations to be present by counsel or otherwise for the purpose of cross-examination. Nor does it disclose the more important fact that these same agents were borne on the rolls of the committee in official capacity as officers of the committee (that these men have long been in the employ of the railroad company is a matter of public notoriety); nor does the record disclose the more important fact that the attorney of this railroad company, Judge T. C. Sears, who publicly claims the honesty and fair dealing of the railroad company toward the Indians, accompanied the committee and examined these clandestine witnesses at every point. If he offered no insult to the Senate of the United States it were well.

THE ELECTION IN THE CHICKASAW NATION FOR GOVERNOR IN 1878

The evidence on pages 420, 421, and 422 of the record shows there was a change in the administration of the Chickasaw Nation by the election of B. F. Overton as governor in 1874, and that the party of which Cyrus

Harris, the late candidate for governor, was an influential member had been in power from the year 1856 to the year 1874.

The issue in the election of 1874, which resulted in this change, was reform in the management of their domestic affairs, and an honest application of their trust-fund interest; the establishment of a Territorial government and the allotment of the land in severalty.

The evidence also shows that the party opposed to Governor Overton's election at that time had formed a ring and had divided among themselves and others connected therewith a large sum of money, amounting to over \$300,000, obtained by them from the United States. (See report No. 98, House of Representatives, Forty-second Congress, third session, from the Committee on Indian Affairs, and also page 422 of the Record.)

The question of allotting the lands in severalty as provided for in the treaty of 1866 was submitted to the legislature of the Chickasaw Nation. In ratifying that treaty it was represented to the legislature by their delegates who were members of the old ring engaged in these frauds, as before shown, upon their own people, that unless they accepted that treaty with that proviso their lands would be taken away from them and they would be left homeless. Accepting this as the only thing they believed they could do, they ratified the treaty, and sent a memorial to the President of the United States asking for a survey of their lands. The division of the land was not made for the reason that the Chickasaws and Choctaws hold their title in common, and the Secretary of the Interior decided that under the treaty it required the concurrent assent of the councils of both nations.

At the election in 1876, Governor Overton was again the candidate of the reform party on the same issue, and was almost *unanimously* elected. Under the constitution of the Chickasaw Nation he was ineligible for re-election to a third term, and Governor B. C. Burney was selected as the candidate of the reform party. The testimony of Benjamin Kemp and Charles Sheco, which appears from pages 796 to 804, inclusive, was taken at Fort Scott, Kans., November 9, 1878, as appears by the record—these men lived within ten miles of Colbert's Station, on the extreme southern boundary of the Chickasaw Nation. While the committee was at Colbert's Station, within ten miles of their homes, or at Denison, Tex., within sixteen miles of their places of residence, their testimony could easily have been taken; but for some reason unknown to Governor Overton, who was present at Colbert's Station when the committee was examining witnesses there, and not disclosed by the record, these witnesses were brought up to Fort Scott, in Kansas, in company with Mr. Marston, where their testimony was taken, without any opportunity for cross-examination.

Kemp testifies, on page 796 of the record, briefly, as follows: That the treaty provided for the division of the land in severalty; that the legislature had consented to it; that Mr. Harris was the candidate for governor of the party in favor of dividing the land in severalty, known as the *progressive party*, and that he was elected upon this issue.

In regard to the last election, held in 1878, for governor of the Chickasaw Nation, he testifies briefly, as follows: That Harris had a majority of the votes cast, and that his election was challenged in the House of Representatives; that testimony was taken in regard to certain illegal votes, and that the legislature threw out a number of the votes upon what he regarded as insufficient evidence, thereby giving the present governor, B. C. Burney, a majority of five votes, and proceeded to in-

augurate him in the office of governor, and that he is now acting in that capacity.

Governor Burney was not offered an opportunity of presenting any evidence touching the late election. Indeed, he was not aware that the matter had been touched at all until after the evidence which had been taken by the committee had been printed, which was not done until the 18th of December last.

Article 5, section 4, of the constitution of the Chickasaw Nation is as follows:

"SEC. 4. The returns of every election for governor shall be made out, sealed up and transmitted to the national secretary, at the seat of government, who shall deliver it to the speaker of the house of representatives, during the first day of its organization, who shall proceed immediately to open and count the votes in the presence of both houses of the legislature. The person having a majority of the whole number of said votes shall be declared by the speaker to be governor," &c. &c.

The corresponding article in the Constitution of the United States provides, "That the President of the Senate shall in the presence of the House of Representatives open the certificates, and the vote shall then be counted, and the person having the greatest number of votes for President shall be the President if such number be a majority of the whole number of electors appointed." That the electoral vote of any State may be challenged by either members of the House or Senate may be said to be an acknowledged rule under our government.

It will be observed that the provisions of our Constitution and the provisions of the Chickasaw constitution are very similar. At the time the vote for governor was canvassed in the Chickasaw legislature there was no act of the legislature providing for a settlement of a contest, or joint rule of the two houses in regard to the same. In this condition of things Governor Burney could have shown, if an opportunity had been offered him, that during the day of the organization of the legislature the secretary of the nation delivered the returns of election from the various counties of the nation to the speaker of the house of representatives, and that the speaker immediately proceeded to open and count the vote in the presence of both houses of the legislature. The speaker stated that the returns showed that Harris had a majority of ten votes for the office of governor, but did not declare him elected. Whereupon Sampson Sealey, a member of the house of representatives, arose in his seat and preferred formal charges of fraud in the matter of the election, and moved an investigation of the same. After Sealey preferred his charges of fraud, a motion was made to adjourn, which was carried. On the day following, the house of representatives proceeded to investigate the charges of fraud preferred by Mr. Sealey.

Article 2 of the constitution of the Chickasaw Nation in regard to the right of suffrage is as follows:

"SECTION 1. No idiot, or insane person, nor any person convicted of any criminal violation of law against the Chickasaw Nation; or after the commission of such offense, by persistently eluding the vigilance of the officers and avoiding arrest, shall be entitled to the privileges of an elector.

"SEC. 2. All elections by the people shall be by *viva voce*.

"SEC. 3. All free male persons of the age of nineteen years and upwards, who are by birth or adoption members of the Chickasaw tribe of Indians, and not otherwise disqualified, and who shall have resided six months immediately preceding any election in the Chickasaw Nation,

shall be deemed qualified electors, under the authority of this constitution."

Evidence was adduced before the house of representatives of the Chickasaw Nation showing that a number of illegal votes had been cast for Governor Harris, upon which evidence the senate and house of representatives in joint session excluded the same, and thus left a majority for Governor Burney of five votes. *Whereupon he was duly declared elected governor by the speaker of the house of representatives*, and sworn into office. This whole proceeding is a matter appertaining to the Chickasaw Nation alone, with which the United States, nor indeed the Kansas and Pacific Railroad Company can have no concern. The people acquiesced in the result and peace and prosperity prevails in the nation. Should the Government of the United States desire to enter into an exhaustive investigation of this election, it could be shown that under the system of voting *viva voce* in the Chickasaw Nation, much time is consumed in casting a single vote; that the Harris men crowded around the places of voting and prevented many of the Indians who desired to vote for Governor Burney, who were backward and unassuming, from casting their votes. If the majority of the Chickasaw people were really in favor of dividing these lands in severalty, and changing their form of government, is there anybody so verdant as to believe that the railroad company would not have shown this by the evidence when the committee was in that nation, and every opportunity was afforded it for so doing?

It is true the committee remained in the Chickasaw Nation *forty minutes* examining witnesses. But if the railroad company had supposed that they could have established by the testimony of the people of that nation the fact that they desired a change in the form of their government, and the division of their lands in severalty, certainly they would have taken time to have called the witnesses.

The resolution of the Senate granting permission to this committee to visit the Indian country passed that body on the supposition that it was necessary for that committee to go down there in order to ascertain more fully than could be done here what the real sentiments of the people of that Territory are touching the establishment of a Territorial government, the division of the lands in severalty, &c.

Had the intention of the Senate been faithfully carried out, and an opportunity offered to the various nations in that country to express their wishes upon this subject, the evidence would have been overwhelming against any change of government or the division of the lands in severalty. As before stated, the committee did not stop in the Chickasaw Nation but FORTY MINUTES to examine four negroes, all of whom desired to have their lands as at present held by the Chickasaws, and preferred to be adopted as citizens of the Chickasaw Nation rather than to be citizens of the United States.

An effort was also made to smirch Col. D. F. Harkins, the delegate from the Choctaw Nation, and national agent for the collection of royalty imposed by the Choctaws on coal and timber mined or used by the railway company or cut by others from their lands. To do this newspaper articles were admitted in evidence.

By an examination of the act of the Choctaw legislature creating the office, it will be seen that he was required to obtain a settlement from the railway company for all arrears due on account of timber and coal, and after deducting the expenses incurred therein to pay the remainder into the treasury of the Chickasaw Nation for the benefit of their school-fund. This Colonel Harkins has done, and has properly accounted for every cent of money that came into his hands as such agent.

SOLUTION OF THE INDIAN QUESTION.

The true solution of this Indian question, in my humble opinion, is to gather the wild Indians south of the Union Pacific Railway, on reservations contiguous to the Indian Territory, and to invoke the aid of these civilized tribes in helping them to erect governments similar to their own, and to abandon the chase and live wholly by the labor of their hands. This is practicable, and these five nations will all reach out a friendly hand to aid.

Another like Territory should be set apart in the northwest for the Indians north of the Union Pacific Railway, and like governments established. In this way the wild Indians of the plains may all be brought under the wholesome influence of Christianity and civilization. Already the Osages desire to establish such a government as the Creeks, and sent their head men to the Creek council last fall while it was in session to observe the working of it. If this policy is pursued there will soon be no vacant lands in the Indian Territory, and the race will be saved from destruction by shot and shell.

LEGISLATION.

Establish United States courts with civil jurisdiction over these Indians, if you will, in such a way as to force them to become citizens of the United States in order to furnish the machinery for the courts; force upon them the responsible duties of citizens of the United States against their will; force them to hold their lands in severalty instead of by their present tenure in common, so that they will soon be compelled to alien them, and you lift the latch that must open wide the door to the destruction of their nationality, their country, and their homes. We can do this, but we have no warrant for it in any of the treaties with these nations. Indeed it will be a plain violation not only of the letter, but the spirit of every treaty.

Remember that country, nationality, home, and children are as dear to these people as to us. Look around you upon these men who are present here in behalf of their nations protesting against unholy legislation. Do you think they are devoid of manhood, or love life more than home and country? Do you think they will tamely submit to these wrongs without such resistance as the courts of the country in the first instance, or a resort to arms in the last, will enable them to make?

When they were removed from the country east of the Mississippi to their present homes they were taken there, against their will, in chains. Many of them perished in the journey by reason of the cruel and inhuman treatment in the manner of their removal. Since then they have put away the blanket and moccasin, adopted the habits and customs of the Christian nations, abandoned the chase, and live exclusively by their flocks and tilling their lands; they are rapidly advancing, as the official reports show, in the arts and sciences; are taking a deep interest in education; have established governments modeled after the governments of the various States, all republican in form. Will you cut down this civilization and force them again into savage life? Will you destroy them as domestic dependent States; take away their nationality, their country, and their homes? When you do, you sound the death knell to the civilization of the American Indians, for they prefer death to the unequal contest in the race of life with our frontiersmen. You shock the civilization of the nineteenth century and bring our country into shame and contempt among the Christian nations of the earth.

I know that the long roll has been sounded in the camp of certain railway jobbers and land grabbers—the enemies of these people—and that they have gathered in this our Capitol from the money centers of the Old World, and from our own “Wall street,” and hover about this building as birds of prey. I know they hope and believe they will succeed in this unholy cause, but let me warn them they cannot accomplish their wicked purposes with *stocks and bonds*. The price of these lands will be paid in human blood. Who, among these Indians is so lost to love of country, home, and little ones as not to lay down his life in defense of them? They will stand shoulder to shoulder in defense of their rights, and though their enemies gather thick and fast they cannot quench their thirst for liberty nor shake their trust in God.

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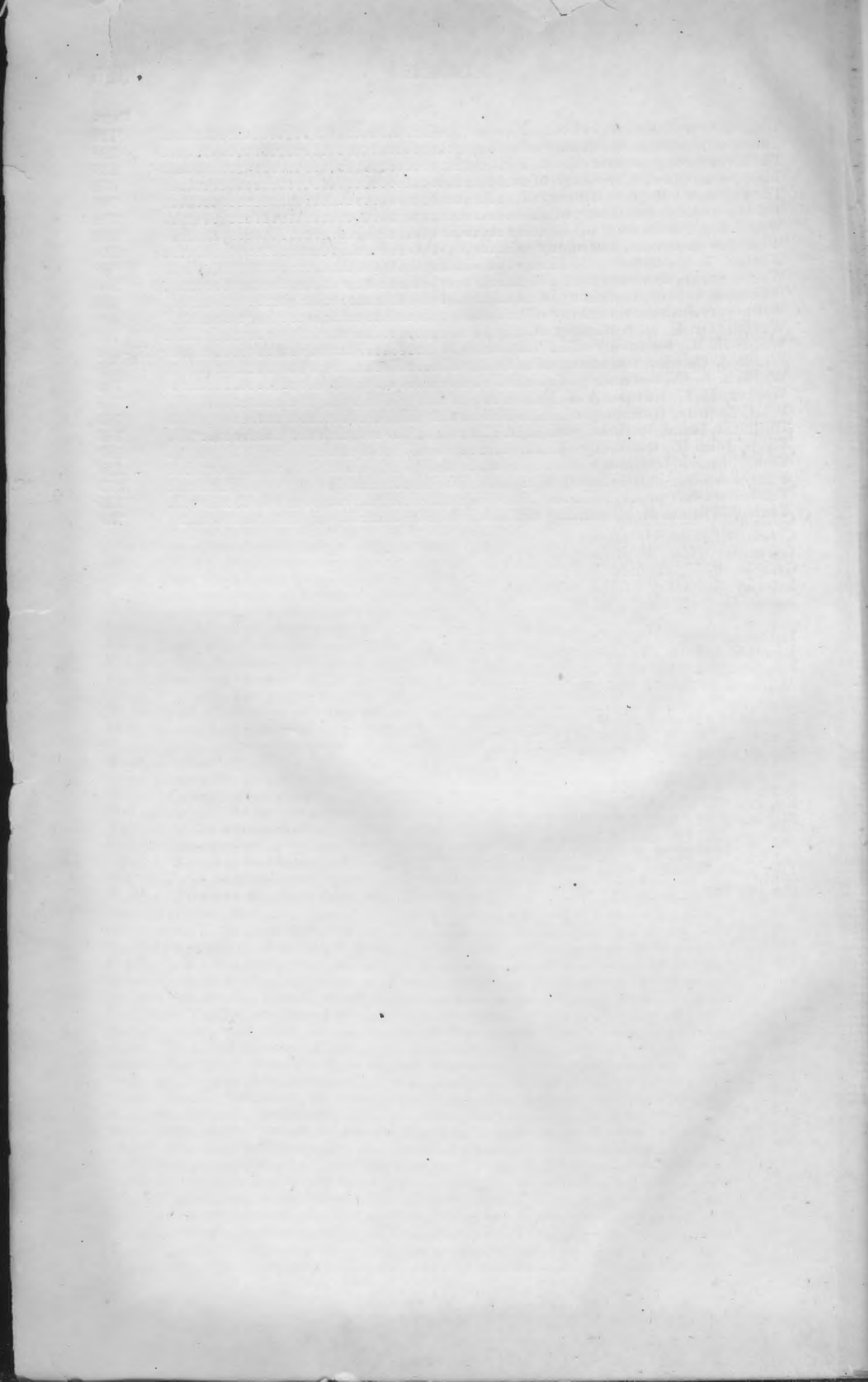
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