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# Choctaw claim. Message from the President of the United States, transmitting a report of the Secretary of the Interior upon a certain claim of the Choctaw Nation

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CHOCTAW CLAIM.

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M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A report of the Secretary of the Interior upon a certain claim of the Choctaw Nation.*

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JANUARY 24, 1879.—Referred to the Committee on Indian Affairs and ordered to be printed.

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*To the Senate and House of Representatives :*

I transmit herewith, for the consideration of Congress, copies of a report, and accompanying papers, received from the Secretary of the Interior, upon a communication addressed to the President of the United States in behalf of a certain claim of the Choctaw Nation, arising under the provisions of the Choctaw and Chickasaw treaty of June 22, 1855.

R. B. HAYES.

EXECUTIVE MANSION, *January 24, 1879.*

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DEPARTMENT OF THE INTERIOR,  
*Washington, January 18, 1879.*

SIR: I have the honor to acknowledge the receipt, by executive reference of the 7th ultimo, of a communication addressed to the President by P. P. Pitchlyn, Choctaw delegate, dated Washington, December 6, 1878, relative to a certain claim of the Choctaw Nation arising under the provisions of the treaty with the Choctaw Nations of June 22, 1855. (U. S. Statutes, vol. 11, p. 611.)

The matter was referred to the Commissioner of Indian Affairs on the 7th ultimo, with request for speedy report, and I now have the honor to submit herewith copies of his report, and certain papers noted therein, for your information.

The views of the Commissioner and his recommendation in the premises have the approval of this department, and duplicate copies of the papers are herewith inclosed, with the recommendation that they be presented to Congress for the action of that body.

I have the honor to be, sir, very respectfully, your obedient servant,

C. SCHURZ,  
*Secretary.*

The PRESIDENT,  
*Executive Mansion.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, January 16, 1879.

SIR: I have the honor to submit the following report upon a communication addressed by P. P. Pitchlyn, the Choctaw delegate, to the President of the United States, under date of the 7th ultimo, relative to a certain claim of the Choctaw Nation arising under the provisions of the Choctaw and Chickasaw treaty of June 22, 1855 (11 Stat., 611), and referred by you to this office, "with request that the matter be looked into as soon as possible."

The claim referred to by Mr. Pitchlyn has for many years been known as the Choctaw net-proceeds claim, arising under the treaty of 1830, and referred to in the treaty of 1855 with said Indians. A proper understanding of the same necessitates a thorough examination and consideration of the various treaties by which the Choctaws ceded their land east of the Mississippi River to the United States, and removed and settled on the lands granted them in the Indian Territory.

The first treaty of importance bearing on this claim is that of October 18, 1820 (7 Stat., 210). The principal object of the government in making this treaty was, as declared in the preamble thereto, to perpetuate said Indians as a nation "by exchanging for a *small part of their land here* (east of the Mississippi River) a country beyond the Mississippi River, where all who live by hunting and will not work may be collected and settled together."

In order that this object might be effected, the Choctaw Nation, by said treaty, ceded to the United States a *part of their lands* in Mississippi, and in *part* satisfaction of the same the United States granted to them a tract of country west of the Mississippi River, and bounded as follows: "Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself in Red River, on the north side; thence a direct line to the beginning."

By the first article of the treaty of January 20, 1825 (7 Stat., 234), the Choctaws ceded to the United States that portion of the above-described land lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running due south to Red River.

During the following year commissioners were appointed under the provisions of the act of May 20, 1826 (4 Stat., 188), to negotiate with the Choctaws for the cession of the remainder of their lands east of the Mississippi River, but owing to the unwillingness of the Indians to sell their lands, the commissioners failed to accomplish the object desired by the government.

By an act approved the 28th of May, 1830 (4 Stat., 411), Congress authorized the President to exchange with the Indian tribes residing east of the Mississippi River, certain lands west of said river for their lands east, and to assure said Indian tribes that the United States would guarantee the lands so exchanged, forever, and if the Indians preferred, that the United States would cause a patent or a grant to be executed for the same.

The legislature of the State of Mississippi, having in the year 1829 extended the jurisdiction of the State over the Indian reservations within its limits, in utter disregard of the rights of the Indians, the President saw, in the discontent among the Indians, arising from the action of the State in this respect, a favorable opportunity to negotiate a treaty

with the Choctaws for the cession of the remainder of their lands east. He accordingly appointed the commissioners, who a short time afterwards accomplished the desired object in the negotiation of the Choctaw treaty of September 27, 1830 (7 Stat., 333).

The articles of this treaty pertinent to this inquiry are as follows: By the second article the United States agree to convey to the Choctaw Nation and their descendants, in fee simple, a tract of country west of the Mississippi River, "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."

In the third article the Choctaws ceded all of their lands east of the Mississippi River, and agree to remove to and settle upon the land described in the second article.

By the fourteenth article it was stipulated that each head of a Choctaw family who desired to remain east of the Mississippi River, and become a citizen of the States, should be allowed to take a reservation of 640 acres for himself and an additional quantity for each of his children.

The fifteenth article stipulated that each of the then chiefs of the Choctaw Nation were to receive four sections of land and they and their successors to be paid an annuity of \$250 each, one of whom, however, had an annuity of \$150, under a former treaty, and he was to receive only the additional sum of \$100 annually. The speakers of the three districts were to receive \$25 each, and the secretaries of the chiefs were each to receive \$50 a year for four years. Each captain of the nation, not exceeding ninety-nine in all, was to be furnished, upon removing west, a suit of clothes and a broadsword, and for four years they were each to receive \$50 "for the trouble of keeping their people at order in settling."

By the sixteenth article the United States agreed to furnish wagons and steamboats to remove the Indians West, and to pay the expenses of the removal, and also to take the cattle of the Indians and pay them in money or cattle after they had arrived at their new homes.

The seventeenth article stipulates that the annuities under former treaties should continue, and that an additional sum of \$20,000 per annum for twenty years should be allowed the nation after removal West.

Article 18, after providing for the survey of the lands ceded by the Choctaws, stipulated that "for the payments of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for" and arranged. "And, further, it is agreed that in the construction of this treaty wherever well-founded doubts shall arise, it shall be construed most favorably toward the Choctaws."

Article 19 provides for certain special reservations.

In article 20 the United States agreed to appropriate \$10,000 for the education of a certain number of Choctaw youths, and for the building of a council house, a house for each chief, and a church for each of the three districts. The sum of \$50,000 was also to be appropriated for the purpose of paying three teachers of schools for twenty years.

The Indians were also to have three blacksmiths for sixteen years, and a millwright for five years, and were to be furnished with twenty-one hundred blankets; each warrior who emigrated was to have a rifle, molds, ammunition, and wipers; and there were to be given to the na-

tion one thousand each of axes, plows, hoes, wheels, and cards, and four hundred looms; and to each district, for sixteen years, one ton of iron and two hundred-weight of steel annually.

The twenty-first article provided that certain old warriors who fought in the Army with General Wayne, were each to be paid \$25 a year.

By the stipulations of this treaty the government acquired 10,423,139 acres of valuable land in a State that was being rapidly settled up, without a foot of land in return.

The boundary of the Choctaw country West, before the treaty of 1830 was made, extended west "to the source of the Canadian Fork; thence due south to Red River, and down Red River to the west boundary of Arkansas."

By consenting to the clause after the words "Canadian Fork," viz, "If in the limits of the United States, or to those limits," the Choctaws gave up all claim to the land west of the one hundredth meridian of west longitude.

When the adoption of the treaty was being urged upon the Choctaws, the commissioners on the part of the United States, in their talk to the Indians, told them that they did not desire their lands, their whole object being to move them West, where they could be protected in the right of self-government. (See House report No. 80, 3d session 42d Congress.)

The United States had received on 21st of March, 1860, \$7,556,568.05 from the sale of 5,912,664.63 acres of the Choctaw lands in Mississippi.

It has been stated as an argument against the claim, that the treaty of 1830 was made at the urgent solicitation of the Choctaws, who were anxious to move west in order to preserve their right of self-government, which was then being infringed upon by the State of Mississippi.

A careful examination of the history of this treaty shows that the anxiety for the removal of the Indians was on the part of the government.

By the fourteenth article of the treaty of 1830, "Each Choctaw head of a family, being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter-section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

The agent who was to make a register of those who desired to remain and become citizens of the States refused to take the names of a great many who applied to him to be registered (see House Doc. 138, 2d session of 23d Congress), and a part of the register of those whose names were taken by the agent was afterward lost and another part destroyed by him (see letter from the Secretary of War to the President, under date of February 5, 1835).

Under these circumstances it was made to appear that the Indians had not complied with the treaty provision requiring them to register

within six months from the date of the treaty, and when the whites commenced locating on the lands at the expiration of said period, the application of the Indians having been ignored, the Indians discovered that unscrupulous white men were taking advantage of the misconduct of their agent, and locating upon their most valuable lands. They saw the State of Mississippi exerting its authority to protect these white men in possession of said lands, and their own agent working in the interest of the parties to the fraud, and using his official position to deprive them of their homes. Under these circumstances many of them gave up their lands and improvements in despair and moved west, while others remained east to meet with equally as bad a fate.

In view of these frauds, on the 13th of October, 1834, George M. Martin was directed by the Secretary of War to locate the reservations regardless of the register of the Choctaw agent, but his locations were unsatisfactory to both the Indians and the government; and Congress, by an act approved March 3, 1837 (5 Stat., 180), which provided for the appointment of a commission to adjudicate the claims to reservations under the fourteenth article, declared that certain of said locations were without authority.

This commission was, by the terms of the above-mentioned act, and the act amendatory thereof, approved February 22, 1838, confined to cases where the Choctaws, who were heads of families at the date of the treaty of 1830, and who had not already obtained reservations, had complied or offered to comply with all the requisites of article 14 of said treaty.

The act of Congress approved August 23, 1842 (5 Stat., 513), extended the powers and duties of the commission provided for in the two acts last above mentioned, and enacted among other things that—

If the United States shall have disposed of any tract of land to which any Indian was entitled under the provisions of said fourteenth article of said treaty, so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements as aforesaid, or any part of it, or to his children on the adjoining lands, the said commissioners shall thereupon estimate the quantity to which each Indian is entitled, and allow him or her for the same a quantity of land equal to that allowed to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale, and certificates to that effect shall be delivered under the direction of the Secretary of War, through such agent as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw country west of the Mississippi River.

The amount of land taken for reservations under the different articles of the treaty of 1830 was only 334,101.69 acres, while certificates were issued and delivered under said act to cover 1,399,920 acres.

The act of the 3d of March, 1845 (5 Stat., 777), provided that the scrip, which was not deliverable east, should not be issued or delivered, but should carry an interest of 5 per cent., estimating the land to which reserves were entitled thereby at one dollar and twenty-five cents per acre.

The act of July 21, 1852 (10 Stat., 19), after appropriating a sufficient sum to pay the interest on this scrip for the half-year ending June 30, 1852, provided—

That after the thirtieth day of June, eighteen hundred and fifty-two, all payments of interest on said awards shall cease, and that the Secretary of the Interior be and he is hereby directed to pay said claimants the amount of principal awarded in each case respectively, and that the amount necessary for this purpose be, and the same is hereby, appropriated, not exceeding eight hundred and seventy-two thousand dollars; *Provided further*, That the final payment and satisfaction of said awards shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior.

The money appropriated by this act was paid, and a release of all claims of such persons who were entitled to scrip was taken, not from the individuals who had a right to the scrip, but from the Choctaw council.

In the report of E. C. Banfield, Solicitor of the Treasury, dated November 14, 1872 (Ex. Doc. No. 69, 3d session, 42d Congress), it is charged that extensive frauds were committed in obtaining these reservations.

I have examined the authorities relied upon by him to sustain these charges, and I do not find sufficient evidence to support such allegations.

R. B. Grant, one of the principal persons relied upon by Mr. Banfield, was examined by the commissioner appointed to investigate the Choctaw claims, after he had written the letter referred to in the Solicitor's report, and in answer to the question whether he knew of any frauds committed by the Indians, he replied he did not. (See Senate Doc. 168, 1st session of 28th Congress, p. 94.)

In regard to the Poindexter protest mentioned in Mr. Banfield's report, I have to call your attention to a letter of Mr. Graves, one of the commissioners above mentioned, dated June 12, 1843, in which he states that, "after being compelled to find the protestors and some of the witnesses whom they desired to be subpoenaed, for disobeying the process of the board of commissioners, succeeded in procuring their testimony in May last. They failed to sustain the protest."—*Id.*, 82.

The list of witnesses referred to included J. B. Hancock and others mentioned in Mr. Banfield's report.

It is claimed by the Choctaws that there were many legitimate claims for reservations under the fourteenth article, which were not allowed.

There were 4,397 Indians who received land or scrip under the 14th article, and 442 under the 15th and 19th articles, and the supplementary treaty. These latter classes, however, were not required to remain east to perfect the title to their reservations, and many moved west; but assuming that all remained, there were east in 1844 only 4,397 Choctaws who received land or scrip. Between the 1st of December, 1844, and July, 1856, 6,007 Choctaws were removed west, and, at the latter date, the agent reported that 2,063 still remained east.—(See Office Report of May 15, 1858.)

It would appear, therefore, that there were 3,236 Choctaws at least, in Mississippi, in 1844, who did not receive land or scrip, and there is no evidence whatever of the return of the Indians to Mississippi after their removal west.

Eight hundred and sixty of these persons prosecuted claims for reservations, but their claims were rejected for the reasons stated in answer to the 16th question in Office Report last above mentioned. Seven hundred and forty-eight persons were entitled to reservations under the 19th article, two hundred and eight of whom relinquished their land; 25, however, of these did not receive their share of the commutation. Reservations were located for 362 Indians, and 98 more were entitled to reservations, but who received none. These Indians were deprived of 21,920 acres of land, which were granted to them by the 19th article.—(See Office Report last above mentioned.)

The Choctaw Nation claims that there were 893 members of their tribe who did not receive the commutation allowance for removing themselves west, to which they were entitled under the 16th article, and that they were not paid for the stock which they were compelled to leave in Mississippi when they moved west, viz., 2,796 horses, valued at \$95,974 4,899 head of cattle, at \$30,835, and 10,981 head of hogs, at \$33,697.50;

The payment of these claims and many others was being urged when the treaty of 1855 was concluded, and it will be seen that when the matter was afterwards submitted to the United States Senate, in accordance with the treaty for their award, that body preferred to allow the Choctaws the net proceeds of the sale of their lands in Mississippi, rather than pay any specific sum as a full satisfaction for the payment of these individual claims.

The 11th and 12th articles of the treaty of June 22, 1855, 11 Stat., 633, stipulated the manner in which the indebtedness of the United States to the Choctaw Nation arising under the treaty of 1830 should be ascertained and settled, in the following terms :

ARTICLE 11. The Government of the United States not being prepared to assent to the claim set up under the treaty of September the twenty-seventh, eighteen hundred and thirty, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September the twenty-seventh, eighteen hundred and thirty, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much.

ARTICLE 12. In case the Senate shall award to the Choctaws the net proceeds of the land ceded, as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe, shall on their requisition be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

The matter was accordingly taken up by the Senate, and after a thorough investigation had been made by one of its committees and a favorable report made thereon, the following award was made in favor of the Choctaws :

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians provides that the following questions be submitted for decision to the Senate of the United States: 1st, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold in order that a final settlement with them may be promptly effected; or, second, whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much :

*Resolved*, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day January last, deducting therefrom the cost of their survey and sale, and all proper expenditures and payments undersaid treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of one dollar and twenty-five cents per acre;



and further, that they be also allowed twelve-and-a-half cents per acre for the residue on said lands.

*Resolved*, That the Secretary of the Interior cause an account to be stated with the Choctaws showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress. (Senate Journal, second session Thirty-fifth Congress, page 493.)

It will be observed that the 12th article, above quoted, expressly provided that the decision of the Senate should be final, and in making the award the Senate evidently considered their action as final and conclusive, for the settlement of the account to be made by the Secretary of the Interior, as called for in the award, was not to be made to the Senate, but to Congress.

The resolution above named having been referred by Secretary Thompson to this office in 1860, for a statement of account with the Choctaw Nation in conformity with the principles laid down in said resolutions, the then Commissioner of Indian Affairs, on the 22d of March, 1860, submitted the required account with report thereon, which was transmitted on the 8th of May, 1860, by the Secretary of the Interior to the House of Representatives. From this statement it appears there was due to the Choctaws \$2,981,247.30.

On the 28th of May, 1860, the Secretary of the Interior, in reply to a communication from the Hon. W. K. Sebastian, requesting a statement of the amount paid or to be paid to the State of Mississippi under the contract by which she was to receive 5 per cent. of the net proceeds of the sale of the lands within her limits, said, that should the amount due the State of Mississippi be calculated according to the principles adopted in the report of May 8, 1860, the 5 per cent. referred to would be \$340,045.56.

The Senate Committee on Indian Affairs, in their report made the 19th of June, 1860 (Senate Report of Committees, 283, 1st session of 36th Congress), conceded the correctness of the Senate award, but suggested that the 5 per cent. of the net proceeds of the sale of the lands, as stated in the department report last above mentioned, be charged against the Choctaws, and that \$286,595.75, the same being the amount allowed for lands which were given the State of Mississippi under the swamp act, and for the grants for railroad and school purposes, be also deducted from the balance found due the Choctaws in the settlement of accounts with them.

The Senate affirmed its award on the 9th of February, 1861, by voting, 29 to 15, in favor of a proposition to pay \$1,202,560.85 as the "undisputed balance" due the Choctaws (Globe, Feb. 9, 1861, p. 831). The House, however, declined to concur in the proposition, and the appropriation was not made.

Congress in the appropriation bill of March 2, 1861 (12 Stat., 238), made a partial appropriation on the award in the following language, viz:

For the payment to the Choctaw Nation or tribe of Indians, on account of their claim under the 11th and 12th articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars, two hundred and fifty thousand dollars of which sum shall be paid in money; and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws under the treaty aforesaid, the said sum shall be charged against the said Indians.

The difference between those who favored the payment of the whole award as ascertained and determined in the stated account with the Choctaws, appears to have been upon the question as to what was the net proceeds of the sale of the Choctaw lands according to the princi-

ples laid down by the Senate. The sum of \$250,000 in money, appropriated as above stated, was paid, but the bonds were not delivered. The 10th article of the Choctaw and Chickasaw treaty of April 28, 1866 (14 Stat., 774,) provided that—

The United States reaffirms all obligations arising out of the 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 farther 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 thirtieth of June, in the year eighteen hundred and sixty-six.

The question having been referred to the Attorney-General as to the authority of the Secretary of the Treasury to issue the \$250,000 bonds, he gave it as his opinion, on the 15th of December, 1870, that the bonds could be legally issued. (See Ex. Doc. 25, 3rd session 41st Congress.)

The Committee on Indian Affairs of the Senate and the Judiciary Committee of the House both indorsed the opinion of the Attorney-General, the former on the 5th of January, 1871 (see Committee Reports 3d session 41st Congress), and the letter on the 20th of February, 1871 House Report 41, 3d session 41st Congress).

The Committee on Appropriations of the House, the Committee on Indian Affairs of the House, and the Judiciary Committee of the Senate reported respectively on the 30th of May, 1868 (Globe, vol. 67, 2708), on the 6th of July, 1868 (House Report 77, 2d session of 40th Congress), and on the 22d of June, 1870 (Senate bill 979, 2d session 41st Congress), in favor of allowing the balance of the Choctaw net-proceeds claim, as recognized by Senate Committee on Indian Affairs in report of June 19, 1860, above referred to, amounting to \$1,832,560.85, but the reports were not adopted.

By the act of March 3, 1871 (16 Stat., 570), the Secretary of the Treasury was authorized to issue to the Choctaw Nation bonds to the amount of \$250,000, as provided in the act of March 2, 1861. The Secretary of the Treasury, in two communications, one of which was addressed to the President of the Senate, under date of June 6, 1872 (Senate Ex. Doc. 87, 2d session 42d Congress), and the other to the Speaker of the House, January 6, 1873 (House Ex. Doc. 69, 3d session 42d Congress); stated that the net-proceeds claim of the Choctaws had been investigated under his direction by the Solicitor of the Treasury, Mr. Banfield, and that, for the reasons stated in the Solicitor's report, one of which was inclosed in his former and the other in his latter communication, he was of the opinion that the Choctaws had received all they were entitled to under the treaty of 1830, and that the bonds should not be issued. These reports of the Solicitor were examined and the arguments used therein refuted in reports made respectively by the Indian Committee of the Senate, January 22, 1873 (Senate Report 318, 3d session 42d Congress), and the Indian Committee of the House, under date of February 22, 1873 (House Report 80, 3d session 42d Congress).

In the report of the committee of the Senate it is stated that—

From a careful examination of the whole subject, your committee entertains no doubt that the whole subject was fully understood by the Committee on Indian Affairs, when, on June 19, 1860, they recommended the payment of \$2,332,560.85, and by Congress, when by the act of March 2, 1861, they directed the payment of \$500,000 on account, in pursuance of the Senate award. And this committee finds nothing in the history of the case to justify the conclusion that the Secretary of the Interior in his statement of account, or the committee of that date, in their recommendations, or Congress in ordering a payment on account, committed any substantial error against

the interests of the United States; but are of the opinion that if the case were reopened and adjudicated as an original question by an impartial umpire, a much larger sum would be found due said Indians, which they would undoubtedly recover were they in a condition to compel justice.

Both committees gave it as their opinion that the Choctaws were justly entitled to \$1,832,560.85, in addition to what has already been directed to be paid.

The third section, however, of the act of February 14, 1873 (17 Stat., 462), suspends the authority given in the act of March 2, 1861, and March 3, 1871, to issue and deliver to the Choctaws certain bonds "until the further action of Congress in the matter, and providing for such issue or delivery."

The Appropriation Committee of the House in Report 391, first session Forty-third Congress, recommended the payment of \$2,981,247.30, less \$250,000 paid in 1861, with interest.

The Committee on Indian Affairs of the House, at the same session (House Report 599, 1st session 43d Congress), concurred in the report last above mentioned, and also recommended the payment of the award of the Senate in full with interest at 5 per cent. per annum from the 2d of March, 1861.

By the third section of the sundry civil appropriation act of June 23, 1874 (18 Stat., 230), the Secretary of the Treasury was—

Directed to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles twelve and thirteen of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians, and to report the same to the next session of Congress, with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to said Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in article thirteen of the treaty aforesaid.

A full statement of these liabilities is found in the Secretary's report and accompanying papers—House Executive Document 47, second session Forty-third Congress.

On the 11th of May, 1876, the House Committee on Indian Affairs reported in favor of the claim, but recommended that the whole subject-matter be referred, by proper legislation, to the Court of Claims for adjudication—House Report 499, first session Forty-fourth Congress. Two reports were made from the Committee on Indian Affairs of the House on the 26th of February, 1878—House Report 251, second session Forty-fifth Congress—recognizing the justness of the claim; the majority, however, proposing, by an act, to resubmit the matter to the Senate for adjudication, and to pay the award when made; and the minority recommending the passage of a bill by which the Court of Claims was authorized to take jurisdiction of the case and to determine the amount due the Choctaws.

After a thorough investigation into the facts connected with this claim, the treaties, the accounts stated by this office, the award of the Senate, and all the legislative reports of the Senate and House committees, &c., the fact is apparent that the Senate has admitted the existence of a claim in excess of the amount of \$250,000 paid.

It further appears that numerous attempts have been made to arrive at the exact amount for which a final award should be made, without success.

The Choctaw delegates suggest that Congress be requested to pass the bill introduced at the last session, submitting the matter to the Court of Claims for adjudication, subject to an appeal to the Supreme Court of the United States.

The twelfth article of the treaty of 1855 vests the adjudication of this question in the Senate, and it would appear that final action in the case should be had by that body. I cannot, therefore, concur in the request of the Choctaw delegates, but have the honor to submit the matter for your consideration, with a recommendation that the question involved be submitted to Congress for its action.

The letter of Mr. Pitchlynn is herewith returned.

I also transmit herewith a letter from the same party, dated the 14th ultimo, with inclosures, relating to the same subject.

I have the honor to be, very respectfully, your obedient servant,  
 E. A. HAYT,  
*Commissioner.*

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WASHINGTON, *December 6, 1878.*

To the PRESIDENT:

My duty to the people I represent constrains me to appeal to you, not only as Chief Magistrate, charged with the execution of laws and treaties, but also as a Christian man, desiring to see justice done to all, to take proper steps for the execution of the treaty of 1855 with the Choctaws and Chickasaws.

That treaty submitted certain questions to the Senate for decision. The decision was made on the 9th March, 1859, and by the terms of the treaty was final. Under that decision \$250,000 was paid, and several acts of Congress have recognized the fact that something is still due.

Year after year we have asked in vain for the balance. The committees of Congress have invariably recommended payment, but differed as to the amount. These differences have given rise to disputes in Congress which have prevented final action.

A committee of the Forty-fourth Congress reported a bill referring the whole subject to the Court of Claims, with an appeal to the Supreme Court.

This would necessarily involve delay, but we assented to it because we were assured by the members of the committee that it was so reasonable and fair in calling judicial attention to every objection ever urged against the discharge of the debt, that it could meet with no opposition. The bill was not reached. At the last session of the present Congress the same bill was again reported to the House, and also another, referring the case back to the Senate.

I am now advised that, under the rules, these bills are not likely to be reached unless the Executive calls special attention to the subject.

In view of that fact, the President is requested to submit the case with a recommendation for Congressional action.

Such recommendation is not expected or desired until after rigid scrutiny in the proper department. I only ask that during such scrutiny I may be heard, and that it may be made at once, so that the case may be disposed of during the present session of Congress.

I have the honor to be, with the highest respect,

P. P. PITCHLYNN,  
*Choctaw Delegate.*

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WASHINGTON, D. C., *December 14, 1878.*

SIR: Referring to my letter of December 6, 1878, to the President, now in your office for examination and report, permit me to file herewith a brief furnished by me in 1875, for the use of Congress, which gives references to every important paper in the case printed by Congress, and states most of the facts.

Also a short brief furnished by me in 1877, at the request of the House Committee on Indian Affairs, in relation to the "release" referred to in the letter of the Solicitor of the Treasury (House Ex. Doc. 69, third session Forty-second Congress).

I also desire to call your attention to my reply to the Solicitor's letter, printed as House Miscellaneous Document No. 94, third session Forty-second Congress, and also to the reports (Senate No. 318 and House No. 80) made at that session of Congress upon that letter.

By reference to the remarks of members of the House Indian Committee, found on pages 1081 to 1084 of the Globe of February 4, 1873, which investigated the statements contained in that letter of the Solicitor, it will be seen that it was prepared by outside attorneys for a fee of \$30,000, conditioned upon the defeat of Choctaw claims.

Mr. Burdett said, p. 1032:

"I want to say that these informers did not bring forward a proper but a garbled record; that in their eager hunt for fees and vengeance they imposed upon the honorable Solicitor of the Treasury, not the whole truth of the case, but partial, unfair, and hostile selections only, carefully concealing and willfully keeping in the background the vast amount of record evidence making to the advantage of the claimants, and on which, during the past fourteen years, Congress, by the action of both its branches, and by the reports of its Committees of Indian Affairs and the Judiciary, have repeatedly declared that this claim of the Choctaws ought to be paid."

I may be pardoned if I add that the committee had before it several letters which were identified by the person who swore that he was the principal author of the Solicitor's letter, as having been written by him, in which he demanded from the Choctaws, or those whom he supposed represented them, employment and large fees, and threatened to defeat their claims if they did not pay him.

The fact that of the twenty reports of this subject from committees of Congress and departments of the government, this is the only one of an adverse character, is of itself a strong commentary upon it.

I have the honor to be, very respectfully, your obedient servant,

P. P. PITCHLYNN,  
*Choctaw Delegate.*

Hon. E. A. HAYT,  
*Commissioner of Indian Affairs.*

*The claim of the Choctaw Nation for the net proceeds of the land ceded by the treaty concluded at Dancing Rabbit Creek, September 27, 1830.*

The following statement, prepared for the use of the Committees on Indian Affairs of the Senate and the House of Representatives, and of such members of either House as may desire to investigate the subject, contains a synopsis of the proceedings relating to the net-proceeds claim from the 22d June, 1855, when a treaty was made which submitted the whole subject of Choctaw claims, individual and national, to the Senate for adjudication, down to the 9th February, 1875, the date of its last appearance in Congress, with a brief abstract of all that was said about the claim in either House in 1860 and 1861, and a brief reference to subsequent proceedings.

It also sets forth the objections that have been urged against the claim, so far as they are known to the undersigned, with the answers thereto, relied upon by the Choctaws, and will therefore be alike useful to those who favor and to those who oppose it, inasmuch as it will serve as an index to all that has been heretofore said for or against it.

The treaty of 22d June, 1855, between the United States and the Choctaws and Chickasaws—

1st. Settled certain difficulties between the Choctaws and Chickasaws, which threatened to become serious. (See Annual Reports Com. Ind. Affs. for the years 1853, '54, '55.)

2d. Extinguished Choctaw title to a large tract extending several degrees of longitude beyond the 100th meridian.

3d. Secured the use of 8,000,000 acres of Choctaw and Chickasaw land for the Wichitas and other tribes for whom the government had no other place.

4th. Referred certain Choctaw claims to the Senate on the express condition that its decision should be final.

The treaty was ratified and proclaimed March 4, 1856.

The reference to the Senate was in its 11th and 12th articles, namely:

"ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws, as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just,

fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

“First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

“Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much?”

“ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States; but should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid, it being expressly understood that the adjudication and decision of the Senate shall be final.”

The attention of the Senate was called to these articles soon after the treaty was ratified by the memorial of the undersigned, P. P. Pitchlynn, and his co-delegates, which was referred to the Senate Committee on Indian Affairs. To the same committee the undersigned and his associates subsequently submitted—

1. The grounds of their claim for the net proceeds of the lands ceded by the treaty of Sept. 27, 1830.

2. A statement of claims, individual and national, amounting in the aggregate—

For individual claims, to .....	\$3, 671, 293 20
“ national “ .....	203, 299 15
Total, individual and national .....	3, 874, 592 35

The committee, after thorough investigation, extending over a period of three years, on the 15th Feby., 1859, reported—

1. That the Choctaws were *not* entitled by the terms of the treaty of 1830 to the net proceeds of the lands therein ceded.

2. That for reasons specified by the committee it was impossible to ascertain the exact amount of their just claims, and consequently impossible to name any gross sum that would correctly state them; and, therefore,

3. They “should be allowed” the net proceeds, not because the treaty gave them, for it did not; but because that seemed the only practicable mode of adjustment, “the only course by which justice can now be done them in paying for damages and losses sustained, as the amount payable to them for net proceeds would really amount to little more than half what might be recovered in a court of equity if the case were one between individuals.” (Sen. Rep. Com. 374, 2d sess. 35th Cong.)

On the 9th March, 1859, the Senate passed the following resolutions:

“Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians provides that the following questions be submitted for decision to the Senate of the United States:

“First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

“Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much?”

“Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of \$1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

"Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress."

(Senate Journal, second session Thirty-fifth Congress, page 493.)

In compliance with these resolutions the Secretary of the Interior on the 8th May, 1860, reported to Congress that the balance due the Choctaws was \$2,981,247.30. (H. Ex. Doc. 82, first session Thirty-sixth Congress, p. 24.)

On the 13th June, 1860, Mr. Sebastian offered, from the Committee on Indian Affairs, an amendment to the legislative, executive, and judicial appropriation bill, then pending in the Senate, appropriating \$2,332,560.83 for carrying into effect the resolution of the Senate, being the sum reported by the Secretary of the Interior, less 5 per cent. paid the State of Mississippi on net proceeds of lands sold within its limits ..... \$362,100 70  
And also the value of 2,292,766 acres of railroad and swamp lands granted the State of Mississippi, at 12½ cents ..... 286,595 75

Making a deduction in all of ..... 648,706 45

The reasons which induced the committee to recommend these deductions are fully explained in Mr. Sebastian's report of June 19, 1860. (Sen. Rep. Com. No. 283, 1st sess. 36th Cong.)

The following synopsis of the debates upon this amendment, and upon another offered in the Senate Feb. 2, 1851, and considered in the House Feb. 23 and Feb. 28, 1861, will give some idea of the views then expressed both for and against the Choctaw claim. It is necessarily brief, but will be useful as an index to those who may desire to refer to the remarks as reported, which fill more than eighty columns of the Globe.

#### SENATE DEBATE, JUNE 13, 1860.

In the debate on the amendment (Globe, June 13, 1860, p. 2935 *et seq.*), Mr. SEBASTIAN, of Arkansas, explained the award, which he said, as finally made, does not take one dollar from the Treasury, but simply refuses to make a speculation out of the ceded lands.

From the sum reported to Congress as due, the committee recommended a deduction of \$350,000, leaving balance to be appropriated in pursuance of final award, which he did not deem it competent to go behind. "It is final; it is conclusive; it is irrevocable."

He then referred to his reply to a question of Senator King, when resolution of March 9 was offered, that the amount involved would perhaps be from \$300,000 to \$1,000,000, an error into which he had been led by the General Land Office, the land sales proving to be more than he had supposed. But that did not alter the principle of the case. The committee believed it right to allow the net proceeds, whether they amounted to \$500,000 or \$5,000,000.

Mr. TOOMBS, Georgia, asked if Mr. S. proposed to appropriate \$2,300,000. His (Mr. T.'s) understanding was that \$1,851,000 was reported by the department to be due. Thought the award should never have been made; but in the settlement under it, the question was whether Choctaws should be charged with \$1,130,000 paid them for sales and concessions of lands they had acquired under the treaty of 1820. "We did agree to give the Indians the net proceeds; but the difficulty is as to what *are* net proceeds."

Mr. SEBASTIAN, and Mr. CLARK, New Hampshire, contended that the \$1,130,000 referred to had nothing to do with the treaty of 1830, and was therefore no part of the net proceeds, and Mr. CLARK gave a clear, connected history of the whole case (pp. 2959-60).

Mr. HUNTER, Virginia. This evidently requires investigation, and should not go on an appropriation bill. I do not understand it. We all must see that it is a complicated matter.

Mr. PUGH, Ohio. It requires less investigation than any amendment that has been proposed. After hearing the Senator from Georgia (Mr. TOOMBS) last evening, had read all these treaties carefully, from 1820 down, and cannot arrive at any other conclusion than that the award is right. We ought to pay the money. Our faith is pledged.

Mr. DOOLITTLE, Wis. It is a question resting upon the good faith of the United States whether they will pay it now or postpone it to some other time.

Mr. FESSENDEN, Me. The award was made without understanding the question. It ought to be thoroughly investigated.

Mr. FITCH, Ind. The Senator from Maine has reached the real point. The award was hasty.

Mr. PUGH, Ohio, stated the circumstances under which the treaty of 1830 was made. The award was right, and is just as much binding as anything can be.

Mr. BROWN, Miss., was on the Indian Committee when this subject first came before it. We are as much bound to pay this award as we are to pay the President's salary, or the salary of any other officer of the government.

Mr. POLK, Mo., inclines to believe this claim is just and ought to be paid, but objects to putting it on the "legislative, executive, and judicial" appropriation bill. Shall therefore vote against it.

Mr. DAVIS, Miss., moves to strike out \$2,332,560.85 and insert \$1,851,247.30, as he thinks *that* is the sum reported to be due. Would prefer, as a general rule, that appropriations of this magnitude should be considered separately, but feels that this question should be settled, and that these Indians should no longer be standing in the door of the Capitol, begging that justice to which they have so great a claim.

Mr. TOOMBS, Ga. The reason of these charges of \$600,000 and \$530,000 (\$1,130,000) is that we gave the Choctaws fifteen million acres in payment of the land east. If we give them the proceeds of the land east, we are entitled to what they sold of the land west, and the Secretary ought to have taken into account the ten million acres unsold as well as the few millions sold. (Page 2964.)

Mr. SIMMONS, R. I. But it (the \$1,130,000) is proceeds of the sale of their lands. I understand, and how can we set that off?

Mr. CRITTENDEN, Ky., stated at some length reasons why \$1,130,000 should not be deducted from amount found due.

Mr. DAVIS, Miss. What the Choctaws were to have west was a *permanent home*. That was the spirit of the original grant. After their concessions to the Chickasaws, and in the leased district, the *home* guaranteed to them still remains, and all the money we put in the money scale is to be counted as so much paid. (Page 2964-5.)

Amendment offered by Mr. DAVIS was rejected.

Amendment offered by Mr. SEBASTIAN, from Committee on Indian Affairs, was rejected—yeas 22, nays 24.

Yeas—Messrs. Brown, Chesnut, Clark, Crittenden, Doolittle, Fitzpatrick, Grimes, Hammond, Hemphill, Johnson, Ark., Kennedy, Lane, Latham, Mallory, Nicholson, Pugh, Rice, Sebastian, Seward, Simmons, Wigfall, Wilkinson.

Nays—Messrs. Bayard, Bigler, Bingham, Bragg, Bright, Cameron, Chandler, Clingman, Davis, Fessenden, Fitch, Foster, Harlan, Hunter, King, Mason, Pearce, Polk, Powell, Saulsbury, Sumner, Thompson, Toombs, Wilson.

#### SENATE DEBATE, FEBRUARY 2, 1861.

The Senate, as in Committee of the Whole, having under consideration the Indian appropriation bill (*Globe*, p. 704)—

Mr. SEBASTIAN, Ark., offered an amendment appropriating \$1,202,560.85 as the "undisputed balance" due the Choctaws under the award of March 9, 1859.

Mr. FESSENDEN, Me. The Senate has never acted understandingly in this matter, and should not be bound by its previous action. There is nothing in treaty of 1830 to warrant net proceeds. There had been violations of that treaty, and for that reason questions were submitted to the Senate. Not half a dozen Senators knew they were giving away so much. Blames no one. Takes his own share of responsibility. Refers to statement of Mr. SEBASTIAN that award would require \$800,000. When reported it was near \$3,000,000. There is no power to compel Senate. Therefore we have a right to re-examine. Did not think it just that under treaty of 1830 Choctaws should have their country west, expenses paid, reservations of land, and then proceeds of what was sold.

Mr. GREEN, Mo., insisted on moral obligation to pay, and objected to theory that Senate was not bound by its own award.

Mr. GWIN, Cal. Choctaws got a possessory title to their country west in 1820. In 1830 they got a fee-simple title to the magnificent empire for which they had acquired a possessory title in 1820. They received a patent—were the first tribe that did receive one—for the millions upon millions of acres more than they ceded in 1830. They had no shadow of claim to net proceeds under treaties of 1820 and 1830.

Mr. FESSENDEN, Me. In the debate of 1860 objections went beyond the \$1,200,000 now claimed as "undisputed." Refers to Mr. Toombs's remarks that the value of the country west should to taken into consideration, and that if it was, the balance would be against the Choctaws. Denies that the Senate made an award of the particular sum named in the report of the committee last year.

Mr. PUGH, Ohio. Examined case carefully last session. Saw nothing wrong in award. Claim is indisputable. Senate appointed arbitrator, not to go into details, but to settle principles. We did settle them.

Amendment rejected—17 to 27.

Yeas—Messrs. Bigler, Bragg, Clark, Doolittle, Fitch, Green, Hemphill, Kennedy, Lane, Latham, Nicholson, Polk, Powell, Pugh, Rice, Sebastian, Wigfall.

Nays—Messrs. Bingham, Bright, Chandler, Clingman, Collamer, Dixon, Douglas,



Durkee, Fessenden, Foot, Foster, Grimes, Gwin, Harlan, Hunter, Johnson, Ark., King, Morrill, Pearce, Saulsbury, Seward, Simmons, Sumner, TenEyck, Trumbull, Wade, Wilson.

February 9, 1861. Question being on motion to reconsider (*Globe*, p. 824)—

Mr. JOHNSON, Ark., explained origin of claim under treaty of 1830, which has been complicated with treaty of 1820, by which Choctaws had sold a small part of their country east for their country west, embracing from 25 to 40,000,000 acres, the government extending the grant beyond its own limits into Mexico. Choctaws had acquired by treaty of 1820 a perfect title of precisely the same character as that acquired by the United States from the Choctaws for their cession east. The whole transaction was complete on both sides.

For their cession of 1820, Choctaws received an equivalent in their country west. For their cession of 1830, nothing but what is contained in other articles of treaty, consisting almost entirely of reservations. In other words, they were paid for the whole of their lands by allowing them to select a few locations, and by an annuity of \$20,000 for 20 years. In stating accounts, the Interior Department and its bureaus had never estimated that the country west was part of the price for the cession of 1820. The country west had nothing to do with the question before us.

Fourteen months' investigation in Treasury and Interior Departments had shown that \$2,981,247 was due the Choctaws. The committee now proposes to appropriate \$1,200,000.

The committee had recommended an unauthorized deduction of \$648,000. Then the Finance Committee had proposed to deduct \$1,130,000 more, leaving \$1,200,000, about which not a particle of dispute till the Senator from Maine had disputed the whole amount, admitting that he had never investigated it, and, I think, said he never would.

Mr. PEARCE, Md. Had voted against appropriation because he was not satisfied with award, which had not been discussed. Senator from Arkansas [Sebastian] spoke a few minutes. Was asked by Senator from New York [Mr. King] how much it would take. Answered that he could not tell, but it was a very large amount; probably from \$300,000 to \$1,000,000. With that answer Senate seemed content, and adopted the resolution or award. Had felt embarrassed. It was a solemn act—a resolution of the Senate under a treaty stipulation. But, it was suggested that if we had been surprised into paying such an award, we were not so bound but that we might look back to all the facts in the history of the transaction.

Mr. SEBASTIAN, Ark., explained his statement to Mr. King. Had been led into an error in part by statements of the General Land Office. A memorandum on file among the original papers would show that his guess was very nearly right. Had expected that more would be charged to the Choctaws, and in fulfillment of that very expectation of his and of the committee, \$600,000 was afterwards charged.

Mr. PEARCE, Md., when interrupted, was simply stating his reason for opposing claim before he had looked into treaty of 1830. Apparently by that treaty the United States had ceded to the Choctaws their country west. Had supposed this large tract in fee-simple was a full consideration for the Choctaw cession in Mississippi, out of which had been carved large reservations, to which were added annuity payments and expenses of removal and subsistence. Had thought there was a fair bargain—a *quid pro quo*—and therefore could not understand what foundation there was for the award of March 9. This morning had learned, what was not before known to him, that the United States, having paid for their purchase east in 1820 with the Choctaw country west, did, in 1830, get the rest of the Choctaw country east for precisely the same consideration which had been exhausted by the cession of 1820. The reservations made in 1830 were not part of the consideration, for these reservations belonged to the Choctaws. Annuities were comparatively trifling. Emigration expenses it was, of course, proper for the United States to pay. Evidently the Indians had conveyed a large tract without sufficient consideration—such a conveyance as would be vacated by a chancellor. They had a claim on the justice of the United States—indefinite—for proceeds of land and value of unsold land.

In that condition the committee had found the matter. Two questions were presented—net proceeds, or gross sum. We have said net proceeds, and directed account to be stated. It has been stated, and thereupon the chairman reports this amount, excluding items disputed. I cannot resist a demand of justice made so perfectly clear. The Senator [Mr. Johnson] has satisfied me that it is my duty to vote for the present appropriation, leaving the other to be considered hereafter.

Mr. PUGH, Ohio, calls attention to clause making award of Senate final. Sees no mode of avoiding payment.

Mr. FESSENDEN, Me. Has no doubt a considerable sum is due and ought to be paid. Is "perfectly willing it shall be paid the moment it can be properly ascertained what it is." Objected to the amendment, because it acknowledges the force and effect of the award, binding upon him. If gentlemen will waive that point and appropriate \$500,000,

expressly prescribing that it shall not be considered an acknowledgment of the force and effect of the award, would be willing to let it pass.

Mr. TRUMBULL, Ill., called for yeas and nays. "We may as well have a test vote on reconsideration." (*Globe*, p. 831.)

Yeas 29, nays 15.

Yeas—Messrs. Bigler, Bragg, Bright, Cameron, Clark, Clingman, Collamer, Crittenden, Dixon, Doolittle, Fitch, Green, Grimes, Gwin, Hemphill, Johnson, Ark., Johnson, Tenn., Kennedy, Lane, Latham, Nicholson, Pearce, Polk, Powell, Pugh, Rice, Sebastian, Ten Eyck, Wigfall.

Nays—Messrs. Anthony, Bingham, Chandler, Durkee, Fessenden, Foot, Foster, Hale, Harlan, Seward, Sumner, Trumbull, Wade, Wilkinson, Wilson.

PRESIDING OFFICER. The vote is reconsidered and the amendment is reconsidered. The amendment was agreed to.

Mr. GRIMES, Iowa, proposed to insert provision that the appropriation neither affirmed nor denied right of Choctaws, and also to reduce it to \$500,000.

Mr. HALE, N. H., hoped amendment would be accepted. Thinks in that shape it would receive the almost unanimous consent of the Senate.

Mr. JOHNSON, Ark., objected to reduction when there was an undisputed claim to \$1,200,000.

Mr. PEARCE, Md., believed \$1,200,000 must be paid eventually, but thought it would be judicious to let amendment pass.

Mr. GRIMES, Iowa. Believes Choctaws have a just claim; has only offered amendment from an anxiety that they should receive a portion of the money which I conscientiously believed to be justly due them.

Mr. WILSON, Mass. This sum of \$1,200,000 is undisputed, and now Senator from Iowa proposes to put in \$500,000 as undisputed.

Mr. GRIMES, Iowa, moved to strike out words "being the undisputed balance due them."

Mr. CLARK, N. H., referred to amendment offered by Mr. Davis last session. Has no doubt that if Choctaws had consented to take \$1,200,000 then, Senate would cheerfully have accorded that sum.

Mr. FESSENDEN, Me., protests against reiterated statement that amount is undisputed. Nobody admits that except those who are in favor of it.

Mr. SIMMONS, R. I., has not examined the subject, but if those who have can agree to \$500,000, thinks they ought to. It will not affect the balance of the claim. Thinks we owe the Indians something, but it ought to be investigated before we pay so large an amount. Will cheerfully vote for \$500,000. Alluded to financial difficulties.

Mr. GRIMES's motion to reduce appropriation from \$1,200,000 to \$500,000 was then rejected—yeas 20, nays 21.

Yeas—Messrs. Anthony, Bingham, Chandler, Collamer, Durkee, Fessenden, Foot, Foster, Grimes, Hale, Harlan, King, Morrill, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilson.

Nays—Messrs. Bigler, Bragg, Bright, Clark, Clingman, Crittenden, Doolittle, Fitch, Green, Gwin, Hemphill, Johnson, (Ark.,) Latham, Nicholson, Pearce, Polk, Powell, Rice, Saulsbury, Sebastian, Wigfall. (*Globe*, p. 832.)

#### DEBATE IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 23, 1861. (*Globe* p. 1155.)

The Indian appropriation bill being under consideration, Committee of Ways and Means recommended non-concurrence in 19th Senate amendment appropriating \$1,200,000, "being the undisputed balance due" Choctaws under award of Senate of 9th March, 1859—

Mr. STEVENSON, Ky., asked reason for non-concurrence. Does not see how the award can be repudiated.

Mr. SHERMAN, Ohio. First ground for non-concurrence is that the amendment does not pertain to an appropriation bill.

2d. It should have been reported on by the Committee on Indian Affairs. We had neither time nor patience to examine it.

3d. Terms of the bill were in other respects objectionable.

Mr. STEVENSON, Ky., stated the history of the case down to the award. Since then the matter had been referred to accounting officers. There was a dispute about this sum of \$1,200 being justly due. Finance Committee of Senate had reported against it, and then reversed its report.

Mr. ETHERIDGE, Tenn. (chairman Committee Indian Affairs). If this matter goes over, doubts if half a dozen members would become any better acquainted with it. No doubt of its justice. Only reason Committee of Indian Affairs did not urge it last session was the state of the Treasury. Will not go into details. Claim admitted so far as government is concerned. It is *res adjudicata*. If claim is deferred ten years House will still be compelled to rest upon statements of those who have time to exam-

ine it. Treaty provides that award shall be final. Amendment provides \$1,200,000. Claim is larger, but that amount is not disputed.

Mr. SHERMAN, O. Amendment is put on an appropriation bill in violation of rules of the House. An old claim. Impossible for Ways and Means Committee to examine it. It ought to pass on its own merits, and should not be attached to an appropriation bill. If chairman Committee on Indian Affairs [Mr. Etheridge] will bring in a bill and it passes, has no objection.

Mr. ETHERIDGE, Tenn. If this had never been adjudicated the objection would be well taken. If we were to bring in fifty bills and ask House to investigate, it would never be investigated, and gentlemen would be no better prepared to vote than they are now.\* When a matter has been adjudicated and treaty provides adjudication shall be final, this House has no discretion but to pay amount found due.

Mr. STEVENSON, Ky. This is an award. Government agreed to refer the matter to the Senate, and to pay what Senate should award. Why not pay it? There are disputed items, but none put in here are disputed.

Mr. PHELPS, Mo. (p. 1287). Question covers not merely \$1,200,000 in amendment, but \$2,900,000 claimed by Choctaws. By treaty of 1820 they had acquired their country west of Arkansas, and agreed to migrate. In 1830 they ceded their country east in consideration of an absolute grant of their country west of Arkansas. By this treaty reservations east were permitted as part of the consideration for what they ceded. They were also to have an annuity and other sums, which have all been paid, and they were emigrated and subsisted at the cost of the United States. The real object of the treaty of 1830 was to relieve the government from a difficulty in which it had been involved by the State of Mississippi, which had extended its jurisdiction over the Choctaws. To obviate this difficulty it was agreed that the tribe should emigrate, but that those choosing to remain should have land. Again, those having improvements under cultivation might have land to embrace them. In other words, reservations were provided for nearly 1,500,000 acres. This part of the treaty has been fully complied with, and the stipulated payments have all been made. Denies that Choctaws were entitled to the net proceeds of the cession under 18th article of the treaty. The lands were ceded in consideration, 1st. Of moneys to be paid. 2d. Of emigration and subsistence. 3d. Of large reservations. 4th. Of patents to be issued for lands west in fee. Again: Scrip was provided for Indians not desiring to retain or to reside on their reservations. This scrip was issued to the Indians, and sold by them before the price was depreciated by land-warrant issues. Denies that treaty of '55 is binding upon House of Representatives. Claims right to control his own vote, whether in fulfillment of treaty stipulation or not.

Mr. MAYNARD, Tenn. Does the gentleman claim the right to go behind a treaty and inquire into its propriety?

Mr. PHELPS, Mo. Where a treaty requires legislation, if I disapprove such legislation, it is my duty to vote against it. If we pay this \$1,200,000 on the ground that it is due, we are bound to pay the residue of \$2,900,000 whenever it is demanded. If these Indians were entitled to the proceeds of the lands they ceded in 1830, then in equity they are entitled not only to the whole \$3,000,000, but to the interest for the time the government has withheld the money. The award was made at a called session of the Senate, in March, 1859. When committee reported a bill to pay it, \$600,000 was deducted from the amount. But if the Choctaws are entitled to the net proceeds, they are entitled to them without this deduction. Quotes the statement of Mr. Sebastian to Mr. King when award was pending that the amount to be paid would be between \$800,000 and \$1,000,000. Quotes Mr. Toombs's remark about the award, that "we agreed to a very wrong thing. There never was a solitary foundation for it on the face of the earth, and how anybody could have voted for it I cannot imagine, because it is plainly in the face of the treaty, every line and every word of it." Concurs with Mr. Toombs. The very debates prove that the award was made on the chairman's statement that the amount would not exceed \$800,000 or \$1,000,000. The account is for over \$2,900,000. The account shows that an approximate estimate had been sent to the Senate in May, 1858, showing that the award would probably be for \$2,993,000, the ultimate result being \$2,981,247.30. Denies exclusive control of the Senate over our Indian relations. Believes the award was made without due consideration, as it was said at the time that it would not take over \$800,000 or \$1,000,000 to pay the claim, whereas it now appears that it will take \$2,900,000.

Mr. MAYNARD, Tenn., states the causes which led to the treaty of 1855: 1st. Choctaw and Chickasaw land wanted for wild Indians; 2d. A difficulty between Choctaws and Chickasaws, likely to lead to open rupture and to a border war, which it was desirable to avoid; 3d. The Choctaws had claims under their treaty of 1830 which they pressed upon the Indian Bureau. It was, therefore, deemed important to make a treaty. It was made and ratified, and under the Constitution became the supreme law of the land, and is binding upon every citizen. We are not at liberty to disregard it,

\*Subsequent events have fully demonstrated the correctness of this remark.

if it was injudicious. By the 11th and 12th articles government stipulates that certain disputed constructions of treaty of 1830 should be submitted to the Senate. The Senate had made its decision. It is final, irreversible, and there is, by agreement, no appeal from it. Suppose the Senate did not know how much the proceeds of these lands would be, they knew the principle they were settling. The amount was a mere matter of computation. Whether larger or smaller, a matter of no consequence—does not affect the adjudication. The Secretary of the Interior had reported that \$2,981,247.30 was due, and I hold that to be the amount to which the Choctaws are justly entitled.

Mr. STEVENSON, Ky. This was an award; higher than a treaty. The treaty of '55 stipulates that the Choctaws should become liable for individual claims of their citizens upon the United States. We forced the Choctaw Nation to assume these individual claims, and now repudiate the obligation we have entailed upon them. The only serious argument against the claim is our want of money to pay it.

Mr. SHERMAN, Ohio. Is opposed to the amendment. 1. Because it has been improperly put upon an appropriation bill. 2. Because this is *not* a "solemn award." A resolution had been passed by the Senate, without any one knowing what it meant, saddling \$2,900,000 upon Treasury. Under treaty of '55, Senate was to give a just, fair, liberal consideration to certain questions. At a called session resolutions were introduced in the nature of an award. There was no debate, no consideration. Resolutions passed, and on the faith of that award we are asked to appropriate from two to three millions. It was *not* an award; has never been considered; never acted upon. It has not the form and substance of an award. 3. The amendment proposes to submit another subject to the Senate for a future award. The Senate may appropriate another million without the consent of the House.

This is a claim growing out of Yazoo lands. The Representatives of Mississippi and Georgia have always denounced and opposed it. Mr. Toombs always contended that it was unjust and unfounded. This is not the time to pay doubtful debts against the State of Mississippi.

Mr. STEVENSON, Ky. The gentleman says Mr. Toombs said so and so. Did not the Finance Committee of the Senate, after full discussion, recommend the payment of this claim?

Mr. SHERMAN, Ohio. I understand they did after the Senators from Georgia and Mississippi, who knew most about it, had withdrawn.

Mr. PHELPS, Mo. Last summer, after long debate, proposition to appropriate \$2,900,000 was voted down in the Senate.

Mr. SHERMAN, Ohio. When Senators from State where claim originated were present it was voted down. Shall we appropriate \$3,000,000 to pay a claim which has been disputed in country where it arose? Besides, we ought not to appropriate till we know whether Choctaws belong to this government or to Southern Confederacy.

Mr. MAYNARD, Tenn. Is not the gentleman aware that after the Senate had heard both sides it agreed to this amendment?

Mr. SHERMAN, Ohio. Well, the House has heard both sides.

Yeas and nays ordered. Yeas 56, nays 104 (p. 1291).

Committee of conference appointed: House—Messrs. Phelps, Etheridge, and Graham. Senate—Messrs. Pearce, Powell, and Clark.

March 2 (p. 1414) committee recommended that the House recede from its disagreement, Mr. Phelps dissenting.

Report of committee was rejected by the House, and another committee was appointed, namely: For the House—Messrs. Howard, Mich., Morrill, Vt., and Stevenson, Ky. For the Senate—Messrs. Pugh, Ohio, Nicholson, Tenn., and Doolittle, Wis.

March 2 (p. 1427) committee recommended substitute for Senate amendment, appropriating \$250,000 in money, \$250,000 in bonds, to be charged in the future adjustment of Choctaw claims. Report signed unanimously by committees on the part of both Houses.

Mr. HOWARD, of Mich. The managers from the House could not agree to recognize the award. But we were satisfied there was something due the Choctaws. How much we did not know; but we were satisfied it was more than the amount now reported.

Mr. SHERMAN, Ohio. Report recognizes the validity of the claim. Would rather see bill defeated than vote for it.

Mr. PHELPS, Mo. Hopes House will adhere to disagreement. Would rather give the Choctaws \$500,000 than recognize the award.

Mr. STEVENSON, Ky. Insisted upon compliance with compromise. Senate had receded from original amount, and we have recommended payment of \$500,000 on a claim regarded by the Senate as just and valid.

Mr. SHERMAN, Ohio. Was satisfied from superficial examination of this matter that we do not owe the Choctaws. The House should have a fair opportunity to investigate, and the claim should not have been put upon an appropriation bill.

Mr. STEVENSON, Ky. Whole subject has been investigated thoroughly. Wants to find out if sectional policy has anything to do with the opposition to this claim.

Mr. HOWARD, Mich. House managers yielded reluctantly to the compromise. Had himself objected that an estimate had not been sent at the beginning of the session, as for other appropriations. Also objected to recognizing award. The Senate could not yield or recede without surrendering its treaty-making prerogative, which we did not wish to infringe upon. Demanded previous question. Yeas and nays ordered. Yeas, 70; nays, 61.

So the report of the committee of conference was agreed to. (*Globe*, p. 1429.)

#### TREATY OF 1866.

The 10th article of the treaty of 28th April, 1866, with the Choctaws and Chickasaws reaffirms all obligations arising out of former treaty stipulations or acts of legislation in force when the war commenced.

Referring to this article, the Secretary of the Interior, Mr. Browning, on the 5th February, 1867, sent communications to the Committees on Appropriations of the House and on Finance of the Senate, recommending the appropriation necessary to pay the Choctaws the balance of \$1,832,560.85 due them, after deducting \$500,000 appropriated March 3, 1861.

The Finance Committee of the Senate referred the Secretary's letter to the Committee on Indian Affairs, which, on the 23d February, 1867 (*Globe*, page 1811), reported an amendment to the pending Indian appropriation bill appropriating \$250,000 for payment to Choctaws on account of their claim under 11th and 12th articles of treaty of 1855. The amendment, after debate, was rejected.

The Appropriation Committee of the House, acting upon the recommendation of the Secretary, reported, by Hon. Thaddeus Stevens, a deficiency bill (No. 1227), containing in its 8th section provision for the payment of \$1,832,560.85 in money and bonds. This provision was debated on the 2d March, 1867, and the section stricken out. (*Globe*, pp. 1748-9-50, and 51.)

On the 15th March, '67, Mr. Sherman presented in the Senate a memorial from the Choctaw delegates concerning their claims, which, he said, ought to be thoroughly investigated. He offered a resolution, which was adopted, referring the subject to the Committee on Indian Affairs, with instructions to report, by bill or otherwise, at the next session of the Senate. (*Globe*, p. 106.)

A few days afterwards, while a joint resolution was under consideration in the Senate providing for the payment of losses sustained by loyal Choctaws and Chickasaws by the sale of trust funds belonging to those tribes, Mr. DOOLITTLE offered as a substitute an appropriation of \$250,000, to be charged to the Choctaws in the future adjustment of their claims under the 11th and 12th articles of the treaty of 1855. In the discussion which followed, Mr. Sherman gave an outline of what had occurred in connection with the claim, and alluded to the resolution adopted at his instance instructing the Indian Committee to investigate and "go to the root of the controversy." Mr. Doolittle withdrew his substitute for the reason that two-thirds of the amount to be paid was for claims upon the *Chickasaws*, not chargeable to the Choctaw fund. (*Globe*, March 20, '67, p. 221.)

On the 30th of May, 1868, Mr. Butler, of Massachusetts, reported to the House of Representatives the reasons which had induced the Committee on Appropriations to insert section 2 in the bill then pending, authorizing the issue of bonds for \$1,832,560.85, the balance due the Choctaws after deducting the \$500,000 authorized to be paid in money and bonds by the act of March 3, 1861.

The section, after debate, was stricken out. (*Globe*, May 30, 1868, pp. 2707 to 2710.)

During the same session, on the 6th of July, 1868, Mr. WINDOM, who had moved to strike out the section above referred to, reported from the House Committee on Indian Affairs, of which he was chairman, a bill for the relief of the Choctaws, appropriating \$1,832,560.85, the same amount reported as due by the Appropriation Committee. (House Report No. 77, 2d session, 40th Congress.)

On the 16th July, 1868, Mr. HENDERSON, from Senate Committee on Indian Affairs, offered an amendment, which was incorporated in the Indian appropriation bill and became a law, requiring the Indian Committee of each House to report on the Choctaw claim. (15 Stat. at Large, p. 223.)

On the 10th April, 1869, Mr. HARLAN, from the Senate Committee on Indian Affairs, reported that the question whether or not the United States was bound by the award of the Senate to pay the Choctaw claim should, in the opinion of the committee, be referred to the Committee on the Judiciary, which was accordingly done, and the Indian Committee discharged from its further consideration. (*Globe*, April 10, 1869, p. 718.)

Passing over the proposition offered and withdrawn by Senator Rice on the 8th June, 1870, and the discussion thereon in the *Globe* (page 4208-9), we come next to the bill, No. 973, authorizing the issue of bonds amounting to \$1,832,560.85, in pay-

ment of the Choctaw claim, reported from the Judiciary Committee of the Senate by Mr. RICE on the 22d June, 1870, and afterwards, on the 12th July, moved by him as an amendment to the civil appropriation bill. In the course of the discussion on this amendment the amount was increased from \$1,532,560.85 to \$2,032,560.85, on motion of Mr. GARRET DAVIS, of Ky., that \$250,000 authorized by the act of March 3, 1861, to be paid in bonds, should be added thereto, which motion was carried—ayes 31, noes 20—and then the amendment was rejected—ayes 24, noes 26—Mr. BAYARD, who voted no, remarking that the obligation to pay was perfectly plain, but that he did not think the amendment appropriate to the pending appropriation bill. (*Globe*, July 12, 1870, p. 5483, *et seq.*)

Of the 24 voting aye, five were Senators in 1860, namely, Messrs. Cameron, Hamlin, Harlan, Sumner, and Trumbull.

Mr. TRUMBULL, who had voted against the claim in 1861, said that while it was before the Judiciary Committee (of which he was chairman) it had been carefully examined, and it seemed to him that there was no escape from the obligation to pay.

On the same day that the foregoing amendment was rejected, Mr. DAVIS, Ky., introduced a bill to "settle and adjust all claims of the Choctaw tribe of Indians against the United States," which was referred to the Committee on Indian Affairs, and immediately reported back without amendment. (*Globe*, July 13, 1870, page 5531.)

#### \$250,000 PAYABLE IN BONDS.

Meanwhile efforts had been made to induce the Government to issue the bonds for \$250,000, authorized by the act of March 3, 1861.

The attention of the Attorney-General being called to the subject he expressed the opinion that the bonds could be lawfully issued, in a letter to the Secretary of the Treasury of December 15, 1870, which was transmitted to Congress and referred to the Senate Committee on Indian Affairs, which directed Mr. DAVIS, of Ky., to report the resolution adopted by the Senate on the 5th January, '71, that the President had full authority under existing law to issue the bonds. (Senate Journal, 3d sess. 41st Cong., p. 95.)

On the 27th February, 1871, Mr. KERR, from the House Committee on the Judiciary, made a similar report. (House Rept. 41, 3d sess. 41st Cong.)

And on the 3d March, '71, the Indian appropriation bill, was passed, containing the following clause:

"And the Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of \$250,000, as directed by the act of March 2, 1861, entitled 'An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes.'" (16 Stat. Large, 570.)

The bonds, however, were *not* issued; have never been issued.

#### SOLICITOR BANFIELD'S 1ST REPORT.

On the 6th June, '72, the Secretary of the Treasury, in a letter to the President of the Senate, stated that in consequence of representations to the Department that the Choctaw net proceeds claim was not founded in equity and ought not to be paid, he had directed the Solicitor of the Treasury (Mr. E. C. Banfield) to hear the parties professing to have knowledge of the facts, and to test their statements by examining the Choctaw treaties. The Solicitor's report, which he transmits, taken in connection with other information, induces the Secretary to suggest that he be authorized to delay the issue of bonds to the Choctaws until there shall have been further investigation by Congress. (Sen. Ex. Doc. 87, 2d sess. 42d Cong.)

#### SOLICITOR BANFIELD'S 2D REPORT.

On the 6th January, '73, the Secretary of the Treasury communicated to Congress (House Ex. Doc. 69, 3d sess. 42d Cong.) another report from the Solicitor of the Treasury, dated November 14, '72, purporting to give the origin, nature, and history of the net proceeds claim, in which he endeavors to show, 1st. That the claim never had any foundation. 2d. That it has been fully paid. 3d. That the Choctaws have themselves given a receipt acknowledging full satisfaction.

This attack, to which the undersigned at once replied, bore speedy and remarkable fruit in two provisions of a somewhat opposite character in the Indian appropriation act of February 14, 1873, of which the first is: "SEC. 3. That all authority now existing by the acts of March 2, 1861, and March 3, 1871, or otherwise, to issue or deliver any bonds of the United States to the Choctaw tribe of Indians, is hereby suspended until the further action of Congress in the matter and providing for such issue and delivery."

The second, found in the 6th section of the act, provides "That there shall not be

paid or allowed to any person whatever any fees or reward for services in connection with the subject-matter referred to in the 3d section of this act, either on account of the United States or the Choctaws, until further action of Congress in the matter, and providing for such action and payment."

The *Globe* of February 4, 1873, pages 1079-1085, shows that the object of this last clause was to prevent the payment of \$30,000 to the real authors of Mr. Banfield's report of Nov. 14, 1872, for their services in attacking the Choctaw claim, under their contract or agreement with the Secretary of the Treasury, printed on page 1084 of the *Globe* of February 4, 1873.

The injurious effect upon the claim produced by the Solicitor's report, and especially by the "release" printed at the end of it, may be seen in the remarks of Mr. EDMUNDS in the Senate, January 7, 1873 (*Globe*, pp. 378, 379, and 380), and that of Mr. SARGENT in the House, February 4, 1873. (*Globe*, pp. 1082, 1083.)

The reply of the undersigned was in two separate papers, of which one rested upon the legal obligation of the government to pay the Choctaw claim, and demonstrated the absurdity of Mr. Banfield's attempt to go behind and disregard former adjudications and acts of Congress. The other answered in detail his charges of fraud, and pointed out his misrepresentations and suppressions of important facts. The paper last named was printed as House Mis. Doc. 94, 3d session 42d Congress.

Mr. Banfield's allegations were examined in a report from the Indian Committee of the Senate, presented by Mr. Harlan, January 22, 1873 (Sen. Rep. 313, 3d sess. 42d Cong.), and in another from the Indian Committee of the House, presented by Mr. J. P. C. Shanks, February 22, 1873.

The two committees concur in the opinion that the receipt or "release" above mentioned, which was executed by the Choctaws in 1852, and is reprinted at the close of the Solicitor's report, was not a bar to the Choctaw claim; that it was simply an acknowledgment of the payment of a certain sum, which was duly charged to the Choctaws in the statement of their accounts. It "had," says the House report, "no wider significance—was a special receipt for a special thing."

The Senate report goes on to say that "your committee also find many matters mentioned in Solicitor Banfield's report as benefits conferred on said Indians under the treaty of 1830 erroneously stated; and on a careful comparison of said Solicitor's report, so far as comparison is possible, with the account stated by the Secretary of the Interior, that each and all the items *correctly* stated by the Solicitor are charged against the Indians in the said statement of account by the Secretary of the Interior.

"From a careful examination of the whole subject your committee entertain no doubt that the whole subject was fully understood by the Committee on Indian Affairs, when, on June 19, 1860, they recommended the payment of \$2,332,560.85, and by Congress, when, by the act of March 2, 1861, they directed the payment of \$500,000 on account in pursuance of the Senate award. And this committee find nothing in the history of the case to justify the conclusion that the Secretary of the Interior in his statement of account, or the committee of that date in their recommendation, or Congress in ordering a payment on account committed any substantial error against the interests of the United States, but are of the opinion that if the case were reopened and adjudicated as an original question by any impartial umpire, a much larger sum would be found due said Indians, which they would undoubtedly recover were they in a condition to compel justice."

The House committee, after a minute and thorough examination of the whole subject in all its details, arrives at substantially the same conclusion, that the Choctaws are entitled to \$2,332,560.85, less \$250,000 heretofore paid.

At the next session of Congress a bill providing for the payment of the award of the Senate in favor of the Choctaw Nation was referred by the House of Representatives to the Committee on Appropriations, from which it was returned on the 9th April, 1874, by the Hon. I. C. Parker, with a report setting forth the conclusions upon which the bill was founded, namely, that the amount reported by the Secretary of the Interior to Congress on the 8th of May, 1860, in obedience to the Senate resolution of March 9, 1859, shows that the balance due the Choctaws on that day was ..... \$2,981,247 30  
Of which has been paid..... 250,000 00

Leaving a balance still due of ..... 2,731,247 30

No part of which has been paid, and that on said balance the Choctaws are entitled to interest from the date of the award, namely, March 9, 1859.

During the same session Mr. Comingo, on the 20th May, 1874, made a report from the House Committee on Indian Affairs, in which the various transactions between the United States and the Choctaws are carefully examined, and the manner and mode of relief provided in the bill (H. 2189) reported from the Appropriation Committee by Mr. Parker are recommended. (House Reports 391 and 599, 1st sess. 43d Cong.).

It is a fact worthy of notice that the conclusions in the reports of Messrs. Parker

and Comingo are precisely the same as those which Mr. Phelps said, when he was opposing the claim in 1861, must inevitably follow if a payment was made, as proposed by the Senate, to the Choctaws on account of the award of March 9, 1859.

On the 13th June, 1874, the House of Representatives, by a vote of 156 to 73, instructed the Appropriation Committee to insert in the sundry civil appropriation bill, then before the House, a section providing for the payment of the net proceeds claim by issuing United States bonds for an amount equal to \$2,332,560.85, less \$250 paid April 12, 1861, with interest from the 2d March, 1861.

On the 16th June, after considerable debate, by a vote of 118 to 103, the following clause was substituted for this section: "That the Secretary of the Treasury is hereby directed to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles 12 and 13 of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians, and to report the same to the next session of Congress, with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to said Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in article 13 of the treaty aforesaid." (3d sec. civil appropriation act, June 30, 1874.)

The reply of the Secretary, Hon. B. H. Bristow, is found in House Ex. Doc. No. 47, 2d sess. 43d Cong., and also House Mis. Doc. 40, 1st sess. 44th Cong., which embraces all the information he was able to obtain.

On the fourth page of his letter he deems it "proper to remark that, while the act of June 23, 1874, by which this inquiry was directed, is apparently intended to provide a trust fund for educational and other purposes, for the benefit of the Choctaw people, such fund, as a matter of fact, is already in existence under the provisions of existing treaties, and the balance of the award, if any should remain, would go as an addition to such existing fund, not to create one.

"The results of the inquiry directed by Congress may be briefly summarized as follows:

Amount of liabilities from the nation to individuals, without interest ..	\$3, 216, 098 00
Amount of liabilities from the nation to individuals, with interest ....	5, 439, 551 00
	<hr/>
Amount of "net proceeds" or "sum due," as ascertained under the award	
of the Senate.....	2, 981, 247 30
Less payment on account .....	250, 000 00
	<hr/>
Balance of award, exclusive of interest .....	3, 731, 247 30

The Secretary expresses no opinion as to "any amount as liquidated or justly due from the United States," but adds that—

"The amount above named as due is that sum fixed upon in the report of the Secretary of the Interior, May 8, 1860, under the resolution of the Senate, March 9, 1859, based on the 11th article of the treaty.

"It is referred to in several reports of committees of the respective houses of Congress, as follows:

- "Report of Senate Committee on Indian Affairs, No. 318, 42d Congress, 3d session.
- "Report of House Committee on Indian Affairs, No. 80, same session.
- "Report of House Committee on Appropriations, No. 391, 43d Congress, 1st session.
- "Report of House Committee on Indian Affairs, No. 599, same session. (All these documents are printed in House Misc. Doc. No. 40, 1st sess. 44th Cong.)

"The credit of \$250,000 is a cash payment to the accredited agents of the Choctaw Nation under an act entitled 'An act making appropriations \* \* \* for fulfilling treaty stipulations with various Indian tribes,' approved March 2, 1861.

"The sum of \$500,000 was appropriated on account of the claim of the Choctaws under the treaty of 1855, but, for reasons growing out of the rebellion affecting the peaceful relations theretofore existing between the Choctaws and the national government, the payment of the other half of the appropriation was suspended by the Secretary of the Treasury.

"Although friendly relations were restored by the treaty of April 28, 1866, the United States reassuming its former obligations in the premises, doubts had in the mean time arisen as to the power of the Secretary of the Treasury to complete the payment authorized by the act of 1861 by delivering bonds for the remainder. And notwithstanding the opinion of the Attorney-General, 15th of December, 1870 (13 Op., 354), in favor of such delivery, it was not made, and appears subsequently to have been postponed for an indefinite period."

This letter on the 23d December, 1874, was referred to the Committee on Appropriations.

On the 19th January, 1875, the Indian appropriation bill being under consideration in the House of Representatives, Mr. Comingo offered the amendment which appears on page 591 of the Record, appropriating \$2,981,247.30 to pay amount due Choctaws



under award of the Senate of March 9, 1859, less \$250,000 heretofore paid, with interest at the rate of 5 per cent. from the date of the award until paid.

On the 20th inst. this amendment was amended, on motion of Mr. Garfield, by substituting 5 per cent. bonds, to be delivered in place of money. (Pages 610 and 613.)

On the same day \$2,332,561 was inserted in place of \$2,981,247, struck out on motion of Mr. Loughridge, who cited several committee reports in support of his motion. (Page 617.)

The amendment, as thus amended, providing for the payment of \$2,332,561 with interest at 5 per cent. from March 9, 1859, less \$250,000 already paid, the whole to be paid in 5 per cent. bonds, was carried by a vote of 139 yeas to 101 nays; 48 not voting. (Page 617.)

A test vote was then called for on ordering the bill, as amended, to be engrossed for a third reading, which resulted—yeas 112, nays 121; so the House refused to order the bill engrossed. (Pages 617-18.)

This vote was reconsidered on the 21st, and the bill was ordered to be engrossed and read a third time. (Page 637.)

A motion was then made to recommit the bill with instructions to report it back without the Choctaw amendment, which was decided in the negative, yeas 120, nays 130 (p. 637); so the House refused to recommit with such instructions.

A motion to lay the bill on the table was negatived. Yeas 114, nays 132. (Page 637.)

The question recurring on the passage of the bill, the result was—yeas 120, nays 126.

This vote was reconsidered (p. 639), and subsequently, on the same day, the bill was recommitted to the Committee of the Whole by a vote of 140 yeas to 102 nays. (Page 639.)

On the 9th of February, by unanimous consent, the bill was considered in the House, as agreed to, with the exception of the Choctaw claim and another in favor of the Chickasaws, which, by consent, were to be regarded as pending amendments; whereupon the Choctaw amendment was rejected by a vote of 88 yeas to 137 nays. (Page 1093.)

Thus it will be seen that of the seven distinct votes above referred to, three were favorable and four were adverse to the Choctaw claim.

The favorable votes were—

1st. 139 to 101 to put the claim in the bill.

2d. 120 to 130, refusing to recommit with instructions to strike out.

3d. 114 to 132, refusing to lay the bill on the table.

The unfavorable were—

1st. 112 to 121, refusing to engross for third reading.

2d. 120 to 126, refusing to pass the bill.

3d. 140 to 102, recommitting the bill to Committee of the Whole.

4th. 88 to 137, refusing to insert Choctaw amendment.

Clearly a majority of the voting members present were in favor of the claim.

It was equally clear that a majority of the whole House favored it in 1874.

Yet in 1874, as in 1875, it was stricken out of the appropriation bill, after having been put in by a large vote, as in 1867 and 1868 it had been stricken out of appropriation bills reported from committees.

It was, therefore, evident that the claim could not be passed as part of a regular appropriation bill.

It was equally evident to the undersigned, from the tenor of the debates, that the only course left was to get the case referred to the courts.

To give the substance of those debates, of what was said for or against the claim, when it happened to be discussed in either house from February, '67, to February, '75, would take up too much space. It has been shown in the preceding pages where these debates may be found in the *Globe* or the *Record*. It will be seen, on consulting them, that the arguments against it are chiefly those urged in 1860 and 1861, and indicated in the abstract on pages 7, 11, and 12, *ante*. To these were added, after the appearance of Solicitor Banfield's report in 1872, his allegations that the claims of the 14th article of the treaty of 1830, upon which the award of the Senate chiefly rests, were fraudulent, and were barred by a "release" acknowledging full payment. Finally, it was alleged that a large part of the claim was to go to the "lobby."

Before proceeding to reply to these objections, it may be well to recapitulate the

#### FACTS OF RECORD.

1st. The treaty of 1855 was made by the United States for a valuable consideration.

2d. One of the inducements to the Choctaws to make that treaty was the reference of their claims to the United States Senate for decision.

3d. Acting upon this reference, the Senate, on the 9th March, 1859, resolved that the Choctaws should be allowed the net proceeds of the lands they ceded in 1830, and directed the amount of such net proceeds to be reported to Congress.

4th. The amount reported was \$2,981,247.30.

5th. From that sum a committee of the Senate recommended a deduction, not mentioned in the report and contemplated in the resolution, of \$648,686.45.

6th. \$500,000 was appropriated by Congress in 1861 for payment to the Choctaws "on account of their claim," \$250,000 to be paid in money, the residue in bonds.

7th. The \$250,000 in money was paid in 1861.

8th. Since then no part of the claim has been paid, the bonds having been withheld, although two separate acts of Congress authorized their issue.

## THE OBJECTIONS

to the payment of the residue of the net proceeds have already been stated in part, but that they may be fully understood, will be repeated. They are—

1st. That the Senate in passing its resolutions of March 9, 1859, acted without a proper or sufficient understanding of the subject, and under a wrong impression as to the amount involved, Mr. Sebastian stating that it would be from \$800,000 to \$1,000,000, whereas it exceeded \$2,900,000.

2d. That the Choctaws were not entitled to the net proceeds by the terms of the treaty of 1830, not a syllable of that treaty warranting any such conclusion.

3d. That the Choctaw country west was part of the pay for the cession of 1830, and should have been charged to the Choctaws in making up the account of the net proceeds.

4th. That the grounds assigned by the Senate Committee on Indian Affairs in their report of February 15, 1859, for recommending that the Choctaws be allowed the net proceeds, rest upon claims which have no equitable foundation, particularly those under the 14th article of the treaty of 1830, most of which, it is alleged, were fraudulent, and all of them barred by a "release" executed in 1852 acknowledging payment in full.

5th. The allegation that the larger part, or a large part, of whatever might be appropriated would not reach the Choctaws, but would be absorbed by "the lobby."

The first objection, that the Senate passed the resolutions of March 9, '59, without understanding the subject, and under a wrong impression as to the amount involved, is easily answered.

After three years of thorough examination of the subject-matter in committee, the resolutions had been reported on the 15th of February. They were called up "when there was a pretty full attendance,"\* and considered on motion of Mr. SEBASTIAN, who moved a number of amendments to the first resolution, which were agreed to, and then Mr. KING asked several questions, speaking, in all, five different times. In reply, Mr. SEBASTIAN gave a condensed summary of the nature and effect of the resolutions, "a brief skeleton explanation," as he called it, but very clear and comprehensive, in the course of which he stated that the amount to be paid would be very large. Mr. King asked if it would be \$1,000,000. Mr. Sebastian answered that he thought, when the account is stated, it would be between \$800,000 and \$1,000,000. Mr. King said, "It is a pretty large sum to be voted in this way," and then the resolutions were adopted. (*Globe*, March 9, '59, p. 1691.)

Obviously, if other Senators did not ask any questions, or had not already informed themselves, it must have been because they reposed confidence in the committee which had reported the resolutions. It appears from Mr. Sebastian's statement (*Globe*, February 9, '61, p. 829) that the reports of the Indian Committee had generally been adopted without investigation, the Senate trusting to the correctness of its conclusions, no doubt very properly, two of its members, General Sam. Houston, of Texas, and the Hon. John Bell, of Tennessee, having had more experience in Indian legislation than any one else in either House at that time, and having, both of them, given particular attention to the subject embraced in the resolutions.

The fact that the Senate placed confidence in the judgment and discretion of its Committee on Indian Affairs certainly ought not to prejudice the Choctaw claim.

That the resolutions were approved and sustained by a majority of the Senate as then constituted is proved by the records.

The first vote recorded was on an amendment offered by Mr. Sebastian to the legislative, executive, and judicial appropriation bill, on the 13th of June, 1860, appropriating \$2,332,560.85, which was rejected, yeas, 22, nays, 24; not voting, 19; the Senate then consisting of 65 members, one seat being vacant.

Yeas.		Nays.		Not voting.	
Messrs.	Brown,	Messrs.	Bayard,	Messrs.	Anthony,
	Chestnut,		Bigler,		Benjamin,
	Clark,		Bingham,		Clay,
	Crittenden,		Bragg,		Collamer,
	Doolittle,		Bright,		Dixon,

\* Mr. Sebastian, *Globe*, February 9, '61, p. 829.

<i>Yeas.</i>	<i>Nays.</i>	<i>Not voting.</i>
Messrs. Fitzpatrick, Grimes, Hammond, Hemphill, Johnson, Ark., Kennedy, Lane, Latham, Mallory, Nicholson, Pugh, Rice, Sebastian, Seward, Simmons, Wigfall, Wilkinson.	Messrs. Cameron, Chandler, Clingman, Davis, Fessenden, Fitch, Foster, Harlan, Hunter, King, Mason, Pearce, Polk, Powell, Saulsbury, Sumner, Thompson, Toombs, Wilson.	Messrs. Douglass, Durkee, Foot, Green, Gwin, Hale, Hamlin, Iverson, Johnson, Tenn. Slidell, Ten Eyck, Trumbull, Wade, Yulee.

[*Globe*, June 14, 1860, p. 2965.]

Of the 24 voting against the claim, Mr. POLK, Mo., was inclined to believe "this is a just claim, and ought to be paid"; but thought it should not be put in the "legislative, executive, and judicial" appropriation bill, and "shall therefore vote against putting it on this bill." On the 2d of the following February he voted to put it in the *Indian* appropriation bill, and on other occasions sustained the resolutions. (*Globe*, p. 2963.)

Of the other 23 voting against Mr. Sebastian's amendment, two, Messrs. Toombs and Davis, did so solely because they thought he had stated the amount incorrectly. They made no comment on the manner in which the award was adopted, and did not dispute its validity.

Mr. TOOMBS said: "We agreed to give the net proceeds, but the difficulty is as to what *are* net proceeds." And again: "The Senate agreed to give net proceeds, after deducting legitimate credits; whether \$1,130,000 are legitimate or illegitimate credits is the thing to be determined." Again, speaking of the same \$1,130,000, he said, in reply to Mr. SIMMONS, "whether that shall be taken as a part of the payment is the sole question." (*Globe*, pp. 2936, '37, and '64.)

Mr. DAVIS also thought the \$1,130,000 which had been received by the Choctaws for some of their western lands should be charged to them, and that the amount due under the award was \$2,981,247.30, less \$1,130,000, leaving \$1,851,247.30, which he moved to insert in the bill in place of \$2,332,560.85. Far from objecting to the award, he actually apologized for urging the committee to report sooner. "I have," said he, "from time to time, and I fear even to the extent of being considered indelicate, pressed upon the chairman of the committee the presentation of this subject to the Senate." (*Globe*, June 14, p. 2963.) His remarks are strongly in favor of paying the Choctaws what is justly due them, though the fact that he voted against paying \$2,300,000 under an impression that only \$1,800,000 was due was afterwards referred to in the House of Representatives as evidence that he regarded the whole claim as unfounded and unjust.

It is true that neither Mr. Davis nor Mr. Toombs ever voted directly to sustain the award. But there are *twelve* of those voting with them in the negative who did—12 of the 24—making, with the 22 voting aye June 14, 34 affirmative votes, to which must be added 8 of the 19 not voting on that day; in all, 42 Senators out of the 65 composing the whole number in June, 1860.

The changes occurred, all of them, after full debate and discussion; some of them not until after careful investigation by the Judiciary Committee of the Senate.

Messrs. Bigler, Bragg, Fitch, Polk, and Powell first voted for the claim on the 2d February, 1861, on a proposition to provide in the *Indian* appropriation bill \$1,202,560.85 to pay the "undisputed balance" due the Choctaws, which was rejected, but was afterwards reconsidered, very fully discussed, and, on a test vote, Messrs. Bigler, Bragg, Bright, Cameron, Clingman, Fitch, Pearce, Polk, Powell, and Saulsbury, who had voted in the negative in June, 1860, voted in favor of the award, as also did Messrs. Collamer, Dixon, Green, Gwin, Johnson of Tennessee, and Ten Eyck, among the 19 not voting in June, 1860. (*Globe*, February 9, '61, p. 831.)

Ten years later, after the whole matter had been referred to and examined in the Judiciary Committee of the Senate, the chairman of that committee, Mr. Trumbull, who had voted against the award three times in 1861, calling for the yeas and nays on one occasion to secure "a test vote," said in the Senate on the 12th July, 1870 (*Globe*, p. 5485), that it seemed to him that there was no escape from the obligation to pay

the Choctaw claim. There had been a dispute as to what was due. "It was agreed that the amount should be fixed by this body. This body settled the principles on which it should be fixed," and directed a computation to be made. "Under that computation a certain amount was found to be due them, and we have never paid it." (*Globe*, p. 5485.)

Mr. Trumbull accordingly voted on the 13th July, 1870, to sustain the award, and so likewise did Mr. Harlan and Mr. Sumner, who had each voted four times against it in 1860 and 1861, and also Mr. Hamlin, who was among the number not voting on former occasions.

Mr. Sebastian's statement, that the amount involved would probably be between \$800,000 and \$1,000,000, might well be passed over with his own remark that the committee had undertaken to settle principles, not to fix amounts. Mr. Davis said the same thing, that "this was no place to adjust an account; no place to strike a balance between claims and payments." The fact that *forty-two* out of the sixty-five Senators responsible for this adjudication were satisfied with that view of the case ought to be a sufficient answer to any strictures upon that branch of the subject.

Possibly, however, the forty-two were not aware that Mr. Sebastian had before him official estimates, showing that the net proceeds would exceed \$2,900,000 at the very time he told Mr. King it would be less than \$1,000,000, which, at the first blush, looks like intentional misrepresentation.

But these identical estimates furnished the basis of his statement. They appear on pages 8 and 9 of Secretary Bristow's letter,\* House Ex. Doc. 47, 2d sess. 43d Cong., and also on page 74, House Misc. Doc. No. 40, 1st sess. 44th Cong., and they show that—

The receipts for lands sold were stated at .....		\$6, 576, 483 87
And that there were 2,477,255.09 acres of unsold land, which, at the		
then existing graduation price of 75 cents per acre, would be.....		1, 857, 941 31
		<hr/>
Making a total credit of.....		\$8, 434, 425 18
Against which the charges for survey and sale were.....	\$1, 075, 366 03	
Other charges.....	4, 365, 338 97	
		<hr/>
		5, 440, 705 00
		<hr/>
Leaving a balance of .....		\$2, 993, 720 18
This estimate the committee cut down more than half by		
reducing the allowance for unsold lands from 75 cents		
to 12½ cents per acre, being a reduction of the difference		
between .....	\$1, 857, 941 31	
And .....	309, 656 88	
		<hr/>
		\$1, 547, 284 43
		<hr/>
Bringing the estimate down to.....		\$1, 446, 435 75
*Query 10. What would be the probable or estimated amount or balance coming to the Choctaws by conceding to them, as an equitable rule or basis of settlement of all their claims and demands, whether national or individual, against the United States, the proceeds of the sale of their lands relinquished by the treaty of 1830 so far as sold, and the present graduated rates for the public lands for those remaining unsold, deducting therefrom the average cost of the survey and sale of the lands of the government, and all payments and expenditures that have been made under and in carrying out said treaty?		
Answer. From a statement obtained from the General		
Land Office, it appears that the amount realized for the		
lands thus far disposed of is.....	\$6, 576, 483 87	
Deduct cost of surveying and selling the same, viz, 10		
cents per acre (which the Land Office states is the		
average cost of surveying and selling the government		
lands) .....	827, 640 53	
		<hr/>
		\$5, 748, 843 34
The Land Office reports 2,477,255.09 acres remaining un-		
sold, which, at the present graduation price therefor,		
as given by said office, viz, 75 cents per acre, amounts		
to .....	\$1, 857, 941 31	
Deduct 10 cents per acre for surveying and selling the		
same, viz .....	247, 725 50	
		<hr/>
		1, 610, 214 81
		<hr/>
Total .....		\$7, 359, 059 15

Aggregate of payments and expenditures under the treaty	\$2, 162, 538 97
Reservations, and scrip in lieu of reservations, obtained by Choctaws under 14th article of the treaty, embracing 1,586,080 acres, at \$1.25 .....	1 982, 600 00
Reservations obtained under the 19th article, embracing 89,280 acres, at \$1.25 .....	111, 600 00
Reservations obtained under the 15th article, embracing 7,680 acres, at \$1.25 .....	9, 600 00
21, 140 acres reserved for orphans, under 19th article, at \$1.25 .....	26, 800 00
Reservations secured under supplement to the treaty, embracing 75,760 acres, at \$1.25 per acre .....	72, 200 00
	<hr/>
	\$4, 365, 338 97

Balance .....	\$2, 293, 720 18
From Mr. Clark's statement, on page 2960, <i>Globe</i> , June 14, 1860, and Mr. Sebastian's, on page 830 of <i>Globe</i> , February 9, 1861, it appears that the deductions afterwards recommended by the committee for allowances to the State of Mississippi were contemplated from the start. They amounted to .....	648, 696 45
And would have reduced the estimate to .....	796, 739 30

It is not probable that the precise amount of the Mississippi charges was known to the committee. Indeed, it is certain that they were not. But Mr. Sebastian speaks of a memorandum in existence showing that his "guess with reference to these very charges was pretty nearly right." In that case his estimate must have been near the above sum.

But when the accounts were finally adjusted, it appeared that the land sales, instead of six and a half, amounted to seven and a half millions; and that the unsold lands were over four, instead of under three millions of acres, the accounts being, for sales .....

.....	\$7, 556, 578 50
Unsold lands, 4,176,374.04, at 12½ cents .....	510, 367 50

Being a total amount of .....	8, 078, 624 80
Against which the charges were .....	5, 107, 367 50

Leaving a balance of .....	2, 971, 247 30
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Whereas, in the Indian Office statement, the credits, as reduced by the committee, were .....	6, 886, 140 75
And the charges in the original estimates were .....	5, 440, 705 00

1, 445, 435 75

the credits being larger by \$1,200,000 and the charges smaller by \$333,000 than the first estimate.

A closer examination shows that the difference in charges arises in part from the change in the terms of the resolution, which, as first reported, proposed to charge the Indians \$1.25 an acre for keeping their own land! its terms requiring all reservations "allowed and secured" to be estimated at \$1.25 per acre. The manifest injustice of such a charge was doubtless pointed out, and Mr. Sebastian moved to amend by "excluding the reservations allowed and secured." As the 14th article reservations were almost all "scrip" cases, Mr. Sebastian probably excluded them in making his calculations of probable results. If he did, he would have added to the balance already stated of .....

.....	\$796, 739 30
For reservations in the 15th and 19th arts. and supplement .....	220, 200 00

Increasing his estimate to .....	1, 016, 939 30
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Mr. Sebastian, however, as he said at the time, did not pretend to arrive at a correct conclusion as to the net amount. He stated then, in March, 1859, as he did afterwards in 1860 and 1861, the principles which the committee had endeavored to settle, ignorant of what the exact figures would be, but satisfied that the award would give the Indians less than they were entitled to receive.

Proceeding to the second objection, that the Choctaws were—

#### NOT "ENTITLED" TO THE NET PROCEEDS

by the provisions of the treaty of 1830, it is only necessary to say in reply that it is not pretended that they were, either in the resolutions of the Senate which constitute

the award, or in the report of the committee from which they emanated, or in the statement of Mr. Sebastian, on whose motion they were adopted.

The language of the resolution is, "*Resolved*, That the Choctaws be *allowed*," not that they are *entitled*, but that they "*be allowed* the proceeds of the sale of such lands," &c.

The committee report that the Choctaws were *not* entitled by the terms of the treaty to the net proceeds; that it was impossible to ascertain the amount of their just claims, consequently impossible to name any gross sum as indicated in the treaty of 1855, and therefore they should be allowed the net proceeds because that seemed the only practicable mode of adjustment, the only mode in which justice can be done in paying for damages and losses sustained.

Mr. SEBASTIAN said substantially the same thing when the resolutions were adopted in the Senate.

This view of the case is clearly expressed in the report of the committee that the objection would not be noticed if it had not been repeatedly urged in debates from 1860 down to 1875.

#### THE CHOCTAW COUNTRY WEST.

Next in order is the question, was the Choctaw country west, in any sense whatever, part of the pay for the cession of 1830, and therefore chargeable, or to be considered in the account of the net proceeds of that cession?

From the first application for an appropriation down to the last, the Choctaw country west has been urged as a set-off in some form or other to the claims under the treaty of 1830.

In June, 1860, Mr. Toombs contended that the three treaties of 1820, 1825, and 1830 were, in effect, *one* instrument, the two latter being supplementary to the former, which secured to the Choctaws their country west of the Mississippi in exchange, he says, when taken in connection with the treaty of 1830, for their entire possessions east of the Mississippi, and therefore he thinks any money they may have received for surplus lands west should be charged to them in their settlements with the government.

In 1837 they sold the Chickasaws the right to settle among them for \$530,000, which the Chickasaws paid out of their own funds, with which payment Mr. Toombs thinks the United States should be credited, though it cost them nothing.

So, too, with \$400,000 paid the Choctaws by the government for their title to 10,000,000 acres west of the 100th meridian, and \$200,000 paid them for the privilege of settling wild Indians on their western border between the 98th and 100th meridians of west longitude. He thinks both sums should be charged to them, together with the \$530,000 of Chickasaw money, all as part pay for the lands in Mississippi which they ceded in 1830.

Mr. JEFFERSON DAVIS arrived at the same conclusion by a different route. The Choctaws, in his opinion, bargained, not for so many acres of land in the West, but for a *home*. If they thus acquired any surplus territory more than they needed for a home, and sold that surplus for money, that money, no matter where it came from, should be charged to them and credited to the government in a settlement of their accounts for the proceeds of their country east of the Mississippi. He therefore thought, with Mr. Toombs, that the sums above named, \$1,130,000 in all, should be deducted from the balance of \$2,900,000 reported to be due.

It is a little singular that both Mr. Davis and Mr. Toombs overlooked the payments for the country sold by the Choctaws in 1825, 5,000,000 acres, in what is now the State of Arkansas, for a permanent annuity of \$6,000 a year, the thirty-five payments up to 1860 amounting to \$210,000, which was just as legitimate a charge as any of those specified, and which would have increased the aggregate for country sold west to \$1,340,000.

Mr. GWIN thought the improved title to their country west, secured by the treaty of 1830, was an equivalent for what the Choctaws then ceded, inasmuch as it secured their "*magnificent empire*" by a "*fee-simple*" title in exchange for the mere right of occupancy, by which they had previously held it.

All these errors, for such they were, of Messrs. Toombs, Davis, and Gwin, and of those in and out of Congress who have echoed their assertions, have one, and only one, apparent foundation, namely, in the second article of the treaty of 1830, which stipulates 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 while they shall exist as a nation and live on it, beginning,*" and then follows the description substantially in the language of the treaty of 1820, as modified by the treaty of 1825, which established the present western boundary of Arkansas.

But as the treaty of 1820 is not mentioned, any one ignorant of its provisions would infer from reading the treaty of 1830 that the Choctaws acquired their country west by that treaty, which is not true, nor was it so understood by Messrs. Toombs, Davis, and Gwin, for they all of them knew better.

Mr. Toombs's theory was that the then treaties with the Choctaws of 1820, 1825, and 1830 were all part of one transaction, the two latter being supplementary to the former. That the treaty of 1820 conveyed the country west, the treaty of 1825 contracted its eastern boundary, and the treaty of 1830 carried the nation to its new home, their entire possessions east having been bought by the government in 1820, and paid for with a double portion of land in the west.

"It is very clear," said he, "that the United States in that treaty" (of 1830) "never intended to give the Choctaws the entire net proceeds of this country east of the Mississippi, for they had given them in exchange a much larger and equally valuable country." (*Globe*, June 13, 1860, p. 2930.)

This assertion, that the country east of the Mississippi, ceded by the Choctaws in 1830, was bought by the United States in 1820, and paid for with their country west, is not only not sustained by the language of the treaties of 1820, 1825, and 1830, but it is contradicted by these treaties, by the negotiations which preceded them, and by other contemporaneous record evidence, all of which shows that it was not so understood by either of the contracting parties, or by any one else at that time. There is, in fact, no reason to believe that any one ever dreamed of such a construction until Mr. Toombs suggested it in 1860.

The theory of Mr. Davis is equally destitute of any foundation in fact.

The simple truth is that the United States wanted to buy some valuable land belonging to the Choctaws on the east bank of the Mississippi, extending from the mouth of the Arkansas to the mouth of the Yazoo. It embraced what is now the capital of Mississippi and several of its richest counties.\* For this tract, containing 5,000,000 acres, the government gave a narrow strip extending several hundred miles west, between the Arkansas and Canadian Rivers on the north and Red River on the south, estimated at 35,000,000 acres, seven for one; apparently a very large price, but in point of fact a much better trade for the government than it was for the Choctaws.

The country west cost the United States less than \$300,000. The country east, that was given for it, was organized into a separate land district, the Choctaw district, † which in a short time paid into the Treasury \$2,100,000, more by \$300,000 than the combined sales of all the land offices in Louisiana, Arkansas, and Florida for the same period. Numerically, in acres, the Choctaws received seven for one. Financially, in cash value, they paid seven for one.

The bargain and sale was regarded as complete on both sides. It transferred one-third of the Choctaw possessions in Mississippi. Nothing was said, in the treaty or out of it, by anybody, about their giving up the remaining two-thirds. On the contrary, all the contemporaneous evidence goes to show that the Indians were expected to keep it.

The preamble of the treaty says it is "an important object to promote civilization" among them, and "to perpetuate them as a nation by exchanging for a *small part* of their land here a country beyond the Mississippi River, where all who live by hunting, and will not work, may be collected and settled together; and whereas it is desirable to the State of Mississippi to obtain a *small part* of the land belonging to said nation," and therefore the 1st article cedes to the United States the country before referred to. (7 Stat. Lar., 210.)

By article 2d: "For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning." (*Ib.*, 211.)

The 4th article provides that "the boundaries hereby established between the Choctaw Indians and the United States on this side of the Mississippi River shall remain without alteration until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation." (*Ib.*, 211.)

The preliminary negotiations, which lasted three weeks, are given in 2 Indian Affairs, pp. 232-241. They show at every step the extreme reluctance of the Choctaws to sell any land. The wish of the government to get "a small part" of the Choctaw country is repeatedly expressed. Nothing is said about buying the whole. On the contrary, it was the intention to "permanently fix the boundary lines between the red and white people; \* \* \* their white brethren could not then ask for any more land." (2 Indian Aff's, 238.)

\* Washington, Issaquena, Yazoo, Madison, Rankin, and Hinds.

† First sec. act May 6, 1822 (3 Stat. Lar., 680.)

On page 240, "the pegs" were to be "driven down and the lines distinctly marked, so that they can never be altered until you are advanced to that state of civilization when the land will be"—not sold, or in any way transferred to the United States—but "apportioned out to each family or individual in the nation."

The next event in this history is the—

## TREATY OF 1825,

which, as shown by the preamble, was made for the benefit of citizens of the United States settled on the eastern border of the Choctaw country west. To accommodate them, the present boundary line was established, the Choctaws receding 5,000,000 of acres in what is now the State of Arkansas, for which they were to receive "\$6,000 annually forever."

An important feature in this treaty—the only one in which it could be regarded in any sense as "supplementary" to the treaty of 1820—was its 7th article, which so modifies the 4th article of that treaty as to prevent the apportionment in severalty of the Choctaw lands east without the consent of the Choctaw Nation.

While the negotiations were pending, Mr. Calhoun, under whose instructions the treaty of 1820 was made, stated that while the government did not want to acquire more land in that quarter, yet for the benefit of a judicial district in Mississippi, it would like to extinguish the Indian title to a small tract adjoining Monroe County, and would be willing to make a liberal compensation. The proposition was declined. Nothing was said on either side about the government having any claim of any kind upon the Choctaw lands east of the Mississippi.

The price of the Arkansas cession was the subject of two months' correspondence. The Indians wanted \$450,000, or nine cents an acre. The government finally agreed to give what was equal to two cents—paid that much mainly to accommodate citizens of Arkansas, and insisted that it was more than the land would bring at the land-office sales. (2 Ind. Aff., 549-558.)

That this was no undue disparagement is proved by the Land-Office reports. The land sales in Arkansas for 1823 amounted to \$2,852.74, for 1824 to \$3,722.28 (7 Public Lands, p. 531), the \$6,000 to be paid annually, being very little less than two years' sales in the largest and most salable part of the then Territory of Arkansas, which shows that Mr. Calhoun had good reasons for asserting that the most valuable part of the Choctaw country west could not be then sold for two cents an acre.

The most striking commentary upon Mr. Toombs' a construction of the Choctaw treaties is found in the

## NEGOTIATIONS OF 1826,

when Messrs. Clark, Hinds, and Coffee attempted to buy the Choctaw country east. They told the Indians they had five times as much land west as they had in the east, but never intimated that they were under any obligation to sell, though one of the commissioners, Mr. Hinds, was associated with General Jackson in making the treaty of 1820, and knew perfectly well how both parties understood it.

The fact that, in addition to the leading provisions afterwards inserted in the treaty of 1830, the commissioners offered a million of dollars in place of the \$400,000 payable under that treaty, shows unmistakably: 1st, the light in which the Choctaw title was then regarded; 2d, the truth of the charges, otherwise sufficiently proved, that the treaty of 1830 was made under *duress*, or the Indians would not have accepted terms so much less favorable than those offered only five years before.

The commissioners reported that their efforts to purchase from the Choctaws either the whole or any part, however small, of their lands, were met with a determination to "hold fast" all of their country. (2 Ind. Aff., 709.)

## "FEE SIMPLE"

As to the difference between the two treaties of 1820 and 1830 in the nature of the title granted, the only real question is whether the latter did or could impair the title granted by the former.

The title granted in 1820 was absolute and unqualified. It was a transfer to the Choctaws of the same right, "full sovereignty" alone excepted, acquired by the United States from France and from the Quapaws, the word "cede" being used in all of the three treaties. "The First Consul of the French Republic doth hereby cede to the said United States." The Quapaw chiefs and warriors "do hereby cede and relinquish." "The Commissioners of the United States do hereby cede to said (Choctaw) Nation a tract of country." (7 Stat. Large, 211.) Nothing is said about living on it, or about any possible remainder in or reversion to the grantor. The conveyance was as absolute and complete as language could make it.

On the other hand, the treaty of 1830 says a grant shall be made "in fee simple to



them and their descendants, to inure to them *while they shall exist as a nation and live on it*," the qualifying words destroying the "fee simple," thus giving it in name but not in fact, while the treaty of 1820 gave it in fact but not in name.

The treaty of 1830 was therefore precisely the reverse of what is claimed for it.

Instead of raising a right of occupancy to fee simple, it attempted to reduce fee simple to right of occupancy.

Suppose the Choctaws had held by such a right of occupancy in 1826, when they refused to sell any land east to Commissioners Clark, Hinds, and Coffee, would not the government have insisted upon the forfeiture of their western territory in view of the fact that not a single Choctaw lived on it?\*

Again, suppose the idea of severalty and citizenship foreshadowed in the fourth article of the treaty of 1820 had been carried into effect; suppose all the Choctaws had remained east, and their land had been apportioned among them as therein provided, their country west, if held by the "patent" which Mr. Gwin thought so valuable, would have reverted to the United States; whereas, under the treaty of 1820, their rights would have remained unimpaired as the individual components of the dissolved nationality, as they did in fact remain unimpaired after the actual failure to occupy.

Nor is this the only objection to the title as defined in 1830. It attempted to curtail the land grant by restricting its western extension to the sources of the Canadian with the qualifying words, "if within the limits of the United States," words not found in the grant of 1820, the western boundary of the United States having been changed by the treaty with Spain ratified in 1821 so as to throw the sources of the Canadian into New Mexico, then a Spanish province.

Thus, instead of benefiting the Choctaw title, the tendency of the treaty of 1830 was to impair its quality and curtail its compass.

Yet a law officer of the government, a Solicitor of the Treasury, has seriously urged that the improved title acquired by the Choctaws in 1830 is a sufficient set-off to their net-proceeds claim!

#### IV.

It is not objected that the claims under the

#### 14TH AND 19TH ARTICLES

of the treaty of 1830, which are chiefly relied upon as sustaining an award of the net proceeds, are fraudulent or unfounded, and most of them barred by a receipt acknowledging payment in full.

The treaty of 1830, besides making separate special provision in land for the chiefs and principal men, and a quarter-section for each orphan, evidently intended to secure reservations for every family in the nation, dividing them into two great classes—those who would and those who would not emigrate.

Those having land in cultivation, who chose to emigrate, were to be paid for their improvements by the 19th article, which gave all such from a section of land down to the eighth of a section, in proportion to the size of their fields.

To each family intending to remain in Mississippi the 14th article gave a section of land, with an additional half-section for each child over and a quarter-section for each child under ten, regardless of the character or extent of their improvements.

The 19th article reservations might be sold with the consent of the President, or might be commuted at 50 cents in money, to be paid by the government, in place of each acre reserved.

On the other hand, the 14th article, meaning to secure homes for those remaining east, promised them a fee-simple grant at the end of five years' residence.

This article appears in the report of the commissioners, Eaton and Coffee, who made the treaty, as part of what they call the *Choctaw proposals* for the basis of a treaty, and there is other evidence to show that it could not have been made without securing their homes in the east for those Choctaws who did not want to go west.

But the principle of reserving a section of land to be held in severalty by fee-simple title for such Indians as might choose to retain their homes in territory ceded by their tribes had long been regarded as the settled policy of the government. It was first recommended by Mr. Crawford, while Secretary of War, in a report to the Senate of March 13, 1816 (2 Ind. Affs., p. 27), and was afterward repeatedly proposed to other tribes, both before and after the treaty of 1830, and was generally accompanied with assurances that improvements should be paid for, the Indian being permitted to take his choice, either to keep his home as a citizen on the footing of a white man, or to receive the fair value of his cabins and fields if he preferred to emigrate.

There were 2,000 Choctaws west, but they were in Louisiana and Texas. The only Choctaw in their own country was the government interpreter, Mr. Edmond Folsom.

These principles were impressed upon the Choctaws by General Jackson in the discussions preceding the treaty of 1820, and were incorporated in the 9th article of that treaty, which provides that those Choctaws desiring to remain in the country ceded by that treaty may do so, and shall be secured in a tract of land one mile square to include their improvements, and those preferring to remove are to be paid the "full value" of their improvements. (7 Stat., 212.)

"The full value of all good improvements which are left by those who remove over the river" was offered to the Choctaws by Commissioners Clark, Hinds, and Coffee in 1826, and also reservations, with good title, to such as may wish to remain and become citizens. (2 Ind. Affs., 712.)

Other instances might be cited to show that this principle of paying for improvements on the one hand and of granting reservations with citizenship on the other, was then, and continued to be, the established policy of the government. There cannot be a doubt that it was so understood by both of the contracting parties in making the treaty of 1830, and that it was intended to be fully secured in that treaty.

Yet the 19th article was so framed as to cut off two-thirds of the emigrating Choctaws from any compensation whatever for the houses and fields they left behind them, and the 14th article was from the very outset deliberately violated in such a manner that nine-tenths of those who remained in Mississippi were deprived of the homes which it was the express object of that article to secure.

THE 19TH ARTICLE,

after giving a number of Choctaws from two to four sections each, adds: "And that others not provided for may be provided for, there shall be reserved as follows." It then describes five classes of heads of families, having each a dwelling-house with land in actual cultivation "during the present year," ranging from two acres each up to fifty or more, each family to have a reservation proportioned to the size of its cultivated field, thus:

- 640 acres to not more than 40 heads of families having in cultivation 50 acres or more-
- 480 acres to not more than 460 heads of families having in cultivation 30 to 50 acres.
- 320 acres to not more than 400 heads of families having in cultivation 20 to 30 acres.
- 160 acres to not more than 350 heads of families having in cultivation 12 to 20 acres.
- 80 acres to not more than 350 heads of families having in cultivation 2 to 12 acres.

Making an aggregate of 1,600 heads of families provided for.

This classification was based upon misapprehension on both sides. The Indians overrated the size of their fields; the commissioners underrated the number, both of the Choctaw people and of their improvements. The Choctaw population they estimated at 12,000, and Secretary Eaton thought there could not be 1,600 cultivators of the soil among them. (8 Ind. Removals, 274 and 302.)

But the agent appointed to take the census reported that the population was 13,637, and the following abstract of his tabular statement of the cultivation claims, on page 631 of 8 Indian Removals, shows that the estimates were in every respect erroneous.

Instead of	40 in the first class,	there were only	17
" "	460 " " second class,	" "	46
" "	400 " " third class,	" "	74
" "	350 " " fourth class,	" "	244
" "	1,250 " " first four classes,	" "	381

But, on the other hand, instead of 350 in the fifth class, these were 1,763; instead of 1,600 in all, there were in all 2,144; and of those awarded reservations, the number, instead of 1,600, was only 731, namely: In the first four classes, 381; in the fifth class, 350 = 731, or less than half the number specified in the treaty.

And instead of 1,600 reserves getting 458,400 acres,  
731 " were awarded 123,680 "

A deficit of 869 " and 334,720 acres.

That is, the ignorance of the contracting parties on both sides led them so to word the treaty as to give reservations to a little over one-third of the emigrant families intended to be benefited, and to distribute less than one-third of the land set apart for the purpose among less than half of the specified number of beneficiaries.

The number of claims actually admitted was ultimately increased to 748, but of these 748, 143 have never received anything whatever, in land or money, under the 19th article. So that out of 2,144 emigrant Choctaws having improvements, which they were led to believe would be paid for, only 605 have ever realized anything. The chief difficulty, in the great bulk of the cases, being, not that the treaty was violated, but that the letter of the agreement did not express the meaning of the parties as either of them understood it. In every-day life among citizens the mistake would have been promptly corrected on making proper application to a court of equity.

With the

14TH ARTICLE

claims the case was different. There was no mistake about its meaning. The only trouble was that its provisions were nullified by the government officers.

The claimants were required by the treaty to "signify" their intention to remain to the United States agent within six months after the ratification of the treaty, which occurred on the 24th February, 1831, but was not made known in the Choctaw settlements until late in June, leaving only two months' time for an ignorant people scattered over a region extending 220 miles in one direction, 120 in another, to make known their intention to the proper officer.

7,000 Choctaws remained in Mississippi.

Of these 7,000, only 564, being the claimants included in 143 families, secured land under the 14th article.

Of the residue, 3,833, embraced in 1,150 families, after a 15 years' struggle, succeeded in securing partial indemnity for the lands to which they were entitled but could not get.

292 families, including 810 claimants, have never to this day realized anything.

In other words,

1,585 families presented claims, of which—

- 143 do. secured their homes;
- 1,150 do. received money and scrip in place of land;
- 292 do. received neither land, money, nor scrip.

The 1,150 families were paid first in scrip, afterwards in money at different periods between 1844 and 1853; land-scrip for one-half the number of acres to which they were entitled, money for the other half.

The bulk of the Choctaw claims as presented to the Senate was for an additional allowance to these 1,150 families.

They contended that 62½ cents an acre in land-scrip at the end of fifteen years, and 62½ cents an acre in money at the end of twenty years after the treaty, was no equivalent for the loss of their homes and their improvements; that their lands were in no case sold for less than \$1.25 an acre, in many cases for much more; that they were really worth on an average five times that price, and that at the very least in strict justice they were entitled to the benefits of the \$1.25 paid into the Treasury as the undoubted proceeds of their own land, therefore to be regarded as a trust fund, and as such to be accounted for.

Stated on that principle, the account for the 1,150 families would be, for—

1,400,000 acres land sold at \$1.25 .....	\$1,750,000	
Interest on sales from 24th February, '36, when title under treaty matured, to 24th February, '48, assumed average date of payment in money and scrip .....	1,050,000	
		2,800,000
Paid in money .....	\$875,000	
Do. in scrip, for which claimants realized, say .....	125,000	
		1,000,000
Making an aggregate realized of .....		1,000,000
Leaving a balance due, after payment of \$875,000 in money, of .....		*1,800,000
To which should be added for interest on unpaid balance or difference between amount paid into the Treasury .....	1,750,000	
And amount realized as above by claimants .....	1,000,000	
		750,000
The difference being .....	750,000	
On which 11 years' interest, from '48 to '59 .....		412,500
Claim of 1,150 families in March, '59, being for .....		2,212,500
Add for 292 rejected claimants, whose land, 324,320 acres, was sold for .....	405,400	
To which add, as originally presented to the Senate in 1856, for 20 years' interest .....	405,400	
		810,400
Making an aggregate claim under the 14th article of the treaty of 1830, in March, '59 .....		3,022,900

To this showing, which mainly influenced the Senate committee in its report of February 14, 1859, recommending that the Choctaws be "allowed" the net proceeds,

\* This balance, as originally presented to the Senate, was \$1,845,094.70. The account was stated somewhat differently.

it is objected that the claims were most of them unfounded, and have all of them been paid in full.

"Unfounded," because the greater part of the Indian claimants did not remain in Mississippi, and therefore were not entitled to the benefits of the fourteenth article, and because those who did remain did not comply with its requirements by signifying their intention to the agent or by residing on the land five years.

"Paid in full," because \$875,000 was appropriated in 1852 for half the value of their land at 62½ cents an acre, for which payment a receipt in full of all demands was given.

The first objection was stated with great force in the House of Representatives by the Hon. W. C. Dawson, of Georgia, on the 15th Feb'y, '38 (*Globe*, p. 183), and was answered by the Hon. John Bell, of Tennessee, who said that every objection urged had been fully considered by the Committee on Indian Affairs, of which he was chairman, "who two years ago had instructed him to make a full report on the subject."

Since the date of that report twelve different acts of Congress have been passed in connection with these claims, all but one of them subsequent to Mr. Dawson's speech, and the last four of them recognizing their validity in the strongest manner.

#### THE "RELEASE."

The last of these four acts, passed July 21, 1852, appropriated the \$875,000, which was paid in money, for one-half of what was due each claimant, and required the "release," which is cited as a bar to any further allowance.

In a statement of the Choctaw claims, which was printed in 1857 for the use of Senators desiring to investigate them, and which was presented to and considered by the Senate Committee on Indian Affairs, attention was called to this release in the following paragraph:

"In July, 1852, Congress directed that the payment of interest, as directed by the act of 3d March, 1845, before referred to, should cease, and that in place thereof the principal should be paid over to the Indian claimants. At the same time a full discharge was required from the Choctaw council for all demands of the claimants in question under the 14th article of the treaty of 1830. This discharge was executed by the council, although it was not authorized by the claimants (who were private individuals) to compromise their rights in any manner, nor was there any consideration of any sort, expressed or implied, either for requiring or executing the discharge."

The act was simply an appropriation of principal instead of interest, which Congress had ordered to be paid on one-half of each claim in March, 1845.

The claimants found it inconvenient to travel long distances every year for small sums, and therefore applied to the government for the principal. Receiving no answer, they applied to the Choctaw Council, which sent delegates to ask for the money. These delegates were "old settlers," western Choctaws, and so were the members of the council that executed the release. Neither delegates nor councilmen were connected with or interested in the 14th article claims. None of the parties in or out of Congress knew anything of the claims for additional indemnity, as it had never been presented. Nor was it thought of when the release was required or executed, as the parties most interested, the claimants, were not consulted.

If both parties had known exactly what they were about—which was not the case—and, taking into consideration the claim for additional indemnity, which neither of them thought of, the "release" had been demanded as a condition precedent for the payment to the claimants of *their own money*, it is doubtful whether any man could be found who would seriously interpose it as an obstacle to a just settlement. When the fact is considered that it was both demanded and executed without any reference to the claim since presented, in ignorance of the very existence of that claim, it will be conceded that it was simply, as is well remarked in General Shanks' report, "a special receipt for a special thing, and has no wider signification."

But whatever may be said of those who received the \$875,000, it will not be pretended by any one that a payment to them, or that a release executed by others acting for them, cuts off the 292 families, the 810 claimants who were not parties to the transaction, and who never received anything. The conclusive answer to any such objection is found in the Indian appropriation act passed a month later, during the same session of Congress, August 30, 1852, providing for the examination of these very claims under the 14th article of the treaty of 1830 (10 Stat. Large, 42), and a similar provision was contained in the Indian appropriation act of March 3, 1853. (10 Stat., 227.)

The obstacles which prevented these various claimants from securing their homes arose—

1st. From the conduct of the government agent, who reported only *sixty-nine* families as desiring to remain, instead of sixteen hundred.

2d. From the fact that the number that actually did remain was twice as large as it was supposed to be.

3d. From the hostility of the white settlers, who wanted the lands, and regarded the presence of the Indians in the country as a check upon its growth.

## WARD'S REGISTER.

The agent refused to register a large number of the Indians who "signified" to him their intention to remain, and of those he did register he either lost or destroyed the books containing the names. (See Report of T. Hartley Crawford, Commr. Ind. Affs., pp. 77 & 78 of Sen. Doc. 168, 1st sess. 28th Cong.)

Mr. Banfield attempts to show by Ward's testimony before the Mississippi legislature that he never refused to register any Indian that applied to him. But Ward's own letter to the War Department of June 21, 1831, on page 493 of 8th Indian Removals, shows that on one occasion alone he refused to register two hundred.

On page 422 of the same volume is a letter to President Jackson from "Little Leader," expressing the desire of himself and two hundred of his people to "stay at their homes." This was dated April 21, 1831. Afterwards "Little Leader" went in person with his people to the agent, by whom they were registered; yet their names were afterward lost or destroyed, and they were among the very last to secure any allowance.

With this proof before him in a book he constantly quotes, that in these two cases *four hundred* families applied in the manner prescribed by the treaty, Mr. Banfield asserts, on page 7 of his report, that only three hundred claims had any foundation whatever, being a distorted and perverted repetition of an estimate in the report of Hon. Horace Everett, from House Committee on Indian Affairs of Feby. 22, 1839 (H. R. Rep. 294, 3d sess. 25th Cong.), based upon the assumption that there were only 3,323 Indians left in Mississippi after the emigration closed in 1833, and that the average size of a Choctaw family was expressed by the fractional figure  $6\frac{1}{7}$ , both of which assumptions were erroneous.

The number of Choctaws still in Mississippi in September, 1844, was seven thousand. (See Ind. Office letter of May 15, '58, on page 10 of H. R. Ex. Doc. 47, 2d sess. 43d Cong.)

As to the probable

## AVERAGE SIZE OF CHOCTAW FAMILIES,

a reasonable inference may be drawn from the rolls on file in the 2d Auditor's Office of annuities paid to the Western Choctaws, which show that among them the average in 1842 was .....	4.455
And that the average in 1844 was .....	4.486
The number of Choctaws in Mississippi in 1844 was 7,000, which, divided by 1,585, the whole number of heads of families presenting claims, gives a quotient of .....	4.416
On the other hand, the 1,585 "heads" only represented 5,257 claimants instead of 7,000, namely:	
Heads of families .....	1,585
Children over 10 .....	1,928
Do. under 10 .....	1,744

In all..... 5,257; the average being.. 3.316

A further examination will show that—

143 families which secured land averaged .....	3.944
1,150 do. receiving scrip averaged .....	3.339
292 do. of rejected claimants averaged .....	2.945

It will be remembered that the *wife* is, of course, included in each family drawing annuities in the West, whereas the wife is in no case counted among the families claiming 14th article reservations, restricted as they are to "heads of families" and to children, which will explain the lower average size of the families. The lowest average is among the rejected claimants, several of whom were widows, living alone, and therefore rejected as having *no* families.

Attention is invited to the foregoing details, because they conclusively exclude the idea of fraud so frequently charged against these cases.

1. The aggregate of heads of families and children claiming is 1,743 less than the number of Choctaws remaining in Mississippi in 1844.

2. The average size of the families claiming, bearing in mind the omission of wives, approximates closely to the size of Choctaw families in the West.

The information, it will be observed, comes from three independent sources:

1st. The pay-rolls of the Western Choctaws, who, in 1844, had no communication with their eastern brethren.

2d. The official report of the number of Choctaws in Mississippi, which was made by the Hon. John J. McRae, then special agent for their removal and subsistence, afterwards governor of Mississippi and Senator in Congress.

3d. The claims presented, which were prepared by three sets of attorneys, who, instead of acting in concert, were notoriously hostile to each other.

## MAJOR ARMSTRONG'S CENSUS.

Mr. Everett's impressions respecting the size of families were derived from Maj. Armstrong's census, overlooking the fact that in many instances several families were grouped together under one head, as shown by the marginal notes, and that in other instances African slaves were included, in one case *twenty*, as part of one family.

The number of Choctaws left in Mississippi he arrived at, as others did, by deducting 15,177, the number of emigrants, from the 18,500 shown to be the entire population in the same census.

But that census evidently did not include all the Choctaws. It was not so regarded by the Indian Office at the time, as appears from a letter on page 581 of 9 Indian Removals. It could not be complete, as only four persons in less than two months enumerated 18,000 Indians, taking down their ages and surveying their farms, which were scattered over an area of 16,000 square miles, being larger than the combined States of Massachusetts, Rhode Island, and Connecticut, and covering what now includes twenty-two or three counties in Mississippi and Alabama, each one of the four performing the service in one-third of the time, and traveling over five times the space prescribed by the United States census law then in force.

But the census was regarded by many as corroborating the charge repeatedly made that many of the emigrant Choctaws had returned purposely to claim land. This charge was not supported by proof, and the attorney\* employed to represent the United States reported that he had no doubt that it was always "the intention of the Indians now here to remain and avail themselves of the benefit of the 14th article.

Mr. R. H. Grant, whose persistent denunciations of the Choctaw claims are cited by Mr. Banfield, and who describes himself as "doing business in the Choctaw Nation previous to and at the time of the treaty," and as "a close observer during the six months after its ratification," when put upon the stand and compelled to testify, replied to the question, "Do you know, or have you heard of any Indian or claimant who has ever removed to the Choctaw country west, and has since returned and is now residing here?" answered: "*I do not know one Indian who has returned from the west of the Mississippi. I have heard from rumor that there were a great many who had returned; but who they are, and where they are, I cannot say.*"

To the next interrogatory, "Do you know of any Choctaw Indian, or other person, who has attempted to get a claim allowed by the Choctaw commissioners on this board, which claim is fraudulent or unfounded in any manner?" the witness answered, "I do not."

This answer comes from the person who was most active in charging fraud, and who had the best means of knowing all about it, if any there were. It appears on page 95 of Senate Doc. 168, 1st sess. 28th Cong., from which a large part of Mr. Banfield's material is drawn. He refers frequently to Grant's charge of fraud, and speaks of his being compelled to testify, but suppresses the answers above quoted, which show that Grant, with all his knowledge, could not point to a single fraudulent claim.

The charges of fraud lead naturally to the mainspring of most of them, the

## HOSTILITY OF THE SETTLERS

in the ceded district—the key-note to the whole case—as it explains a great deal which would otherwise be unintelligible. Mr. Banfield's strictures, worthless in themselves, are of material service in affording an opportunity to point out exactly how that hostility affected the Choctaws.

Mr. Bell, in his report of May 11, 1836, speaks of the deep feeling which has been aroused in Mississippi by the "interferences with the rights and expectations of settlers, which a confirmation" of the claims would produce.

All the attacks upon the claims, except those of a blackmailing character, were incited by this feeling, which was expressed in resolutions, passed unanimously by the Mississippi legislature, February 25, 1836, denouncing the 14th article claims in strong terms, and calling on their delegation in Congress to "prevent the consummation of titles" originating in fraud.

These resolutions were the subject of a report from the Senate Committee on Private Land-Claims, made by its chairman, Mr. Black, of Mississippi, recommending the payment of any *just* claims in money instead of land, but expressing the opinion that none of the claims have any equitable foundation, none of the claimants having "signified their intention" to the agent, a large number of them being returned emigrants, and all of them having sold their claims to speculators.

The points made in this report were repeated in the House of Representatives by Mr. Dawson in the speech before referred to (*ante*, p. 44), which was answered by Mr. Bell.

\* Hon. J. T. Word. (Sen. Doc. 163, 1st sess. 28th Cong.)

Four years later, in discussing a proposition in the Senate to adjust the 14th article claims that might be proved by issuing land scrip receivable in *Arkansas* and *Louisiana*, the same objections were reproduced by Mr. Sevier, of Arkansas, who read Ward's register to show that there were only 69 claimants entitled. No one had complained of that register until more than two years after it had been filed. He spoke of Ward's high character, and said that the delay in making complaints proved that all just claims had been included.

The obvious answer to this point, which Mr. Sevier urged with great force, and which Mr. Banfield seems to have overlooked, is that the character of Ward's report was not known to the claimants until after an agent was sent to locate the reservations under the treaty, which, of course, could not be done until the surveys had been completed, some time in 1833. When the locating agent appeared, five or six hundred Choctaws applied for their land under the 14th article, and it was then first ascertained that the book containing their names could not be found. It was ultimately traced to the house of one of the Choctaw emigrants, where it was used for shaving-paper!

The conclusive reply of Mr. Robert J. Walker (afterwards Secretary of the Treasury, then a Senator from Mississippi) to Mr. Sevier's arraignment of the Choctaw claims, is remarkable for the light it throws upon the whole subject.

He spoke of purchasers from the government having contested the claims of Indians whose names had not been noticed by Mr. Ward. Yet, after full and fair investigation, the claims of the Indians had been sustained. He had himself taken some of these cases to the Supreme Court, which had confirmed the judgments in favor of the Indians. The truth was, there were several hundred planters and others in Mississippi who had bought lands from the government in good faith, who were now threatened with ejection. When Choctaw claims first became a matter of serious controversy, many purchasers became alarmed, procured affidavits, and applied to the legislature for protection. The legislature having made *ex parte* examinations, had adopted report and instructions which had been sent to their Senators. Times had changed since then, and legislature had changed its tone. Did not object to paying claims in money if Congress would consent, which he doubted, considering their extent and the present state of affairs. If they could not be paid in money, the next best way was to pay in scrip. (*Globe*, April 25, '42, p. 441.)

After this explanation no mere was heard of the charge of fraud except in the frantic cries of the blackmailers, whose dead and dying echoes Mr. Banfield has reproduced from document No. 163, above referred to, which is full of them. But they made no impression, because then, as now, they came from men who wanted to be paid for fighting the claims. The "settlers" had found out that it was much easier to get the legislature to resolve unanimously, on *ex parte* evidence, that the claims were fraudulent, than it was to get the courts to say so. Their policy had changed. They wanted the claims settled, and settled in such a way as to take the Indians out of the State.

Resolutions of the Mississippi legislature, urging an equitable settlement of the Choctaw land claims and the "*speedy removal* of the Indians," were presented to the Senate on the 28th February, 1842.

The remarks above quoted of Mr. Sevier and Mr. Walker were upon a motion of Mr. Henderson, of Mississippi, to instruct the Indian Committee to report a bill providing that such claims as might be proved should be settled by the issue of certificates for the number of acres to which the claimant was entitled, which certificates should be receivable at any of the land offices in *Louisiana* or *Arkansas*, but *not in Mississippi*.

The discussions in the Senate, which were frequent and general, seemed to turn chiefly on the nature of the remedy—the precise manner in which relief should be afforded.

Mr. Morehead, of Kentucky, chairman of the Indian Committee, when the subject first came up, spoke of the difficulty arising from the sale of the lands belonging to the Indians, and of the money received for it being paid away for the government uses. The Secretary of War, he said, seemed to think the money should be reimbursed to the Indian claimants. "The only question really at issue was whether that should be done, or land-scrip should be issued in lieu of the amount received for the lands." (*Globe*, April 21, '42, page 435.)

The Mississippi Senators favored the issue of land scrip.

Mr. Sevier, who seems to have become satisfied from Mr. Walker's account of the proceedings in the Mississippi courts that some of the claims were really meritorious, objected to the issue of scrip on the ground that it would be unjust to the claimants. Some of the land had been sold at from \$4 to \$5 an acre. After keeping that money ten years it would not be right to require the claimants to take refuse land, acre for acre, in exchange for that which had brought the government a high price. He thought the treaty ought to be carried out in good faith, and was in favor of giving money to such of the claimants as were willing to take it. (*Ib.*, July 25, '42, p. 786.)

Finally, after a long contest between those who favored and those who opposed the Mississippi mode of adjustment, during which the yeas and nays were called eight different times at different stages of the bill in the Senate, an act was passed on the

28th August, 1842, authorizing the examination of the claims and the settlement of those that were established by giving the Indian his land if it had not been sold, and if it had, "so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvement," he was to have an equal quantity elsewhere in Mississippi, Alabama, Louisiana, or Arkansas, and was to receive certificates for such land, not more than half of which were to be delivered "until after his removal to the Choctaw Territory, west of the Mississippi."

This act, it will be observed, provides that where the Indian's land has been sold, so that it is impossible to give him the improvement (his home) to which he was entitled, he is to receive, not the money paid the government for it, but certificates, better known as scrip, authorizing him to enter other land, which, it will be seen, he was in no case permitted to do, and one-half of that scrip was to be withheld until after his arrival in the Choctaw country west. That half, therefore, was to be used in purchasing his consent to leave Mississippi.

The spirit which prompted the act is illustrated in the correspondence of J. F. H. Claiborne, one of the commissioners to adjudicate the claims. Certain delays in their proceedings having occurred, he writes to the Indian Office that he had with difficulty dissuaded the Hon. S. S. Prentiss, one of the attorneys, from withdrawing his cases, some two hundred and seventy, and commencing actions of ejectment for the lands, which he says would produce the most violent excitement, and "which, by recovering for the Indians land and not scrip, would fix them here permanently, and thus defeat the cherished policy of Mississippi." (Doc. 168, p. 48.)

One of the points urged against the claims had been that the Indians had promised attorneys one-half of their lands for recovering the other half. Referring to these contracts, Mr. Claiborne speaks of the "selfish views" of the attorneys in promising the Indians that they should *not* be removed. (Page 142.) The contracts which appear on pp. 119 to 126 of same document all contained stipulations that the lands recovered for the Indian should be located as near his residence as possible. The fact that they did attempt to secure for the Indian what the treaty provided for him created a strong prejudice against the attorneys.

In the letter last referred to Mr. Claiborne recommends the *funding* of the half of the scrip deliverable in the west as a certain mode of securing emigration. (*Ib.*, 143.)

This recommendation was carried out in the Indian appropriation act of March 3, 1845, which provided that the scrip not deliverable east should not be delivered west, but carry an interest of 5 per cent., payable annually to the reservees, estimating their land at \$1.25 per acre. (5 Stat. Large, 577.)

As to the other half that *was* deliverable east, the Commissioner of Indian Affairs says, in his annual report, 1st sess. 29th Congress: "It is made obligatory upon these people that they must remove, or signify their intention so to do, before any portion of the scrip due them can be issued."

By this ruling the Indian had to signify his intention to *go* before he could realize any part of a claim based upon the signifying his intention to *stay*. Many of the claims were rejected solely because the claimant did not signify his intention to stay; many more because he did not stay five years.

One more step was taken in the same direction in the spring of '47, by prohibiting the delivery of any part of the scrip to the Indian until after his arrival in the Choctaw country west, where he could not use it. And it was decided about the same time that the interest on the funded half did not commence running until after the claimant's arrival west.

Finally, on the 21st of July, '52, Congress directed that the principal of the funded half should be paid to the claimants, and at the same time required the final release, referred to on page —, *ante*, from the Choctaw Council, of all further demands under the 14th article of the treaty of 1830, on the part of those receiving such principal, which release was executed on the 6th November, 1852.

This was the winding up—the finishing touch—of the policy of offering Indians citizenship, with reservations in severalty, inaugurated by Secretary Crawford in 1816, adhered to by his successors down to Governor Cass, who incorporated it in the Creek treaties and offered it to the Seminoles, sending the Choctaw treaty to be used as a model, particularly the 14th article, in negotiating with them.

Yet the moment the Choctaws evinced a readiness to accede to the policy it was abandoned.

Before leaving the 14th article claims it may be proper to call attention to their effect upon the conclusions of the Indian Committee of the Senate, as expressed in Mr. Sebastian's report of February 14, 1859.

The committee expresses the opinion that the market value of the lands which the Indians might have realized if protected in their possession was far greater than the price for which they actually sold, and that in awarding the net proceeds the United States would neither have lost, paid, nor expended anything, but would only refund to the Choctaws the surplus of the proceeds of their own lands, which would amount



to little more than half what might be recovered in a court of equity if the case were one between individuals.

This conclusion, manifestly warranted by the 14th article claims alone, has been severely criticised on the ground that it relies mainly on those claims, and that they are fraudulent in character and barred by a receipt in full. It has been shown in these pages that they were first brought before Congress in 1836, and were fully considered and freely discussed at various times in both Houses between the years 1836 and 1842—the days of Clay, Webster, Calhoun, Benton, Wright, Woodbury, Clayton, Preston, Rives, and others of a class bearing the most highly honored names known to American history; were investigated on the spot, in the country where they originated, by commissioners whose reports were scrutinized by two of the ablest officers that ever presided over the Indian Department—John C. Spencer and William L. Marcy. Under their direction, after hearing everything that could possibly be urged against them, scrip was issued in favor of the claimants by order of Congress, “in place of lands on which they resided, but which it is impossible to give them.”

The validity of those certificates was subsequently recognized by four successive acts, of June 27, 1846, March 1, 1847, September 30, 1850, and July 21, 1852, appropriating money to pay either interest or the principal which they represented, each act asserting that the claimants had been deprived of their lands. That these lands were worth more than \$1.25 per acre must have been known to the committee, as the Choctaw land sales had been investigated by the Senate, and the fact referred to by Mr. Sevier had been ascertained, that in spite of a powerful combination to force them down to the minimum, many of them had been sold at prices ranging from \$5 to \$13 per acre, while at the same sales it was shown that some of them were worth and would readily bring over \$20 an acre. But leaving out of view any inference from these sales, the fact was officially reported to the committee that the lands reserved under the same treaty for the Choctaw orphans, and sold at private sale by the department about the same time, did actually bring an average price of over \$6.50 an acre.

If it is right to take an acre of land worth \$6.50 from the owner without his consent, sell it for \$1.25, pay him at the end of fifteen years half that sum in depreciated land scrip, on the express condition that he shall first go where it can't be used, and then at the end of five more years pay him the other half in money on condition that he shall falsely state that he has been paid in full, and shall admit that he has no rights which any one is bound to respect, why, in that view of the subject the objection might apply to the scrip claims; but it certainly has no bearing, so far as payment in full is concerned, upon the rejected claimants, who never received anything, and whose lands at the same rates were worth over \$2,000,000. Still less does it apply to the 19th article case, whose equitable strength no one knowing the facts will dispute.

But the Indian Committee of the Senate did not see the matter in that light. A thorough investigation satisfied them that any legal tribunal would, under like circumstances, give larger damages than the net proceeds, whether, as Mr. Sebastian said, they were five hundred thousand dollars or five millions. He might have said, in justification of his remark, that the 1,400,000 acres at the same prices paid for the orphan lands would have brought \$9,100,000—more than three times the highest aggregate sum reported or estimated of the “net proceeds.”

Proceeding next to the allegation that the larger, or a large part of what may be recovered for the net proceeds, would not reach the Choctaws, but would be absorbed by

#### “THE LOBBY,”

the undersigned desires to state that, in the offensive sense in which the term is generally used, he has no “lobby.”

It is true that the delegation has from time to time employed attorneys and legal advisers.

The theory that the care of the government in protecting their rights renders such aid unnecessary is not confirmed by the experience of the Choctaw people.

On the contrary, the history of this case from the negotiations preceding the treaty of 1830 down to the present day is the history of a protracted struggle with government officers, from the Secretary of War and the Choctaw agent in 1830, down to the Solicitor, whose attacks it has been the object of this paper in part to answer. In the course of that struggle on one occasion a Commissioner of Indian Affairs appeared on the floor of the House of Representatives in aid of a “lobby” organized expressly to defeat an appropriation to pay the net proceeds claim.\*

\* “I have been here long enough to know that whenever a person comes here with a claim against this government, he is met by the Perry Fullers—if I may use the expression without any personal imputation upon a gentleman I never saw—a class of men who are known as lobbyists, who besiege the claimant and endeavor to get him to employ them, if they can. If that is not done, then they block up the way of his claim, levy black-mail upon him, blasting its merits by whispering unfavorable sug-

As for the aid of attorneys, not half of the 14th article claimants who secured land would have recovered a single acre without such aid, and none of the scrip claimants could without it have realized anything at all.

It is obviously absurd to suppose that a claim like the "net proceeds," which has been called intricate, complicated, and unintelligible by some of the ablest men in Congress, could be managed by Choctaw Indians without legal advice. Such advice they have obtained, and they expect to pay for it.

Demands for such services have multiplied considerably during the twenty-three years which have elapsed since the first steps were taken, to such an extent, indeed, that the undersigned has been compelled to say that they must be referred to the general council of his people. Some of them are moderate and reasonable; others, again, are exorbitant. A third class originates solely in black-mailing efforts of parties who have for years hung around on the net proceeds, and have repeatedly defeated it by asserting that enormous sums are to be paid either to themselves or to others wholly unknown to the undersigned, who repeats that while he has friends who kindly tender their aid in explaining his case to members of Congress from purely benevolent motives, and while he has now and has always had legal advisers, he has no "lobby," in the sense in which the term is usually applied to the solicitation of votes.

#### CONCLUSION.

A very slight examination will satisfy any one—

That a majority of both Houses of Congress have, at different times, expressed the opinion that something was due the Choctaws; and also,

That there has been a considerable difference of opinion as to what amount was really due.

It must be equally obvious that the greater part of the members of the two Houses of Congress have not the time, even if they had the inclination, to investigate a subject upon which so many conflicting opinions have been expressed, which covers so much ground, and upon which so large an amount depends.

Therefore those who really desire to do justice will not fail to see the propriety of referring the whole case to the courts, where both parties can be heard, the United States by its Attorney-General, and the Choctaw Nation by its authorized delegates, and of referring it in such a way as effectually to close the case.

P. P. PITCHLYNN,  
*Choctaw Delegate.*

#### "THE RELEASE," AND OTHER OBJECTIONS TO THE CHOCTAW CLAIM.

On the last page of a "Letter from the Secretary of the Treasury, relative to the claim against the government known as the Choctaw claim," dated January 6, 1873, and printed as Executive Document 69, House of Representatives, third session Forty-second Congress, appears the following:

*"Copy of release referred to in the foregoing letter.*

"Whereas, by an act of Congress entitled 'An act to supply deficiencies in the appropriations for the service of the fiscal year ending the thirtieth of June, one thousand eight hundred and fifty-two,' it is provided that, after the thirtieth day of June, one thousand eight hundred and fifty-two, all payments of interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, for lands on which they resided, but which it impossible to give them, shall cease; and that the Secretary of the Interior be directed to pay said claimants the amount of principal awarded in each case respectively, and that the amount necessary for this purpose be appropriated, not exceeding eight hundred and seventy-two thousand dollars; and that the final payment and satisfaction of said awards shall be first ratified and approved as a final release of all claims of such parties under the fourteenth article of said treaty, by the proper national authority of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior: Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the

gestions in the ears of members who have not time to investigate the matter for themselves. It has been so ever since I have been connected with this body, and I suppose it will ever be so."

(From a speech by Hon. Horace Maynard on a motion to strike out appropriation to pay net proceeds claim from a pending appropriation bill. *Globe*, May 30, '68, p. 2709.)

final payment and satisfaction of said awards, agreeably to the provisions of the act aforesaid, as a final release of all claims of such parties under the fourteenth article of said treaty.

"A. NAIL, *Speaker.*

"NOVEMBER 6, 1852.

"Passed in the Senate.

"Approved.

"D. McCOY, *President.*

"GEORGE W. HARKINS.

"GEORGE FOLSOM."

#### WHAT THE "RELEASE" DOES NOT INCLUDE.

Considered with reference to the questions submitted to the Senate for decision by the 11th article of the Choctaw and Chickasaw treaty of 1855, it will be seen that the above "Release" applies exclusively to claims under the 14th article of the treaty of Dancing Rabbit Creek, while a reference to pages 12, 13, and 14, of the report from the Senate Committee on Indian Affairs, No. 374, 2d session 35th Congress, which accompanied the resolutions adopted by the Senate on the 9th of March, '59, will show that the committee had under consideration Choctaw claims for \$1,215,597.65, under various heads, having no connection with that article, and therefore not embraced in the "Release."

Pages 10 and 11 of the same report relate exclusively to the claims of 292 families, who have never received the land to which they were entitled under the "fourteenth article," referred to in the "Release," or any "awards," in either money or scrip, in place of such land.

That the "Release" does not apply to them is shown by its terms, which include only "such parties" to whom "principal" had been awarded, and to whom the Secretary of the Interior was directed to pay "the amount of principal awarded" to them. Manifestly, the "Release" does not include those "parties" who had never received either interest or principal, or the land for which the principal was to be paid.

If there were any doubt on that point, which there is not, it would be effectually removed by the action of Congress after the 21st July, 1852, the date of the act requiring the "Release," namely, in the Indian appropriation acts of August 30, 1852 (10 Stat., p. 42), and of March 3, 1853 (10 Stat., p. 227), both of which contain clauses extending to 14th-article claimants the provisions of previous acts for the benefit of such claimants.

The committee does not mention in its report the amount in dollars claimed by the 830 persons embraced in the 292 families. But in the statement of the Choctaw claims presented to the Senate it was estimated at \$310,800.

This sum, added to the \$1,215,597.65 above specified, gives a total of \$2,026,639.75 as the amount of Choctaw claims considered by the Senate committee, and *not affected* by the "Release."

#### WITHIN THE "RELEASE."

The only claims presented by the Choctaws which are referred to in the "Release" are those of the parties therein specified, to whom amounts had been awarded "under the 14th article of the treaty of Dancing Rabbit Creek, for lands on which they resided, but which it is impossible to give them."

The lands which it was "impossible to give them" were lands guaranteed by the 14th article of the treaty of 1830 (subjoined as appendix A), to each Choctaw head of a family desiring to remain in Mississippi, on the sole condition of "signifying his intention to the agent within six months from the ratification of this treaty." If, in addition to such notice to the agent, the family reside on the land five years after the ratification, "a grant in fee simple shall issue."

Fifteen hundred and eighty-five families signified their intention to remain, and did actually remain the requisite time for the "grant in fee simple." Out of that number the agent only reported *sixty nine* to the government (9 Ind. Removals, p. 140, 7 Public Lands, p. 133), although he registered many hundreds as having "signified," and refused to register many hundreds more who applied to him for that purpose.

By reason of this omission to report those desiring to remain, the lands guaranteed to them by the treaty were sold by the government, and they were driven from their homes by the purchasers. Those claimants whose names had been registered but not reported, remonstrated as soon as they discovered the omission, and ultimately, besides the sixty-nine originally reported, seventy-four more succeeded in securing their lands. Of the residue, eleven hundred and fifty families, after a twelve years' struggle, obtained awards of scrip receivable for lands, subject to sale at private entry, in Alabama, Mississippi, Louisiana, and Arkansas. One-half of that scrip was, by order of Congress, not to be delivered to the claimant until after his removal to the Choctaw

law territory, west of the Mississippi. The half then deliverable west was funded by Congress on the 3d March, 1845 (5 Stat., 777), being the \$872,000 mentioned in the "Release." After the passage of the funding act, the other half, payable in scrip, was withheld from the claimants by order of the Indian Department until after their arrival in the Indian Territory west, where the scrip could not be used, and where it was no better than waste paper in the hands of the claimant, unless he sold it in a region where there was no market for it. On an average, the claimants realized less than 17 cents an acre, as stated in the report of the Senate committee, page 9, for scrip which is charged to them in the report of the Secretary of the Interior at \$1.25 per acre.

The payment of interest on the funded half being a serious inconvenience, parties entitled to \$1.25 or \$2.50 being in some cases required to travel a hundred miles to get their money, the Choctaw Council, at the request of the claimants, applied for the payment of the principal, which was ordered by Congress in the act of July 21, 1852, referred to in the "Release."

The effect of that payment was to give each head of a family to whom scrip had been awarded four hundred dollars in money for one-half of his land. The other half had been previously paid for, as above stated, in scrip worth to the claimants as a body not more than \$54 for each half-section, making in all \$454 for a section of land for which the government had received \$800, and in some cases ten times that amount, sixteen years before.

In view of these facts, the question asked the writer a few days ago naturally presents itself: Did the claimants file any protest when the council was required to execute a "Release" or receipt in full?

They did not, for no one then thought of the construction now put upon that "Release," that it was a bar to any other claims except those for the \$872,000 which it specified; and if such a construction had been suggested the claimants would not then, in 1852, have thought it possible to secure a just settlement. They had been driven from their homes in 1833, and had been unable to secure any recognition of their rights until after a twelve years' struggle, and then a grossly inadequate allowance. They did not know that the desire of the government to secure the "Leased District," and to settle a serious Indian conflict, threatening a border war, would in less than three years give them an opportunity to be heard. And if they had known it, their past experience would have deterred them from risking another delay, which we now know has lasted over twenty years without obtaining the "just, fair, and liberal consideration" promised in 1855.

#### THE "RELEASE" IN CONGRESS.

But the idea that the "Release" applied to anything beyond the \$872,000 for which it was given, had not occurred to any one in or out of Congress. The clause requiring it was proposed by Mr. Sebastian, as an amendment to a deficiency bill, on the 24th May, 1852. His remarks, covering two columns of the *Globe* (pp. 1452-53), show a thorough knowledge of the subject. He speaks of the use of the scrip as a means of compelling the Choctaws to emigrate, which he says was, "of course, a departure from the original treaty," and he refers to the hardship of requiring claimants to travel long distances for small amounts of interest. It had apparently been objected that the funding act of March 3, 1845 (5 Stat., 777), by pledging the payment of 5 per cent. "forever," had created a perpetual trust-fund, unchangeable in its nature. To which Mr. Sebastian replies:

"The only question which has been suggested by any Senator has been as to the competency of Congress to provide in this mode for the satisfaction of these annuities. \* \* \* They were not created by treaty. If they were perpetual annuities created by the terms of the treaty, then it must be admitted that we must have the sanction of a treaty to enable us to make a good and valid payment to them. \* \* \* It is just as competent for Congress to repeal the act of 1845, which made it a perpetual annuity, as it was to change the act of 1842, which provided satisfaction in place of the fourteenth article of the treaty of 1830. \* \* \* The amendment which I have offered guarantees every kind of security that no further reclamation shall be made upon us for the application of this fund, or rather for the erroneous payment of it to improper parties. It requires the receipts and release of the individual claimants themselves; in addition to which, as a matter of precaution, it requires affirmation by an act of national authority on the part of the Choctaws. With this double security I think it is entirely safe for the Senate to act in this matter; and as to the policy of adopting this proposition, I suppose that no one here for a moment entertains a doubt."

The foregoing paragraph contains all that was said in Congress about the "Release," though the discussion in the House on the appropriating clause fills three columns in the *Globe* of July 8, 1852 (pp. 1689-90). Nothing can be clearer than the fact that the object of requiring the "Release" was to guard against any subsequent claims for the perpetual payment of interest under the funding act, and with that view to hold the national authorities responsible for the identification of the parties entitled to receive the principal.

WAS THE "RELEASE" KNOWN TO THE SENATE WHEN ITS DECISION WAS MADE?

The Solicitor of the Treasury, on page 20 of his report of November 14, 1872, calling attention to the "Release," speaks of "this great fact hitherto studiously kept in the background by the claimants, that in 1852, in consideration of the payment at that time of outstanding scrip amounting to \$872,000, the nation guaranteed that no more claims should ever be made under the fourteenth article."

Passing over the obvious misrepresentations in this paragraph, such as designating the fund created by Congress in March, 1845, as "outstanding scrip," how "studiously" "this great fact" of the "Release" was "kept in the background by the claimants" will appear from the following paragraph in a statement of the Choctaw claims prepared for the use of the Senate in February, 1857:

"In July, 1852, Congress directed that the payment of interest, as directed by the act of 3d March, 1845, before referred to, should cease, and that in place thereof the principal should be paid over to the Indian claimants. At the same time a full discharge was required from the Choctaw council for all demands of the claimants in question, under the 14th article of the treaty of 1830. This discharge was executed by the council, although it was not authorized by the claimants (who were private individuals) to compromise their rights in any manner, nor was there any consideration of any sort, expressed or implied, either for requiring or executing the discharge."

The absurdity of charging the Choctaws with an attempt to keep the "Release" "in the background" becomes more apparent when it is remembered that the chairman of the committee to which the Choctaw claims were referred, and from whose knowledge they are charged with trying to conceal the release, was the very man who proposed it and caused it to be required!

Whatever Mr. Sebastian may have thought of the Release or its intention when executed in 1852, he knew, as chairman of the Senate Committee on Indian Affairs in 1856, when the treaty of 1855 was ratified, that the Choctaws had given a valuable consideration for the reopening of that and all other past settlements, a consideration very valuable to the United States in the settlement of serious disturbances and in 8,000,000 of acres in the "leased district," to which the Choctaws had an undisputed title, and also in 10,000,000 acres west of 100° to which their title, though equally good, had been disputed. For these 18,000,000 acres the pay was only \$800,000—less than one-fourth of the value.

But if there had been no such consideration, Mr. Sebastian, who understood the whole case, knew perfectly well that the mere fact of paying the claimant the *principal* instead of the *interest*, on one-half of the price previously paid the United States for his land, could not of itself alone indemnify the claimant for the unjust detention of the whole price for twelve years; or for the previous short payment of the other half in depreciated paper; or for the damages resulting from the eviction of the claimants from the homes guaranteed to them by the government.

He was aware of the losses sustained under these various heads, for he refers to them in his report of February 15, 1859, and he shows in that report (p. 9) that he was also aware that a great deal of the land belonging to the claimants was worth more than ten times the government price for which it was sold, and it was in view of all these circumstances that he expressed the conviction that the net proceeds would amount to "little more than half of what might be recovered in a court of equity" in a case between individuals.

It is therefore manifest that whatever construction may be given by others to the Release, Mr. Sebastian, who first conceived the idea and drafted the provision in the act which requires it, did not regard it as a bar to any part of the Choctaw claim, or to anything outside of the \$872,000 for which it was given.

DID THE DECISION OF THE SENATE GIVE THE CHOCTAWS MORE THAN THEY WERE JUSTLY ENTITLED TO CLAIM?

That Mr. Sebastian's bias was against, rather than in favor of, the Choctaws is shown by his whole course.

In the first place, but for that bias, he would have seen that the faithful execution of the 14th article of the treaty of 1830, by securing the apportionment of their lands promised them in strict accordance with public opinion and government policy in 1820, would have given the Choctaws all they asked for in the way of "net proceeds," and that therefore they were justly "entitled" to net proceeds, as the only way of making good the pledges of those treaties.

Moreover, in the resolutions adopted on his motion, "Scrip issued in lieu of reservation" is estimated at \$1.25 per acre, though he alludes on page 9 of his report to the average of less than *seventeen cents* an acre realized by the claimants, and under

that estimate it is so charged in the statement of the Secretary of the Interior (page 24, Ex. Doc. 82, 1st sess. 36th Cong.).\*

Other instances of the same sort will be seen by any one who carefully examines the whole case.

WERE MR. SEBASTIAN'S RESOLUTIONS UNDERSTOOD AND APPROVED BY THE SENATE?

How far Mr. Sebastian may be regarded as representing the Senate, which was the adjudicating tribunal, may be judged from the votes of Senators on different occasions upon propositions to carry into effect the resolution adopted by the Senate on his motion as its decision.

It has been objected that those resolutions were adopted without debate after a statement from Mr. Sebastian that the amount involved would probably not exceed \$800,000 or \$1,000,000, and that when the report came from the accounting officers it proved to be nearly \$3,000,000.

To this discrepancy Mr. Sebastian was himself the first to call attention when asking an appropriation to pay the award on the 13th of June, 1860. His motion was lost by a vote of 22 to 24. Among the twenty-four was Mr. Truett Polk, of Missouri, who thought the claim just and ought to be paid, but that it ought not to be in the "legislative, executive, and judicial appropriation bill." In the following February he voted to put it in the Indian appropriation bill.

Of the other twenty-three, Mr. Toombs, of Georgia, and Mr. Jefferson Davis, of Mississippi, voted against Mr. Sebastian's amendment because they thought the amount was incorrectly stated. Mr. Toombs said, "We agreed to give the net proceeds, but the difficulty is as to what *are* net proceeds." And again, "The Senate agreed to give net proceeds after deducting legitimate credits. Whether \$1,130,000 are legitimate or illegitimate credits is the thing to be determined." (*Globe*, pp. 2936-'37 and 2964.)

Mr. Jefferson Davis took substantially the same view. He thought with Mr. Toombs that \$1,130,000 was a legitimate credit. (*Globe*, p. 2963.)

Of the twenty-two Senators who voted with Messrs. Toombs and Davis in 1860 against Mr. Sebastian's amendment, *twelve* afterwards, at different times, voted to sustain the resolutions on which it was based. To those twelve must be added eight who were absent or not voting on the 13th June, 1860, making in all *forty-two* Senators who sustained the decision out of sixty, the entire number then in the Senate who voted at all on the Choctaw question, there being five out of a total of sixty-five (in June, 1860) who did not at any time vote on that question.

The changes in the votes were all after, and the result of, the fullest and freest discussion. One of the forty-two, Mr. Trumbull, of Illinois, voted against the claim in 1861, but after it had been examined in the Judiciary Committee, of which he was chairman at the time, he said, on the 12th of July, 1870 (*Globe*, p. 5485), that there was no escape from the obligation to pay. There had been a dispute as to what was due. "It was agreed that the amount should be fixed by this body. This body settled the principles on which it should be fixed," and directed a computation to be made. "Under that computation a certain amount was found due, and we have never paid it."

WAS THE ALLOWANCE OF "NET PROCEEDS" UNREASONABLE?

That there was nothing unusual or unreasonable in the allowance of net proceeds may be seen from the following list of fifteen treaties and nine acts of Congress, all securing to the tribes named the net proceeds of their lands, generally with the additional provision that 5 per cent. should be allowed on such portion thereof as remained in the Treasury, a rule carried still further in the act approved January 9, 1837, directing that where such funds were invested it should not be at a lower rate than 5 per cent., which still appears in sec. 2,096 of the Revised Statutes.

\* "3d. Scrip allowed in lieu of reservations, viz: 1,399,920 acres, at \$1.25 per acre, \$1,749,900." This includes the \$872,000 embraced in the "Release"; the remaining \$877,900 is for scrip, charged at \$1.25 per acre, for which the claimants realized \$118,400.

Tribe.	Treaty or act.	Date.	Stat. at Large.
1. Senecas .....	8th art. Trea .....	Feb. 28, '31 .....	7 Stat., 349
2. Senecas and Shawnees .....	" " " .....	July 20, '31 .....	" " 352
3. Shawnees .....	7th " " .....	Aug. 8, '31 .....	" " 357
4. Ottawas .....	" " " .....	Aug. 30, '31 .....	" " 360
5. Wyandottes .....	2d & 3d art. Trea .....	Jan'y 19, '32 .....	" " 364*
6. Chickasaws .....	3d " " .....	Oct. 20, '32 .....	" " 382
7. Wyandottes .....	2d, 4th, & 5th " .....	April 23, '36 .....	" " 503
8. Chippewas of S. C. & B. R. .....	2d art. Trea .....	May 9, '36 .....	" " 504
9. Chippewas of Saginaw .....	3d art. Trea .....	Jan'y 14, '37 .....	" " 529
10. Otoes and Missouriias .....	6th " " .....	Mch. 15, '54 .....	10 Stat., 1040†
11. Omahas .....	" " " .....	Mch. 16, '54 .....	" " 1045†
12. Delawares .....	3d " " .....	May 6, '54 .....	" " 1049
13. Iowas .....	2d " " .....	May 17, '54 .....	" " 1069
14. Kaskaskias .....	4th " " .....	May 30, '54 .....	" " 1083
15. Winnebagoes .....	2d " " .....	April 15, '59 .....	12 Stat., 1102
16. Osages .....	12th sec. Act .....	July 15, '70 .....	16 " 362
17. Stockbridge & Munsees. ....	4th " " .....	Feb'y 6, '71 .....	16 " 404
18. Menomonees .....	4th " " .....	Feb'y 13, '71 .....	16 " 410
19. Kansas .....	4th " " .....	May 8, '72 .....	17 " 85
20. Cherokees .....	1st & 4th " .....	May 11, '72 .....	17 " 98
21. Omahas .....	1st " " .....	June 10, '72 .....	17 " 391
22. Pawnees .....	2d " " .....	" " " .....	" " " "
23. Otoes and Missouriias .....	3d " " .....	" " " .....	" " " "
24. Sacs & Foxes of the Mo. ....	4th " " .....	" " " .....	" " " "

\* This case went beyond net proceeds. Improvements were to be paid for; the lands to be put into market, and the Indians to receive \$1.25 for "every acre sold or for sale."

† Sold for their benefit.

#### APPENDIX A.—14th article of Choctaw treaty of 1830.

ARTICLE 14. Each Choctaw, head of a family, being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child who is living with him, over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the section of the parent. If they reside upon said lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family or a portion of it. Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity. (7 Stats., 335.)

[Senate Mis. Doc. No. 59. 45th Congress, 2d session.]

*Memorial of the Choctaw Nation, asking for a settlement of their claims arising under the treaty of 1855.*

MAY 1, 1878.—Referred to the Committee on Indian Affairs. MAY 2, 1878.—Ordered to be printed.

*To the Senate and House of Representatives of the United States:*

The Choctaw Nation humbly prays that an act be passed authorizing the Court of Claims to ascertain and render judgment for the amount due under the following articles of the Choctaw and Chickasaw treaty of 1855, namely:

ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the land ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, and, if so, how much."

ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just; the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final. (11 Stat. at L., page 611.)

which articles were subsequently considered by the Senate, and its decision was expressed on the 9th March, 1859, in the following resolutions:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

"First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much?"

*Resolved*, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of \$1.25 per acre; and, further, that they be also allowed 12½ cents per acre for the residue of said lands.

*Resolved*, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-prescribed principles of settlement, and report the same to Congress.

(Senate Journal, second session Thirty-fifth Congress, page 493.)

In compliance with these resolutions, the Secretary of the Interior, on the 8th May, 1860, reported to Congress that the balance due the Choctaws was \$2,981,247.30. (H. Ex. Doc. 82, first session Thirty-sixth Congress, p. 25.)

The Indian appropriation act, approved March 2, 1861, provided:

"For payment to the Choctaw Nation or tribe of Indians on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money, and for the residue, the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress; *Provided*, That in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians." (Statutes at Large, vol. 12, p. 238.)

Of that appropriation, \$250,000 was paid to the Choctaws in April, 1861. No part thereof has since been paid either in money or bonds.

On the 16th July, 1868, an amendment was inserted by the Senate in the Indian appropriation bill, which became a law, requiring "that the Committees on Indian Affairs of the Senate and House of Representatives shall examine the claim of the Choctaw and Chickasaw Indians for all matters of difference between them and the Government of the United States, and shall report the result of said examination to their respective Houses at the next session of Congress." (15 Stat., 223.)

In obedience to this requirement the Indian Committee of the Senate reported on the 10th April, 1869, its recommendation that the question of obligation to pay the Choctaw claim should be referred to the Committee on the Judiciary, which was done. (Globe, April 10, 1869, p. 718.)

At the next session, on the 22d June, 1870, the Judiciary Committee reported by bill, No. 973, providing for the issue of bonds in payment of the Choctaw claim. The



bill was moved as an amendment to the civil appropriation bill, and on the 12th July, 1870, the amendment was rejected on the ground that it was not appropriate to that bill.

The Indian appropriation act, approved March 3, 1871, contained the following clause:

"And the Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians bonds of the United States to the amount of two hundred and fifty thousand dollars, as directed by the act of March 2, 1861, entitled 'An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes.'" (16 Stat., 570.)

The authority thus given was suspended two years afterward in the act approved February 14, 1873, making appropriations for the Indian Department, in the following clause:

"SEC. 3. That all authority now existing by the acts of March 2, 1861, and March 3, 1871, or otherwise, to issue or deliver any bonds of the United States to the Choctaw tribe of Indians, is hereby suspended until the further action of Congress in the matter and providing for such issue and delivery." (17 Stat., 462.)

The origin of this clause is referred to in another, found in the sixth section of the same act:

"That there shall not be paid or allowed to any person whatever any fees or reward for services in connection with the subject-matter referred to in the 3d section of this act, either on account of the United States or of the Choctaws, until further action of Congress in the matter, and providing for such action and payment." (17 Stat., 463.)

The suspending clause was based upon a report which was prepared by attorneys who had undertaken to defeat the delivery of the bonds for a contingent fee of \$30,000, under a contract printed on page 1084 of the *Globe* of February 4, 1873.

The third section of the sundry civil appropriation act of June 23, 1874, provides:

"That the Secretary of the Treasury is hereby directed to inquire into the amounts of liabilities due from the Choctaw tribe of Indians to individuals, as referred to in articles 12 and 13 of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes of Indians, and to report the same to the next session of Congress, with a view of ascertaining what amounts, if any, should be deducted from the sum due from the United States to said Choctaw tribe, for the purpose of enabling the said tribe to pay its liabilities, and thereby to enable Congress to provide a fund to be held for educational and other purposes for said tribe, as provided for in article 13 of the treaty aforesaid." (18 Stat., 230.)

In compliance with this direction, Secretary Bristow made a full report, which was printed as Ex. Doc. H. R. No. 47, second session Forty-third Congress.

This report was referred in December, 1874, to the Committee on Appropriations of the House of Representatives. A favorable report was made from that committee, and during the same session, from the Indian Committee. An amendment was offered in accordance with these reports to the pending appropriation bill on the 19th January, 1875, which failed, mainly, as the debates indicated, on the ground that it ought to be considered as a separate measure.

In June, 1876, a bill was reported from the House Committee on Indian Affairs, authorizing the Court of Claims to ascertain how much was due the Choctaws, and directing the Secretary of the Treasury to pay the amount of any final judgment that might be rendered in their favor. It could not be reached in its regular order on the calendar, and was therefore never considered by the House.

The same bill was introduced during the first session of the present Congress, and referred to the House Committee on Indian Affairs. The result was that on the 26th February last two reports were made, which are printed in H. R. report No. 251, second session Forty-fifth Congress, to which especial attention is requested.

Both reports urge a speedy settlement, one by referring the Choctaw claim back to the Senate for reconsideration, proposing for that purpose, by order of the committee, the bill H. R. 3550. The other, from the minority, signed by Messrs. Hooker, Throckmorton, Gunter, Van Vorhes, and Townsend of New York, recommends the bill H. R. No. 980, referring the case to the Court of Claims, with an appeal to the Supreme Court, and directing the Secretary of the Treasury to pay the final judgment, whatever it may be; being substantially the same bill reported from the same committee during the Forty-fourth Congress.

In addition to these two there have been from time to time twelve other reports from different committees—some of the Senate, others of the House—made since the passage of the Senate resolution of March 9, 1859, all in favor of the claim—not one against it; yet, so far as legislation is concerned, nothing has been effected in the way of adjustment since the appropriation of March, 1861.

The difficulty indicated in the early debates in both houses seems always to recur. On the one hand, there has been an apparent unwillingness to be governed by the reports of committees in a case involving so large an amount and so wide a divergence

in the sums at different periods recommended to be paid. On the other hand, the vast accumulation of business has always precluded an exhaustive examination, if, indeed, such a thing were practicable on the floor of either house. It was said in the Senate on the 14th of June, 1860, when the first appropriation to pay the Choctaw claim was proposed, that the "Senate was no place to strike a balance between claims and payments." (*Globe*, p. 2963.) It was said, again, in another debate on the 2d of February, 1861, that "A majority of this Senate would not investigate such questions." (*Globe*, p. 707.) Substantially the same thing was said in the House on the 23d of February, 1861, on the same subject:

"If we were to bring in fifty bills and ask the House to investigate, gentlemen would be no better prepared to vote than they are now." (*Globe*, p. 1156.)

Whether any of these remarks were or were not justifiable it is not for the undersigned to say. If a sufficient number of Senators would give their claims the requisite scrutiny, the Choctaws would prefer that tribunal to any other. But twenty years' experience justifies the apprehension that the pressure of other duties might preclude the possibility of such personal examination as a majority of Senators might consider an essential prerequisite to a favorable decision. It is that view of the case suggested by the past history of this claim that induced the Choctaws in the first place to ask for a reference to the courts. It is that view of the case which now induces them to prefer the bill reported for that purpose.

By its delegate,

THE CHOCTAW NATION,

P. P. PITCHLYNN.

\*Mr. JOHNSON, of Arkansas. You must have a thorough investigation. Will the Senator from Maine make it? No, sir; he will not do it.

Mr. FESSENDEN. No.

Mr. JOHNSON. Not a bit of it; you are candid and frank in saying so, for I believe it. You will not. Who will? Will a majority of this Senate make it? Did they ever make it upon any question that ever came before us, unless it was the slavery question? Never in my day. How, then, shall we have a full investigation? I should be pleased to know.—*Debate on appropriation to pay Choctaw claims, February 2, 1861, Globe, p. 707.*

H. Ex. 34—4