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**Memorial of P. P. Pitchlynn, Delegate of Choctaw Nation of Indians, upon the right of that nation to be paid the money awarded to it by the United States Senate on the 9th day of March, A. D. 1859.**

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MEMORIAL

OF

P. P. PITCHLYNN,

DELEGATE OF CHOCTAW NATION OF INDIANS,

UPON

*The right of that nation to be paid the money awarded to it by the United States Senate on the 9th day of March, A. D. 1859.*

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JUNE 8, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

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

The undersigned, for more than twenty years past a delegate of the Choctaw Nation, commissioned and authorized by the acts of the legislative council of that nation to represent its interests and prosecute to final settlement its just claims against the United States, begs leave to again invite the attention of Congress to the unsettled claims and demands of the Choctaw Nation against the Government of the United States. The subject of these claims is not a new one to the Congress of the United States, and their legality and justice have never been called in question, or denied, by any officer of the United States, or by any committee of Congress, who has examined them with any degree of fidelity or with the least desire to do justice to the nation whose interests I have the honor to represent. The claim which my nation has for so many years, and so often, pressed upon the attention of Congress, *has its foundation in the treaty between the United States and the Choctaw Nation, concluded September 27, 1830.* In order to provide a tribunal which might pass upon the validity of the claims, so long unpaid, the United States and the Choctaw Nation concluded the treaty of June 22, 1855, the eleventh article of which is as follows :

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.”

By the twelfth article of the said treaty of 1855, it was expressly provided "*that the adjudication and decision of the Senate shall be final.*"

The Senate of the United States, having assumed the functions of an arbitrator between the United States and the Choctaw Nation, did, on the 9th day of March, A. D. 1859, acting in that character, make and declare the following award in favor of the Choctaw Nation :

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 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

"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 cost 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, 2d session 35th Congress, page 493.)

It is clear that this award gave the Choctaw Nation the *net proceeds* of the sales of their lands ceded in 1830, so far as sold up to January 1, 1859, deducting cost of survey and sale, and all just and proper expenditures and payments under the treaty, excluding reservations allowed and secured, and estimating all scrip received by them at \$1.25 per acre ; and it allowed them twelve and one-half cents per acre for the residue of the lands. By reference to the account as stated in pursuance of this award, you will find (H. Ex. Doc. No. 82, 1st session, 36th Congress, p. 23,) that the whole quantity of land ceded was 10,423,139  $\frac{62}{100}$  acres.

For surveying and sale of the whole of this the Choctaws were charged ten cents an acre, \$1,042,313.96.

Their reservations allowed and secured were deducted from the whole quantity, to the amount of 334,101  $\frac{92}{100}$  acres, for which nothing was allowed the Choctaws, although they were made to pay the cost (ten cents an acre) for surveying and selling the same. Is it not manifest that this was an overcharge against the Choctaws of \$33,410.10 ? The quantity of land sold was 5,912,664  $\frac{63}{100}$  acres ; of that unsold, excluding reservations, 4,176,374  $\frac{93}{100}$  acres. For this the Choctaws were charged ten cents per acre for cost of surveying and selling, and credited twelve and one-half cents per acre ; *i. e.*, they were in fact only allowed two and one-half cents per acre.

The award directed the costs of surveying and selling to be deducted only as to the lands sold. The language is explicit : "The proceeds of such lands as have been sold ;" deducting therefrom the costs of their survey and sale. Clearly, here is another overcharge of \$417,637.40.

There are other charges for certain expenditures, not properly chargeable, which I do not now notice.

The balance due under the award, after straining everything to the utmost against the Choctaws, was \$2,981,247.30.

On the 19th of June, 1860, the Committee on Indian Affairs of the Senate, in their report on this account, stated (Sen. Repts. Com. No. 283,

1st session, 36th Cong.) that they "thought that a further deduction ought to be made for the 5 per cent. on the net proceeds of the sale of the lands which had been paid to the State of Mississippi." The award had specified what deductions should be made from these net proceeds, and had not provided for making the Choctaws pay back moneys which the United States had given to Mississippi. The amount (\$362,100.70) could not righteously be deducted.

But, if it could properly be deducted, it represented 295,633 acres, (one-fifth of all that were sold,) and the Choctaws were charged ten cents an acre for the costs of surveying and selling the very land which realized that money, \$29,563.32. Suppose all, instead of part, of the net proceeds of land sold had been given away by the United States, and the committee had advised that, therefore, nothing should be paid the Choctaws on account of them; and suppose, nevertheless, they stood charged with ten cents per acre for surveying and selling them?

The committee also thought that the phrase, "the residue of said lands," in the award, should not be construed to include such as the United States had given away as swamp-lands, and for railroads and school purposes. Why not, one fails to see. The quantity so disposed of was 2,292,766 acres. The award spoke of the lands ceded, allowed the net proceeds of those sold, and twelve and one-half cents an acre "for the residue of said lands." Nobody but an Indian would have to argue that this meant "all that had not been sold, and of which the proceeds were allowed."

Here was another deduction, utterly unjust, of \$286,595.75 recommended by the committee. The two deductions left \$2,332,560.85. But if anything could be deducted for swamp-lands and others given away, the Choctaws had been charged ten cents an acre for surveying and selling these very lands. Therefore they were only to get two and one-half cents an acre. On any principle could be deducted only \$57,319.15 instead of \$286,595.75; or, if twelve and one-half cents were charged, the ten cents an acre should have been deducted from the charge for expenses of surveying and selling, which would be \$229,276.60, and come to the same thing.

As soon as this report was made, it was objected to by the delegates of the Choctaws, and these gross errors pointed out. They were such as, if insisted on, would have been dishonorable; such as would ruin a merchant or banker, and convict him of fraud and dishonest manipulation. The errors were too plain to be denied, and the report was never called up or acted on. It has not the sanction of the Senate; it is no part of the award, and no part of the account, and the deductions it proposed would have been simply monstrous.

I solemnly protest to Congress that these sums are too large for the Choctaws to lose, and most especially urge that they shall not, in consideration of a sum less than is due them, be required to receipt in full, or to relinquish these amounts. No honorable man in Congress would, for all the wealth of the Indies, so deal with his creditor. Is not a nation's honor as dear to her sons as their own?

The award of the Senate was made on the 9th day of March, A. D. 1859. It was as final and conclusive as a decree in chancery, being strictly within and in accordance with the terms of the submission. Nothing remained to be done under it but to take and state an account in conformity to it. This was a merely clerical process. *The award itself neither should be changed, nor ever afterward was changed.* The report of the Secretary of the Interior (who was, in regard to it, precisely like a master in chancery) was not directed to be made to the Senate,

but to Congress; and it was so made on the 8th of May, 1860, to the House of Representatives and the Senate, separately. Thus the Senate understood and intended its award to be final and conclusive. It had performed the duty imposed on it, and its duties as arbitrator were ended. It was as to them *functus officio*. This view of the character and finality of the award of the Senate, acting as a court of arbitration in favor of the Choctaws, and of the report or account stated by the Secretary of the Interior under that award, is fully sustained by the very exhaustive and able report of the House Committee on Indian Affairs, made to the third session of the Forty-second Congress. In that report, (House Report No. 98,) referring to this subject, that committee used the following language :

By every principle of law, equity, and business transaction, the United States is bound by the accounting of the Secretary of the Interior, showing \$2,931,247.30 due to the Choctaws at the date of the Secretary's report.

The deductions of internal-improvement fund paid to Mississippi, and for lands donated for railroad and swamp land, as shown in Senate committee report, (see Senate Report 283, Thirty-sixth Congress, first session,) are no part of the Senate award, as they were not included in the Secretary's accounting to Congress.

First. The Senate was the umpire, and, in the language of the treaty of 1855, which made it such, its decision was to be final.

Secondly. The Senate, in the exercise of its power under the treaty of 1855, chose to allow the net proceeds of the land as the better of the two modes of settlement proposed by that treaty, and not to allow a sum in gross.

Thirdly. The Senate directed the Secretary of the Interior to make the accounting, which he did, March 9, 1859, as shown above.

Fourthly. The Senate did not, as umpire, or otherwise, reject this accounting; but, on March 2, 1861, made an appropriation of \$500,000 on it, and the Senate has not, since the Secretary's report, rejected any part of it, though near fourteen years have elapsed.

But it is a mistake to urge that the Choctaws, through their delegates, ever assented to any of the deductions proposed to be made by the Senate committee, or expressed a willingness to receive stocks of the United States for the amount awarded, AFTER MAKING THOSE DEDUCTIONS. The Choctaws never consented to receive a part of what the award gave them in satisfaction of the whole. They may be forced to submit to injustice and wrong, because they are powerless to resist it; but they can never admit that prescription can bar their just claim to be paid the amount awarded to them by the Senate, in fulfillment of treaty stipulations. And the undersigned cannot believe that even if the Choctaws had consented to receive less than was justly their due under the award, that such consent, given under overpowering necessity, would be pleaded in bar by the United States, or permitted by the present Congress to stand in the way of justice.

The committee was mistaken in saying that the Choctaws assented to the proposed deductions; but they were willing to receive stocks for what was justly due them. They had never been consulted as to the amount, and immediately upon seeing the report, they and their counsel remonstrated against the proposed deductions, without difficulty satisfying the able chairman that they were neither just nor admissible; in consequence of which, the report was never called up nor acted upon.

The Choctaw Nation instructs the undersigned, its delegate, to urge upon the Senate and House of Representatives its just claim to receive interest upon the sum of \$2,981,247.30, (less \$250,000 in money paid in March, 1861, and \$250,000 at that time appropriated to be paid in bonds,) from the 9th day of March, 1859, the date of the award, until the principal shall be paid. The Choctaw Nation presents this claim to interest with entire confidence in its legal right to be paid the same, and also

because it is required by the principles of the simplest and commonest justice and good faith.

The United States, since the date of the said award, have had the use of these moneys belonging to the Choctaw people, (which, if *then* paid, *would have been paid in gold*,) and have used them during part of the time in purchasing their own bonds, and so relieving themselves of the payment of interest. And, if interest is not paid to the Choctaws, the United States, in thus unjustly delaying such payment, will have had the use of the money of the Choctaws and the benefit of interest thereon for many years for nothing, thus profiting pecuniarily by refusing and delaying to pay an honest debt ascertained and *declared by a tribunal of its own selection*, and in its *legal* character as absolute and perfect a judgment as any that could be rendered against the United States by any earthly tribunal. The *award* of the Senate was a solemn declaration that the Choctaws should be paid the net proceeds of their lands sold by the United States, on the 1st day of January, A. D. 1859. In its legal effect it was a *judgment* against the United States for the amount of those proceeds, *and it cannot be successfully denied that moneys in judgment always bear interest*. The treaty of 1855 was a sacred covenant on the part of the United States that they would *promptly* pay to the Choctaw Nation whatever should be *awarded to them by the Senate, whose decision and award were to be final*. It is said that the United States do not ordinarily consider themselves bound to pay interest on moneys due by them to individuals, but this has been justified upon the legitimate presumption that the Government is always ready to pay all just claims against the United States. That presumption no longer obtains, when the claim or debt is in judgment against it, by the award of a judge or arbitrator selected by itself, and the judgment is final. Then it cannot be presumed to be willing and ready to pay what it does not pay, and that the delay of payment whereof is procured by misstatement of facts by its own advocates, paid by it to legislate and do justice.

There is not a State in the Union, nor, perhaps, a country in the world, in which debts in judgment do not bear interest. As to such a debt the Government has no superior privilege, exemption, or prerogative. It might as well refuse to pay the debt as to refuse to pay the interest; for it keeps from the party that which is his when it withholds the interest, equally as when it withholds the principal adjudged. For, if it had paid the principal punctually, the creditor would have had the use and profit of the money, and have been saved the losses caused by not having it to use, and the debtor would not have had the use of it, nor the profit accruing to him from that use. A great writer, Domiat, thus states the law of reason and justice on this point: "It is a natural consequence of the general engagement to do wrong to no one, that they who cause any damages by failing in the performance of that engagement, are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault, or to his offense or other cause on his part, and to the loss which has happened thereby." (Domat, Part I, Book III, Tit. V., 1900, 1903.)

Unless the United States are prepared to repudiate this principle, and to admit and proclaim that they are ready and willing "to do wrong" to their judgment creditor, the Choctaw Nation, they will pay the interest upon the moneys adjudged by the Senate, as well as the principal,

and not rejoice at the saving of a sum of money at the expense of the nation's character for justice, and integrity, and honest dealing.

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, "la perte que quelq'un a faite, et le gain qu'il a manqué de faire," the loss which one has suffered, and the gain which he has failed to make.. The Roman law defines it as "quantum mea interfuit; id est, quantum mihi abest, quantumque lucraci potui." The two elements of it were termed "lucrum cessans et damnum emergens." The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of this profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment, and, during the delay, have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. He holds them, in reality and essentially, in trust; and when was a trustee not bound to pay interest on moneys so held?

On the question of allowing interest on amounts of damages proven and adjudicated, the Choctaw people respectfully refer to the exhaustive consideration of that question in the cases of Letitia Humphreys and Robert Harrison, before the Court of Claims, in 1856 and 1857, and to be found in the report of the Court of Claims, No. 127, to the House of Representatives, at the first session of the Thirty-fifth Congress; to the opinion and decision of the judge of the district court, at pp. 53 to 57; opinion of Mr. Webster, pp. 75 to 78; opinion of Judge Bibb, pp. 84 to 91; statement of cases of Encomium and Comet, pp. 121 to 124; dissenting opinion of Judge Scarborough, pp. 215 to 221.

It will be seen by reference to these pages that the United States have always claimed interest in behalf of their citizens having claims for damages and injury against foreign nations; and they insisted upon it under the treaty of 1794, and under that of Ghent, under the former of which interest was allowed, as a part of a just and adequate compensation, by those great judges, Sir William Scott and Dr. Nicholl; that interest was allowed under the treaty of 1795 with Spain, and upon claims against Brazil, and under the treaties of 1839 and 1848 with Mexico.

It will also be seen that in *Del. Col. vs. Cunoto*, (3 Dallas, 333,) a case of capture, interest was allowed at the rate of 10 per cent. per annum, which was also sanctioned in the *Apollon*, (9 Wheat., 376,) as to cases where the property was sold under disadvantageous circumstances, or had not arrived at the country of its destination, the allowance of such interest being in lieu of the probable profits.

And in *Eakins vs. East India Company*, (P. Wms., 395,) on a bill to account for a ship and cargo wrongfully taken from the plaintiff in the East Indies by a company that had almost national powers, and maintained a civil government over a great country, and a standing army, and where the complainant, demanding Indian interest, which was 12 per cent., had "rested on his bill" thirteen years, the chancellor said, "If a man takes my money by way of loan, he ought to answer interest; but if he takes my money from me wrongfully, he ought, *a fortiori*,

to answer interest; and it is still stronger where one by wrong takes from me my goods which I am trading with." The interest was decreed at the Indian rate, and the decree was affirmed in the House of Lords. (2 Bro. P. C., 72; 2 Eq. Cas. Abr., ch. 1, 534.)

The Senate, in awarding to the Choctaws the net proceeds of the sales of their lands, included no interest in these net proceeds; nor did the committee, in estimating the damage sustained by the failure of the Choctaws (through the fault of the Government and officers of the United States) to secure their reservations of land, in 1830 and 1831, include any interest on the arbitrarily assumed value of those reservations. If the moneys had been awarded and paid in 1831, twenty-eight years before they were awarded, and more than forty years ago, they would even then have been a very inadequate compensation. Surely, *after they were awarded and in judgment*, they bear interest, as matter of law and right. Upon the claim of the State of Massachusetts, in 1869, for interest upon the principal sum before then paid her for advances made in the war of 1812, the committee of the Senate (Report No. 4, Forty-first Congress, first session, April 1, 1869) considered that the delay of payment of the principal for twenty-two years after a report in favor of paying it, gave the State a right to ask Congress to look with favor on the claim and act generously.

In a proper case the Choctaw people might appeal with confidence to the generosity of Congress. In this case they do not need to do so. They present a right, and ask simply for what is their just due—the amount of the *judgment* rendered in their favor, with such interest thereupon as in every civilized nation under heaven is allowed by law to the creditor upon delay of payment of moneys adjudged against his debtor. They will deem it neither just nor honest in the United States to compel them, *after the lapse of more than forty years, to receive a part only of the principal, so long justly owing to them, and this part, without the interest accruing even from the date of that final adjudication, which placed the United States in legal default.*

Since that day, as a man who, in possession of the lands of another, receiving the fruits that are the property of the lawful owner, does not satisfy the demands of justice by restoring the lands alone after long delay, but must, to be honest, account for the fruits, for that they were not his own, the United States have not only deprived the Choctaw people of the *fruits* of the moneys adjudged to them, but have taken those fruits to themselves, and upon the same eternal principles of justice must account for them or do a grievous wrong. "What," Lord Coke asked, *"is the land but the profits thereof?" The same question may be, with the same perfect truth, asked in this day as to moneys. If one will keep back the moneys of another, he must pay for their use; and when the amount has been ascertained and adjudged, there is nothing in the sovereignty of a state or nation that can exempt or absolve it from the obligation that justice and reason create.*

The United States, by its congressional action, has furnished precedents for what I now demand in behalf of the Choctaw Nation.

By the treaty of 1846, made with the Cherokees, who claimed interest on moneys due them upon part of the price agreed to be given them for their lands in 1835, it was submitted to the Senate to decide "whether the Cherokee Nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date, and at what rate per annum;" upon which submission the Senate decided "that interest, at the rate of five per cent. per annum, should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the



12th day of June, 1838, until paid ;" which was thus settled by the Senate as a general principle, for there had been no bargain or contract for interest ; but the United States had the lands and their profits, and were to pay the agreed price, with interest, in simple honesty and justice. And the act of Congress of 30th September, 1850, (9 Stat., 556,) accordingly appropriated \$189,422.76, reported by the Senate committee, and adopted by the Senate, WITH INTEREST.

The undersigned respectfully calls the attention of Congress to that report of the committee of the Senate, (Senate Report No. 176, Thirty-first Congress, first session,) and asks for his people the benefit of a precedent so eminently just ; for the right of the Choctaws is much higher than was that of the Cherokees.

The solemn pledge of a Christian nation is of eternal obligation. When compliance with it is demanded, no prescriptions can obtain to be pleaded in bar against the claim ; and that people will not escape from deserved calamity which ceases to remember its promises and obligations, consigns them to oblivion, and stares at them with surprise and incredulity when they are set before it by those who, having relied upon them and proved them broken reeds and dicer's oaths, have better memories than their makers.

Surely Congress will agree that nothing should be so sacredly and punctiliously kept as a nation's solemn promise, made to a feeble people under its protection ; and that when a nation obtains valuable concessions from such a people, by specific promises and pledges, and fails, after obtaining the benefit and profit, to keep the promises and pledges which were the inducement, it is as disgraceful to it as obtaining money by false pretenses is to an individual.

Your memorialist respectfully urges that this claim should be investigated with the single purpose of determining the exact amount awarded under the adjudication made by the Senate, sitting as a tribunal of arbitration, and with a fixed determination to provide for the payment of the amount so ascertained to be due. Debarred as the Indian is of that inestimable privilege (accorded to the humblest of every other class of American citizens) of seeking his remedy in any and every of the courts of the white man, the Choctaws again present their case to your honorable body as the only forum on earth where they can be heard, and the only court of competent jurisdiction to which they can appeal for even-handed justice, and they can but hope that you will do all that the good faith and fair fame of the republic require.

The undersigned attaches hereto, and makes the same a part of this memorial, the reports upon this question of the Committee on Indian Affairs of the United States Senate, made on the 22d day of January, 1873, (Senate Report No. 318, Forty-second Congress, third session,) and the report of the Committee on Indian Affairs of the House of Representatives, made on the 22d day of February, 1873, (House Report No. 80.)

Also to unanimous report of Committee on Indian Affairs, in their report to the House of Representatives, No. 599, first session of the Forty-third Congress ; and report of Committee on Appropriations of the House of Representatives, No. 391, dated April 4, 1874 ; and to these your petitioner begs leave respectfully to refer.

P. P. PITCHLYNN,  
*Delegate of the Choctaw Nation.*

WASHINGTON, D. C., June 5, 1874.

## EXHIBIT A.

Senate Report No. 318. Forty-second Congress, third session.

Mr. HARLAN, from the Committee on Indian Affairs, submitted the following report:

*The Committee on Indian Affairs, having had under consideration the letter of the Secretary of the Treasury of January 6, 1873, in relation to the payment of \$250,000, in bonds of the United States, to the Choctaw Indians, respectfully submit the following report:*

That the treaty of June 22, 1855, between the United States and the said Indian tribe, contains the following provisions:

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

"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."

ARTICLES 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."

That in pursuance of this agreement between the two contracting parties, the Senate proceeded to the adjudication of the questions submitted, and referred the subject to the Committee on Indian Affairs for examination. On the 15th day of February, 1859, the committee submitted an elaborate report, and introduced the following resolutions, viz:

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 lands remaining unsold, in order that a final settlement with them may be properly 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 had been sold by the United States, on the day of , deducting therefrom the cost

of survey and sale, and all proper expenditures and payments under said treaty, estimating all the reservations allowed and secured, or the scrip issued in lieu of reservations, at the rate of \$1.25 per acre; and, further, that it is the judgment of the Senate that the lands remaining unsold after said period are worth nothing, after deducting expenses of sale.

*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 committee's report, No. 374, second session, Thirty-fifth Congress.)

That, on the 29th of March following, the Senate considered these resolutions, and, after amendment, they were adopted as follows :

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaws 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 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."

*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 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 of said lands.

*Resolved*, That the Secretary of the Interior cause an amount 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.)

That, in pursuance of this award, the Secretary of the Interior, as directed by the closing resolution, proceeded to state an account between the United States and the Choctaw Indians, upon the principles decided by the Senate in the first resolution, and reported the same to the Senate, May 8, 1860. (Ex. Doc. No. 82, first session, Thirty-fifth Congress.)

That this authorized and official statement, made in pursuance of the Senate award, shows a balance of \$2,981,247.30 to be due said Indians. But that the Commissioner of Indian Affairs (A. B. Greenwood) suggested, in his report accompanying the Secretary's communication to the Senate, a doubt whether certain moneys paid the Choctaws by the United States, for a lease of that part of their western lands lying west of the 98th meridian, and moneys paid the Choctaws by the Chickasaws for the use of a part of said lands lying east of said meridian, amounting to \$1,130,000, should not be deducted from the foregoing sum, leaving only \$1,851,247.30 due the Choctaws. It will be found, however, that the Committee on Indian Affairs examined this question, and made an exhaustive report to the Senate, June 19, 1869, in which the committee deny the equity and justice of this deduction. But after going over the account as stated, and making certain corrections, which were deemed proper, and deducting the \$600,000 paid by the United States for the use of the leased lands, the justice of which they denied, the committee recommended the payment of \$2,332,560.85. (Senate Reports of Com., No. 283, first session Thirty sixth Congress.)

That, in part payment of this award, Congress put the following item into the Indian appropriation bill of March 2, 1861, viz:

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.)

That, in pursuance of this act, the \$250,000 in money was paid to the Choctaws, but that the bonds were not delivered, on account of the interruption of intercourse with said Indians, occasioned by the war of the rebellion.

That, after the close of the war, intercourse was restored, and the treaty of April 28, 1866, was agreed to between the United States and said Indians, which contains the following provision, viz :

ARTICLE X. The United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year (1866) eighteen hundred and sixty-six. (Statutes at Large, vol. 14, p. 774.)

That said Indians applied for these bonds, claiming that they were due under the before-mentioned act and said treaty.

That the Secretary of the Treasury referred the question to the Attorney-General for his opinion on the question of his authority to deliver them.

That the Attorney-General wrote an opinion on the subject, dated December 15, 1870, hereto appended, (marked A,) in the closing paragraph of which he says:

Waiving all discussions of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question according to my judgment of the law of the case, I am of the opinion that you may lawfully issue the bonds to the Choctaws.

That the Secretary of the Treasury communicated this decision of the Attorney-General to Congress for such action as might be deemed proper, in a letter dated December 20, 1870.

That this letter and said decision of the Attorney-General were referred by the Senate to the Committee on Indian Affairs, which, after careful examination on the part of the late Senator Davis and a full committee, on the 5th of January, 1871, made the following report, viz :

*The Committee on Indian Affairs, to whom was referred the communication of the Secretary of the Treasury to Congress, transmitting a copy of the opinion of the Attorney-General of the United States upon the claim of the Choctaw Nation of Indians for \$250,000 of United States bonds, have had the same under consideration, and report :*

They have examined the opinion of the Attorney-General, and concur with him in his reasonings and conclusions. There is a subsisting treaty between the United States and the Choctaw Nation of Indians which entitles said nation to two hundred and fifty thousand dollars of bonds of the United States of America, and which requires the President to make and deliver that amount of said bonds to said Indian Nation. This treaty is the supreme law of the land, and the President is charged with its execution as a ministerial function. He has full authority to execute that law by the making and delivery of those bonds, in compliance with the treaty, to the proper authorities of the Choctaw Nation: Wherefore they report this resolution:

*Resolved*, That the President having full authority under existing law to issue and deliver to the Choctaw Nation of Indians two hundred and fifty thousand dollars of United States bonds, no other legislation by Congress is necessary to that end. (Senate Committee Reports, third session Forty-first Congress.)

That on the same day this resolution was adopted by the Senate, and the Secretary was ordered to communicate a copy of the said report and

resolution to the President of the United States. (Senate Journal, third session Forty-first Congress, page 95.)

That, the Secretary of the Treasury having declined to deliver the bonds, Congress put the following provision in the Indian appropriation bill of March 3, 1871 :

For contingent expenses of trust-funds, heretofore and to be hereafter incurred, three thousand dollars; 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."

That, after a delay of nearly two years to carry into effect this law, the Secretary of the Treasury has sent to Congress his letter of January 6, 1873, accompanied by a report from the Solicitor of the Treasury, dated November 14, 1872, which was referred to this committee, and is the subject of this report, assigning his reasons for non-compliance.

Your committee have carefully considered the reasons as stated, in his letter and report of the Solicitor, and find them to be substantially as follows, viz :

1st. That in the opinion of the Solicitor of the Treasury, in which the Secretary partially concurs, the President and the Senate erred in making the treaty of June 22, 1855, admitting that anything might be due the Choctaws as claimed by them, and providing a tribunal for its adjudication.

2d. That the Senate erred in making the award of March 29, 1859, and in directing the Secretary of the Interior to state an account in pursuance thereof.

3d. That the Senate Committee on Indian Affairs erred in recommending the payment of \$2,332,560.85 in their report of June 19, 1860, or any sum whatever, as due these Indians.

4th. That Congress erred in the enactment of the law of March 3, 1871, directing the delivery of \$250,000 of bonds, not previously delivered under the act of March 2, 1861.

And as evidence in support of these conclusions produces a copy of an act of the Choctaw legislature, dated November 6, 1852, which the Secretary thinks is conclusive that this Choctaw claim has not only been paid, but is barred by a receipt in full given by the authorities of the Choctaw Nation of Indians, and also a long list of payments made by the United States to these Indians, and advantages conferred on them by the Government under the treaty of 1830, which he seems to think bars the equity and justice of any additional payments.

Your committee have carefully examined and weighed these considerations, and find—

1st. That the act of the Choctaw Nation of November 6, 1852, which is claimed to be a receipt in full, is dated several years prior to the treaty of June 22, 1855, and could not be considered in law as barring claims arising under said treaty and subsequent acts of Congress. That said "receipt in full," given in pursuance of a prior act of Congress, requiring it as a condition-precedent to the payment covered by said receipt, (Statutes at Large, vol. 10, p. 19.) might have been treated by the United States as a final conclusion of the controversy over the subject-matter. But it was not so treated. By agreement of both parties this settlement was again opened under the stipulations of the treaty of June 22, 1855. The right of the contracting parties to re-open a question previously settled is too clear to need argument. That this question was so re-opened is a fact that will not admit of dispute. And having been

thus re-opened and re-adjudicated by the tribunal agreed on by the parties, and an award having been made by it of a large sum as still due the Choctaws, and Congress having by two several acts directed the payment, in part, of this award, it is, in the opinion of your committee, too late to plead a prior settlement in bar.

2d. Your committee also find that the "receipt in full" covered only a comparatively small part of the subject-matter of the Choctaw claims submitted to the Senate for adjustment by the treaty of June 22, 1855, and that it was fully considered by the Secretary of the Interior and deducted from the total sum, which otherwise would have been found to be due the Choctaws in the Secretary's statement of account. The "receipt in full" is for money paid the Choctaws in the redemption of scrip issued to them under the treaty of September 27, 1830, in lieu of lands to which they were entitled and never received. The total amount of scrip issued was divided into two equal parts. One-half was delivered to the Indians. The other half was held by the Government as a trust-fund, on which interest was paid by the Government to said Indians at the rate of 5 per cent. per annum. The half thus held in trust, with accrued interest, amounted to \$872,000, and is the sum covered by said receipt of November 6, 1852. But it will be seen, on examination of the account as stated by the Secretary of the Interior, that the Indians are charged with the value of this trust-fund scrip, and also with the value of the other scrip previously delivered to the Choctaws at \$1.25 per acre, both together amounting to \$1,749,900.

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 a 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 of 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 re-opened 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.

This conclusion will be clearly established by a reference to a few facts bearing on the alleged grievances of the Choctaw Indians.

Their grievances, which the United States agreed to redress, under the provisions of the treaty of 1855, were threefold:

1st. That the treaty of 1830 was not made by them of their own unrestrained will and choice.

This allegation should be admitted, as it is admitted in the preamble to the treaty itself, which is in these words, viz:

Whereas the general assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people.

from the operation of these laws: Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi, and have accordingly agreed to the following articles of treaty. (Statutes at Large, vol. 7, p. 333.)

It is therefore clear that they consented to this treaty, and consequent removal, to avoid their subjugation and extinction as an independent people. The history of the transaction also proves that they utterly refused to sign the treaty until brought to do so by threats and intimidation. Consequently, by the most obvious principles of law and justice, they were not morally bound by its provisions.

2d. They complained that the terms of the treaty did not award them adequate consideration for the value of the land, the losses of property, and the personal sacrifices and hardships required by the removal to the western country, had these several provisions been fairly carried into effect.

This will be abundantly proved by an examination of the treaty itself. The chief amount of money promised as a consideration for these lands, amounting to 10,432,139  $\frac{69}{100}$  acres under the treaty of 1830, was an annuity of \$20,000 per year for twenty years. The other considerations of pecuniary value requiring payments of money were chiefly for losses of property, expenses of removal, and subsistence at their new homes, which they would not have incurred had they remained on their eastern lands.

And, contrary to the general impression, the Choctaws did not receive any western lands under the provisions of this treaty of 1830. Ten years before, under the treaty of October 13, 1820, they ceded to the United States 4,150,000 acres of land in Mississippi, covering more than half the river-front, and took in part payment their western lands, being a large tract embracing a considerable district falling in the western part of Arkansas, and extending westward to the western boundary of the United States. And, on the other hand, the Choctaws, in the treaty of 1830, cede to the United States all that part of their western lands lying in Arkansas, and west of the one hundredth meridian. The only lands they were promised under the provisions of the treaty of 1830 were homesteads of 640 acres to each head of a family; 320 acres to each child over ten years of age; and 160 to each child under ten years, of such Choctaws as might consent, within six months, to remain in Mississippi and become citizens of the United States, to be selected in the tract ceded by this treaty; which provision it was expected would not include a considerable number. Hence it will be seen that about all the money consideration promised these Indians as a consideration for the value of this vast tract of over 10,000,000 acres of the best cotton and sugar lands in the State of Mississippi, was the annuity of \$20,000 a year for twenty years; probably not equal to the value of that part of their western lands ceded to the United States by the Choctaws under this treaty, which lands they acquired in exchange for Mississippi lands in 1820; and your committee conclude that to insist that the Indians were promised adequate compensation for their Mississippi lands would be the most naked mockery.

3d. The Choctaws insist that the provisions of this treaty of 1830, although providing such adequate compensation for lands, losses, and suffering, were not carried into effect in good faith by the United States, according to their plain intendment.

That they had abundant grounds for this complaint, your committee find ample proof in the history of these transactions.

They were not furnished with an adequate opportunity within the

stipulated period of six months to register their desire to become citizens of the United States and select their homesteads; to remove their stock, of which they owned immense herds, to the western country, or to prove the value of that necessarily lost on account of a forced removal; or the value of improvements abandoned; or adequate means of transportation of their families and household effects; or proper subsistence on the journey and after their arrival; nor a fair equivalent for the head-rights to which many were entitled, which they were forced to abandon.

Your committee are therefore of opinion that the payment of the net proceeds of the sales of their reserve in Mississippi, under the circumstances, as awarded by the Senate, deducting therefrom all payments actually made to them under the provisions of the treaty of 1830, being chiefly expenses incurred on account of removal, would be far below what justice required.

The total net proceeds of their lands, deducting therefrom all payments made under the provisions of the treaty of 1830, were, as we have seen, \$2,981,247.30; as corrected by the committee in their report of June 19, 1860, it was reduced to \$2,932,560.85.

To charge these Indians with, and to deduct from said amount, the further sum of \$600,000, paid the Choctaws under this treaty for the lease of lands in the western country for the use of other Indians, would be clearly unjust; for, as before stated, these western lands were acquired by the Choctaws in part payment for lands ceded to the United States in the treaty of 1820, and were the property of the Choctaws ten years before the treaty of 1830 was made.

But as the Committee of the Senate on Indian Affairs state in their report of June 19, 1860, that the Choctaws expressed a willingness to admit this charge and to accept the residue, being \$2,332,560.85 in stocks of the United States, your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom \$250,000, paid to them in money, as directed by the act of March 2, 1861; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the aforementioned act, and the act of March 3, 1871, by the delivery of the bonds therein described with accrued interest from the date of the act of March 2, 1861.

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A.

DEPARTMENT OF JUSTICE, *December 15, 1870.*

SIR: In answering the question propounded in your letter of the 29th of September, 1870, it is necessary that I should consider a series of treaties and statutes.

In the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, (11 United States Stat., p. 611,) it was provided that certain claims of the Choctaws against the United States set up under a prior treaty should be submitted for adjudication to the Senate of the United States. The Senate does not appear to have ever adjudicated the claim by any separate action; but in the Indian appropriation act of March 2, 1861, it was provided that there should be paid "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 22d of June, 1855, the sum of \$500,000; \$250,000 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." (12 United States Stat., p. 235.)

In the Indian appropriation bill of July 5, 1862, (12 United States Stat., p. 528,) it was provided "that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any



portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President," and the President was further authorized to expend any unexpended part of previous appropriations for the benefit of said tribes, for the relief of such individual members of the tribes as had been driven from their homes and reduced to want, on account of their friendship to the Government.

In the Indian appropriation act of March 3, 1865, (13 United States Stat., p. 562,) the Secretary of the Treasury is authorized and directed, in lieu of the bonds for the sum of \$250,000 appropriated for the use of the Choctaws in the act of March 2, 1861, "to pay to the Secretary of the Interior \$250,000 for the relief and support of individual members of the Cherokee, Creek, Choctaw, Chickasaw, Seminole, Wichita, and other affiliated tribes of Indians who have been driven from their homes and reduced to want on account of their friendship to the Government."

On the 28th of April, 1866, a treaty was made with the Choctaw and Chickasaw Indians, (14 United States Stat., p. 769,) the tenth article of which is in the following words: "The United States re-affirms all obligations arising out of treaty stipulations, or acts of legislation, with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th of June, in the year 1866." The forty-fifth article is in these words: "All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty."

The Choctaw Indians have made requisition on the Secretary of the Treasury for bonds of the United States to the amount of \$250,000 under the act of March 2, 1861; and the question upon which you desire my opinion is, whether such bonds may lawfully be issued to them.

Without considering the effect of other legislation on the subject, I am of the opinion that the act of March 3, 1865, withdrew from the Secretary of the Treasury the authority, vested in him by the act of 1861, to issue the bonds; and unless that authority is revived in the treaty of July, 1866, it does not now exist. But I am further of opinion that such authority is revived by that treaty, if a treaty can have such effect.

By the treaty the United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time. In every reasonable sense of the word obligations as used in that treaty, the provision in the act of 1861, for issuing the bonds, was an obligation. Liberal rules of construction are adopted in reference to Indian treaties, (5 Wall., p. 760.) It was an obligation which grew out of a treaty stipulation and an act of legislation in part execution of a treaty stipulation. It was entered into prior to the late rebellion. It was in force when the rebellion began. Thus it answers every part of the description in the treaty.

The sections of the treaty above quoted, together with others of its provisions, place these Indians, as to all dues from the Government, just as they stood at the outbreak of the rebellion, in April, 1861. To re-affirm obligations arising out of a repealed act of legislation must signify the restriction of the parties to the positions in which they stood when the act of legislation was in force.

The serious question, however, does not relate to the meaning, but to the authority of the treaty of 1866. The statute of March 3, 1865, repeals the direction of the Secretary of the Treasury in the act of March 2, 1861. The treaty undertakes to revive that direction. Is such an act within its competency?

By the sixth article of the Constitution, treaties as well as statutes are the laws of the land. There is nothing in the Constitution which assigns different ranks to treaties and to statutes. The Constitution itself is of higher rank than either by the very structure of the Government. A statute not inconsistent with it, and a treaty not inconsistent with it, relating to subjects within the scope of the treaty-making power, seem to stand upon the same level and to be of equal validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later.

In 1791, Mr. Madison wrote as follows: "Treaties, as I understand the Constitution, are made supreme over the constitutions and laws of the particular States, and, like a subsequent law of the United States, over pre-existing laws of the United States; provided, however, that the treaty be within the prerogative of making treaties, which no doubt has certain limits." (Writings of Madison, vol. i, p. 524.)

In the United States *vs.* The Schooner *Peggy*, (1 Cranch, p. 37,) the Supreme Court of the United States, in an opinion delivered by Chief Justice Marshall, held, in effect, that a treaty changed the pre-existing law, "and is as much to be regarded by the court as an act of Congress."

In *Foster and Elam vs. Neilson*, (2 Peters, p. 253,) the Supreme Court says: "Our Constitution declares a treaty to be a law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision;" and, in applying this principle to the case before them, say that if the treaty then under consideration had acted directly upon the subject, it "would have repealed those acts of Congress which were repugnant to it."

In *Taylor vs. Morton*, (2 Curtis, C. C. R., p. 454,) it was held that Congress may repeal a treaty so far as it is a municipal law, provided its subject-matter is within the legislative power of Congress.

The just correlative of this proposition would seem to be that the treaty-making power may repeal a statute, provided its subject-matter is within the province of the treaty-making power.

Attorney-General Cushing, in 1854, after a full examination of the subject, came to the conclusion that a treaty, assuming it to be made conformably to the Constitution, has the effect of repealing all pre-existing Federal law in conflict with it. (Opinions, vol. vi, p. 291.)

Hamilton says: "The treaty power binding the *will* of the nation must, within its constitutional limits, be paramount to the legislative power, which is that will; or, at least, the last *law* being a treaty, must repeal an antecedent contrary law." (Works of Hamilton, vol. vi, p. 95.)

Again: It is a question among some theoretical writers whether a treaty can repeal *pre-existing laws*.

This question must always be answered by the particular form of government of each nation. In our Constitution, which gives, *ipso facto*, the force of law to treaties, making them equal to the acts of Congress, the supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it, according to the legal maxim that "*leges posteriores priores contrarias abrogant*." (*Ibid.*, vol. vii, p. 512.)

An engagement to pay money is certainly within the province of the treaty-making power, and I cannot perceive that such an engagement is carried beyond that province by the circumstance that it provides for issuing through the agency of a particular officer an obligation to pay money at a particular time; for such, in effect, is a bond.

Can the Secretary of the Treasury issue the bonds without a new direction from Congress? In other words, is the treaty a law for him, or can he know no laws except such as are passed by Congress?

The Secretary is an officer of the Executive Department of the Government. It is established by a long course of authoritative opinion and conforming practices that, in many cases, the Executive of the United States can execute the stipulations of a treaty without provision by act of Congress. In some instances this has been done as a general executive duty, when the treaty itself pointed out no particular mode of execution. This was the course taken in the case of Thomas Nash, otherwise called Jonathan Robbins, who was delivered up by the direction of President Adams to the British authorities, in execution of the treaty with Great Britain of 1794. An attempt to bring the censure of Congress upon the President for this act was encountered by an argument from Chief Justice Marshall, then a Representative from Virginia, which conclusively established the power. In other cases the President has acted when the mode of action was pointed out in the treaty.

In the treaty of Washington, of 1842, there was a provision for extradition of criminals. Prior to any legislation for carrying out this provision of the treaty, it was executed by officers of the United States. In 1845, James Buchanan, Secretary of State, issued a warrant for the arrest of certain persons, subjects of Great Britain, who were charged with a crime committed under British jurisdiction and against British laws, and it was decided by Mr. Justice Woodbury, upon the return to a writ of *habeas corpus*, that the warrant and the arrest were legal. (1 Woodbury & Minot's Rep., p. 66.) The learned justice remarks: "It is here only on the ground that the act to be done is chiefly ministerial, and the details full in the treaty, that no act of Congress seems to me necessary." (*Ibid.*, p. 74.)

Attorney-General Nelson, in discussing this treaty, remarks: "It has been made under the authority of the United States, and is the supreme law of the land. It has prescribed by its own terms the manner, mode, and authority in and by which it shall be executed. It has left nothing to be supplied by legislative authority, but has indicated means suitable and efficient for the accomplishment of its object. It needs no sanctions other or different than those inherent in its own stipulations, and requires no aid from Congress. Surely it cannot be necessary to invoke the legislative authority to give it validity by its re-enactment." (4 Opinions, p. 209.) This language may be fitly applied to the treaty with the Choctaws.

I am aware of the distinction which has been taken between such treaties as do and such as do not import a contract, and of the current notion that, in the former case, Congress must act before the treaty can be executed. But the practice of the Govern-

ment in extradition treaties and in other sorts of international covenants has been at variance with this notion.

If the Executive may constitutionally execute a treaty for delivering persons to a foreign jurisdiction, it may well feel authorized by the Constitution to execute a treaty that stipulates for the less important matter of issuing bonds.

According to Article I, section 9, of the Constitution, as construed by the practice of the Government, an act of Congress is necessary to appropriate money to pay the public debt, however created. The change of the form of the debt, from a general stipulation in treaty to bonds with particular provisions, does not take away that necessity. The time for the exercise of whatever power Congress has over the subject will come when provision for the payment of the bonds is to be made.

Waiving all discussion of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question according to my judgment of the law in the case, I am of opinion that you may lawfully issue the bonds to the Choctaws.

Very respectfully, your obedient servant,

A. T. AKERMAN,  
Attorney-General.

HON. GEORGE S. BOUTWELL,  
Secretary of the Treasury.

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### EXHIBIT B.

House Report No. 80. Forty-second Congress, third session.

Mr. SHANKS, from the Committee on Indian Affairs, made the following report, (to accompany bill H. R. 306 :)

*The Committee on Indian Affairs, having had under consideration the bill (H. R. No. 306) making provision for the payment to the Choctaw Indians of the remainder of the net-proceeds claim, and also the letter of the Secretary of the Treasury, of January 6, 1873, (Ex. Doc. No. 69, 42d Congress, 3d session,) in relation to the payment of \$250,000 in bonds of the United States, being part of said net-proceeds claim, respectfully submit the following report:*

1. Before entering upon the consideration of the subject of the *financial* relations of the Government of the United States with the Choctaws, the committee call attention to the *practical* relations between the two contracting parties at the dates of the several treaties of 1820, 1825, and 1830, which will be especially referred to in this report, and the last of which treaties is that on which the *net-proceeds claim* of the Choctaws (of which the \$250,000 bonds in question constitute a part) is based.

2. That the United States was an organized, powerful, and well-established government, with competent officials, executive, legislative, and judicial, to manage its business in making and executing its treaties and other laws.

3. While, on the other hand, the Choctaws were, at those dates, a people less than 22,000 population, then decreasing in numbers, located within the organized State of Mississippi, without treaties providing against the extension of State authority over them, and thus placed under conflicting State and national jurisdiction, without learning, or printed or written laws, keeping no records, without a knowledge of business other than the ordinary barter or exchange of one commodity in kind for another in present, embarrassed by the pressure of white settlements upon them, fearing State or other local authority, confiding solely in the integrity and good wishes of the United States Govern-

ment, and relying upon it for protection under the second article of the treaty of Hopewell, of January 3, 1786, and subsequent treaties.

4. Treaties, laws, titles, records, written or printed evidence, accounts, and accounting, touching the transactions between the Choctaws and the United States, were in possession of the United States Government, and not with the Choctaws, and have so remained to this time.

5. The United States is, both by treaty stipulations and by local and political necessity, the protector and guardian of the persons and property of the Choctaws, (and of all other Indians within our national boundaries,) and, in matters of dealing, the *trustee and custodian* of their funds and other properties, and, in every sense of law and equity, bound to the utmost good faith in the administration of justice to the Indians, through the evidence of the Government's own records, to these its own wards.

6. The *explanations and references* of the committee touching the subject-matter of this report, namely, "*the Choctaw net-proceeds claim*," cover in part the several treaties between the United States and the Choctaws—

Of Doak's Stand, October 18, 1820, proclaimed January 8, 1821. (See 7th vol. Statutes at Large, page 210.)

That of January 20, 1825, proclaimed February 19, 1825. (See 7th vol. Statutes at Large, page 234.)

\* That of Dancing Rabbit Creek, September 27, 1830, proclaimed February 24, 1831. (See 7th vol. Statutes at Large, page 333.)

That between Choctaws and Chickasaws, of January 17, 1837, proclaimed March 24, 1837.

That of June 22, 1855, proclaimed March 4, 1856, including lease of lands west of 98 degrees. (See vol. 11, Statutes at Large, page 611, sections 9 and 10.)

And that of April 28, 1866, proclaimed July 10, 1866. (See vol. 14, Statutes at Large, page 769.)

Together with the acts of Congress of March 3, 1837, (see vol. 5, page 180;) February 22, 1838, (vol. 5, page 211;) August 23, 1842, (vol. 5, page 515;) March 3, 1845, (vol. 5, page 777;) July 21, 1852, appropriation bill, (vol. 10, page 19;) August 30, 1852, appropriation bill, (vol. 10, page 42;) March 3, 1853, appropriation bill, (vol. 10, page 227;) March 3, 1855, appropriation bill, (vol. 10, page 675.)

Action of Senate under treaty of June 22, 1855, of March 29, 1859. (See Senate Journal Thirty-fifth Congress, page 493.)

March 2, 1861, appropriation bill, (vol. 12, page 238.)

Act of July 5, 1862, appropriation bill, (vol. 12, page 528.)

Act of February 22, 1862, (vol. 12, page 614.)

July 27, 1868, appropriation bill, (vol. 15, section 5, page 223.)

March 3, 1871, appropriation bill, (vol. 16, page 570.)

And to the favorable action and report of Committee on Indian Affairs of the House; and of same committee July 6, 1868, (report No. 77, 40th Congress, 2d session.)

To favorable report of the Committee on Indian Affairs of the Senate, of June 19, 1860, (report No. 283, 36th Congress, 2d session;) of January 5, 1871, (3d session, 40th Congress,) and of January 22, 1873, (report No. 318, 42d Congress, 2d session.)

To favorable report of the Judiciary Committee of the Senate, June 22, 1870, on bill No. 973.

Report of the Attorney-General, December 15, 1870, (attached to Senate report No. 318, 42d Congress, 3d session.)

To favorable report of the Judiciary Committee of the House, February 27, 1871, (No. 41, 41st Congress, 3d session.)

To favorable report of Committee on Appropriations of the House, (vol. 67, folio 2708.)

Report of the Secretary of the Interior, of 1859, March 9, made to both Houses of Congress, stating in detail the accounting with the Choctaws, with balance due to them, and statement of the Commissioner of Indian Affairs of February 2, 1872, on House bill No. 306.

HISTORY OF THE CHOCTAW NET-PROCEEDS CLAIM, (TREATY OF OCTOBER 18, 1820.)

7. That the treaty between the United States and the Choctaw Nation of Indians, made on the 18th day of October, 1820, at Doak's Stand, Mississippi, was, as set forth in the preamble to that treaty, "freely and voluntarily made" by both parties thereto, and in this respect was unlike that made at Dancing Rabbit Creek, nearly ten years afterward, on September 27, 1830. (For treaty of October 18, 1820, see 7th vol. Statutes at Large, page 210.)

8. The treaty of October 18, 1820, (as appears by its preamble,) was made by both parties thereto, "to promote the civilization of the Choctaw Indians."

The commissioners who entered into this treaty upon the part of the United States were Generals Andrew Jackson and Thomas Hinds.

9. That the mode proposed and adopted by the United States and Choctaws to effect this desired civilization was (as set forth in the preamble to said treaty of 1820) twofold :

First. "By the establishment of schools among them." And to do this, it was provided by article 7 of said treaty that "out of the lands ceded by the Choctaw Nation to the United States, the commissioners aforesaid, in behalf of said States, further covenant and agree that fifty-four sections, of one mile square, shall be laid out in good land by the President of the United States, and sold for the purpose of raising a fund to be applied to the support of the Choctaw schools on both sides of the Mississippi River." It will be seen by this article that "fifty-four sections of one mile square" each, of "good land," being 34,560 acres, were to be set apart and sold for these Choctaw schools. "Three-fourths" of the fund thus to be raised was to be expended east of the Mississippi River, and the remainder "for one or more" schools west of the same.

Second. The second proposition adopted in said treaty of 1820, in support of this desired "civilization of the Choctaw Indians," as stated in the preamble to the treaty, was "to perpetuate them as a nation by exchanging for a small part of their land here [meaning Choctaw lands in Mississippi] a country beyond the Mississippi River, where all who live by hunting, and will not work, may be collected and settled together," (meaning the lands the Choctaws purchased west of the Mississippi.)

10. That for these two purposes namely, "to establish schools among them" and to perpetuate them as a nation by exchanging, for a small part of their lands "in Mississippi," "a country beyond the Mississippi River," the Choctaws, by the first article of the treaty of October 18, 1820, ceded to the United States a tract of land in Mississippi amounting to 4,150,000 acres in one body, being a small part of their lands then owned by them in that State, and comprising more than half of the river-front of that State, and very valuable for farming purposes, and the richest cotton-lands in the State. These lands, conveyed to the

United States by the Choctaw treaty of 1820, were in the organized and rapidly improving State of Mississippi, of great value to the State and to those who purchased them for settlement. (This cession of 4,150,000 acres by the Choctaws to the United States was the consideration in full for all the provisions of the treaty of 1820, including schools and lands west.)

11. In part consideration for the 4,150,000 acres ceded to the United States by the treaty of October 18, 1820, the United States, by the second article of that treaty, ceded to the Choctaw Nation a tract of country west of the Mississippi River, in the following words :

ARTICLE II. 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, situated between the Arkansas and Red Rivers, 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 into Red River on the north side; thence in a direct line to the beginning.

This cession included all the lands the Choctaws have ever owned or held by cession from the United States west of the Mississippi River, and are the same lands a part of which the Choctaws still own and reside upon, and are situated in the southern part of the Indian Territory.

This is all the committee need to say touching the treaty of October 18, 1820.

#### TREATY OF JANUARY 20, 1825.

12. That on the 20th day of January, 1825, the United States and the Choctaws made another treaty, by the first article of which the Choctaws re-ceded to the United States "that portion of their lands ceded to them by the second article of the treaty of Doak's Stand, [meaning the treaty of October 18, 1820,] lying east of a line beginning on the Arkansas one hundred paces east of Fort Smith, and running thence due south to Red River," (being that portion of the lands the United States had, by the second article of the treaty of October 18, 1820, ceded to the Choctaws, but which was found to be within the then Territory, now State, of Arkansas,) for which recession the United States agreed, by the second article of the said treaty of January 20, 1825, "to pay to the said Choctaw Nation the sum of \$6,000 annually forever," thus showing that the United States recognized by this treaty of 1825 two important facts in the progress of this investigation :

First. That the *title to the country west of the Mississippi River* passed from the United States to the Choctaws by the provisions of the second article of the treaty of 1820; and,

Secondly. That full payment was made therefor in the transfer of the lands ceded by the Choctaws to the United States, by the first article of said treaty of October 18, 1820. Otherwise the amount of \$6,000 per annum forever would not have been allowed, but would have been balanced against any former liability that might have existed. But of the fact that the lands ceded to the Choctaws lying west of the Mississippi River were fully paid for by the Choctaw cession of 1820, there is no controversy, and no room for one.

#### TREATY OF SEPTEMBER 27, 1830.

13. The committee now come to the consideration of the treaty of September 27, 1830, out of which has grown the *Choctaw net-proceeds claim*, and no part of which claim antedates that treaty.

14. Any cession by the Choctaws to the United States of lands east of the Mississippi River subsequent to the 18th day of October, 1820, must be accounted for by the United States in some mode other than the lands west of that river, as there has been no addition to that tract since 1820. And it was fully paid for by the cession of the 4,150,000 acres made by the treaty of October 18, 1820, as above stated, and as will fully appear by referring to the treaty.

15. There was not only no additional cession of lands to the Choctaws from the United States by the treaty of 1830, but there was no additional title given or granted. The title directed by article second to be given to the Choctaws for their country west was "in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it." This adds nothing to the title they held under the treaty of October 18, 1820, to these lands. The title is not limited by the treaty of 1820 in its cession, and must be presumed to be a good and perfect one. The United States cannot claim that it is less.

16. The second article of the treaty of September 27, 1830, in terms, limits, rather than extends, the title to the lands lying west of the Mississippi River, and only grants a conveyance of lands then long since sold to, and paid for by, the Choctaws.

17. The law of Congress passed May 28, 1830, some months prior to the date of the treaty of September 27, 1830, provides "that it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there."

And the third section of said law empowered the President "solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them, and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands revert to the United States if the Indians become extinct or abandon the same."

18. The treaty of September 27, 1830, was made in the spirit of the law of May 28 of the same year, above quoted, in these particulars:

First. The Choctaws resided, in part, east of the Mississippi River.

Secondly. The Choctaws resided in the organized State of Mississippi.

Thirdly. The Choctaws owned at that time 10,425,139.69 acres of land, in one body, in said State of Mississippi.

Fourthly. The State of Mississippi had, by act of its legislature, dated in 1829, extended, or attempted to extend, the local or State laws over the Choctaw people, thus complicating the Government in its treaty-relations with the Indians.

Fifthly. By the second article of our treaty of Hopewell, of January 3, 1786, with the Choctaws, it is provided that "the commissioners plenipotentiary of all the Choctaw Nation do hereby acknowledge the tribes and towns of the said nation, and the lands within the boundary allotted to the said Indians to live and to hunt on, as mentioned in the third article, to be under the protection of the United States of America, and of no other sovereign whatsoever."

Sixthly. The course adopted by the State of Mississippi was necessa-

rily compelling a conflict of authority between the United States and the State of Mississippi, or else an abandonment by the United States of its former treaty-stipulations with the Choctaws, and a gross violation of its agreements with them, by which it had received of the Choctaws vast tracts of country in said States of Mississippi and Alabama.

Seventhly. The people of Mississippi were pressing the Government and the Indians for those Indian lands, demanding them for settlement.

Eighthly. It was under this condition of things that the treaty of September 27, 1830, was impelled, forced upon, but not desired by, the Choctaws.

The Secretary of War informed them, by letter dated the 1st of June, 1830, that they could not remain where they were and be a happy and prosperous people; that Congress would not, because they could not, interfere to prevent the States extending their laws over them; and that, of course, it was now for the Choctaws to decide whether they would submit to those laws upon their people or go beyond the Mississippi, where they could be under their own laws and upon their own land, with none to interrupt them. (Sen. Doc. 512, Indian Removal, vol. 2, 1st sess. 23d Cong., p. 4.)

The Secretary of War (Maj. John H. Eaton) and Gen. John Coffee, sent as commissioners to treat with them, with positive instructions to procure a cession of all their lands on any terms, said to them: "Are you willing to remain here and live as white men? Are you willing to be sued in courts; there to be tried and punished for any offense you may commit; to be subject to taxes; to work upon roads, and attend in musters? For all these you must do. If you are satisfied that under such a condition of things you cannot be happy, consent to remove beyond the Mississippi. Neither he [the President] nor Congress possesses authority to prevent the States from extending their jurisdiction over you and throughout their limits. After the present time we shall no more offer to treat with you. You have commissioners in your country for the last time. Hereafter you will be left to yourselves and to the laws of the States within which you reside; and, when weary of them, your nation must remove as it can, and at its own expense." (*Ibid.*, 256-258.)

They also told them that the country west of the Mississippi was not *sold*, but *given*, to their people, because that ceded by them by the treaty of Doak's Stand was fully paid for otherwise. That was positively untrue, because the preamble of that treaty expressly declares that part of the land east of the Mississippi was *exchanged* for the country beyond that river; and article 2 expressly cedes to the Choctaws the land west "*in consideration* of the foregoing cession [in Article 1] on the part of the Choctaw Nation, and *in part satisfaction* for the same."

But the commissioners made the statement, nevertheless; and they imperatively told the Choctaws, thereupon, that they must give up either one country or the other; that it was the understanding, in 1820, that all the Choctaws would remove, [which was also wholly untrue,] and that, if they did not, the land west of the Mississippi would be given to other tribes. (*Ibid.*, 258.)

In the West, the commissioners said, the United States would protect them, preserve them at peace with themselves and all mankind, perpetuate them as a nation, and render them a happy and prosperous people. "Here," they added, "you cannot be so. It is idle to indulge such dreams of your fancy—dreams which are entirely deceptive, and from which nothing of pleasing reality will ever come. Every day's observa-



tion shows wretchedness and distress will be yours, to remain where you are. The kind and friendly feelings of your Great Father will be insufficient to preserve you from these inevitable results." (*Ibid.*, 257.)

"If you prefer to live under our laws and customs," they said, "remain and do so, and surrender the lands assigned to you west of the Mississippi, or otherwise remove to them." (*Ibid.*, 258.)

As they still declined to sell, the Secretary again told them that the President could not possibly prevent the extension of the State laws over them; that the Government intended this to be the last treaty ever held with them, and that it was certainly the last time that commissioners would appear in their nation to talk with them on this subject. (*Ibid.*, 260.)

The treaty was not read at the time when it was signed. It had been read over the day before, when the Indians were engaged in conversation and did not listen. The Secretary's final address was intended to alarm them, in which he portrayed the evils that would be entailed upon them by the entire destruction of their nationality and their subjugation under the State laws, and threatened them with the immediate withdrawal of the protection of the United States. He then placed the treaty on a table in front of him, and urged them to come forward at once and sign it. The speech produced a general panic among them, and in the midst of great confusion and excitement the treaty was immediately signed, without being read again or understood by the Indians. The supplement was afterward signed under the same state of feeling.—*Letter of General Grant, Choc. Corr.*, p. 47.

So great an excitement was caused that those who signed the treaty were afraid to remain on the ground, and the commissioners, apprehensive of serious consequences, left without furnishing the Indians with a copy of the treaty. When copies were afterward furnished, the nation would with one voice have protested against the ratification of the treaty had not the United States agent, by intimidation, prevented it. They understood it to contain all the beneficial provisions promised by the commissioners, and yet were only brought to sign it "under the controlling influence of fear, coercion, and duress."—*Same Letter of General Grant.*

19. The committee are of the opinion that the Choctaws did not either make or sign the treaty of September 27, 1830, of *their own free will and accord*. This is evident from its preamble, which reads as follows:

Whereas the general assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws: Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi, and have, accordingly, agreed to the following articles of treaty.

But, upon the contrary, the committee believe that it was the desire of the Choctaw people to remain on the lands owned and occupied by them in the State of Mississippi at the date of that treaty, and that they were induced to sign the treaty of that date (having little to do with making it) through fear and compulsion; that they believed the United States would abandon them to the State authority of the State of Mississippi, which had already given an indication of its purposes, too plain to be misunderstood, of its intention to compel the Choctaws to submit to local State authority, which they dreaded and feared, and from which they were induced to remove.

INDUCEMENTS AND PROMISES HELD OUT AND MADE TO THE CHOCTAWS  
TO PROCURE THEM TO MAKE THE TREATY OF 1830.

Major Eaton (Secretary of War) and General Coffee said in their first talk to them: "*It is not your lands, but your happiness, that we seek to obtain. We seek no advantages; we will take none. Your Great Father would not approve such a course. He has sent us, not as traders, but as friends and brothers, and to act as such.*" (Doc. 512, above cited, pp. 256, 257.)

When they declined to treat, the Secretary again told them that "their object, he well knew, was to claim the best bargain they could, and the commissioners were prepared to give them one, in all respects liberal, to the extent that they could hope the Senate of the United States would ratify. They had come as friends, and at their own request, to protect them from injury, *not to cavil with them about prices.* Their object was merely the possession of the country, *without regard to anything of value or profit to be obtained from the sale of the lands.*"—*Do.*, 260.

He told them, he says himself in his concluding address, that the United States *did not want their land for any purpose of profit*, but only to have jurisdiction over their country, and save them from the encroachments of the whites. And these declarations, he says, with those that if a treaty were not made the President would withdraw the agent and leave them under the State laws, had great influence with them, and *thereupon they hastily came forward and signed the treaty.*—*Letter of Major J. H. Eaton, Choct. Corr.*, 45.

"The idea that the United States sought any pecuniary profits from their lands, or desired anything beyond a mere jurisdiction over the country, was emphatically disclaimed in the address I made to them. Added to this was a stipulation that the lands should remain a trust for the fulfillment of the engagements of the treaty. These two circumstances might well have induced the Indians to believe, as they now state, that the net proceeds of the sale of their country was to inure to them."—*Same letter of General Eaton, above cited.*

Many protestations and promises were resorted to, all intended to impress the Choctaws with the belief that they would get the full value of their lands. "The idea that the Government desired nothing but the right of jurisdiction, and that all else was to be for the benefit of the Indians, was repeatedly presented, and with special emphasis."—*Letter of General R. H. Grant, Choct. Corr.*, 46.

Thus urged by fear and terror, and at the same time assured that the United States did not desire to make any profit out of their lands, but were willing to give them the whole benefit of their value, they made the treaty.

20. The Choctaws, having, by the treaty of 1830, been induced to sell their homes east of the Mississippi River against their desire, and that, too, in the interest of the United States, to relieve it of the impending conflict of authority with the State of Mississippi, and from the treaty stipulations with which the United States was incumbered for the protection of the Choctaws in their homes in Mississippi, as above shown, and in the interest of the State of Mississippi in the free advancement of its settlements and commercial interests, and of the people of said State and United States, while it was to the great detriment and mortification of the Choctaw people and great pecuniary loss to them, justice demands that the equities of the case should be granted to the Choctaws, as set forth in words in the last lines of the eighteenth article of

the treaty of 1830, in these words: "And further it is agreed that in the construction of this treaty, (treaty of September 27, 1830, 7th vol. Statutes at Large, p. 236,) wherever well-founded doubts arise, it shall be construed most favorably toward the Choctaws."

21. Though the treaty of September 27, 1830, is in spirit and initiative like the law of May 28 of the same year, yet it is wholly unlike it in its results; for while the law of May 28 anticipated an exchange of lands of the United States west for lands held by the Indians east of the Mississippi River, and in the case of other tribes the law was complied with in spirit and in fact, yet in the case of the Choctaws, not one acre of land west of the Mississippi, or elsewhere, (except part of the reservations under it,) was exchanged, given, or granted for the tract of 10,423,130 $\frac{69}{100}$  acres ceded by the Choctaws to the United States by the third article of said treaty of September 27, 1830.

As evidence showing the amount of land ceded by the Choctaws by the treaty of 1830, the committee insert the following:

DEPARTMENT OF THE INTERIOR,  
General Land-Office, March 21, 1860.

SIR: A tedious and laborious investigation was necessary to obtain the information requested in the letter addressed to this office by the Acting Commissioner of Indian Affairs on the 26th of March, 1859, and which I have now the honor to communicate, as follows:

1st. According to the plats of survey on file in this office, the whole number of acres of land embraced in the cession made by the Choctaws in the treaty of September 27, 1830, was 10,423,139 acres.

2d. The portion thereof which had been sold by the United States on the 1st day of January, 1859, is 5,912,664.63 acres.

3d. The cost of "surveying" and "selling" merely, not including annuities, &c., of these particular lands, as stated in a report made to your Office on the 1st of May, 1858, is ten cents per acre.

4th. "The aggregate amount received for this portion so sold," \$7,556,568.05.

5th. The quantity of land contained in all the "reservations allowed and secured" under the provisions of said treaty is 334,101.02 acres.

I am, sir, very respectfully, your obedient servant,

JOSEPH S. WILSON,  
Commissioner.

HON. ALFRED B. GREENWOOD,  
Commissioner of Indian Affairs.

22. Everything of value that the Choctaws received for the 10,423,139.69 acres of land lying in Mississippi, ceded by the third article of that treaty of September 27, 1830, may properly be classed under the following headings, namely: First, moneys; secondly, reserved lands; thirdly, certificates (called scrip) of entry, compulsorily given by the Government in lieu of the lands that large numbers of the Choctaws were entitled to, but which the United States sold from them in violation of the treaty of 1830. All of which is declared in the laws providing for the scrip.

23. And of these in their order. Under the fifteenth article, the following payments are provided for, showing, also, amounts paid thereon:

Salary of three chiefs, \$250 each annually, for twenty years.....	\$15,000 00
Amount paid.....	12,921 25
Salary of principal chief, \$500 per year for twenty years.....	10,000 00
Amount paid.....	None.
Salary of three speakers, at \$25 each per year, \$75 for four years.....	300 00
Amount paid.....	354 66
Salary of three secretaries, \$50 each per year, \$150 for four years.....	600 00
Amount paid.....	550 00

Cloths and swords for ninety-nine captains.....	\$5,000 00
Amount paid.....	4,930 50
Ninety-nine captains' services in settling Choctaws west, \$50 each, \$4,950 for four years.....	19,800 00
Amount paid.....	16,604 65

24. The sixteenth article provides for the removal of the Choctaws to the West, and their subsistence for one year *at the expense of the United States*. It will be seen, however, by reference to the account rendered to the Senate by the Secretary of the Interior under date of March 9, 1859, that this item, amounting to \$1,314,483.94, is charged against the Choctaws in considering their claim to the *net proceeds* of their lands sold to the United States by the treaty of 1830.

25. The sixteenth article also provides that the United States shall take the Choctaws' "cattle at the valuation of some discreet person, to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes." Yet it will be found that in the statement of account of March 9, 1859, as above referred to, the *Choctaws are charged with the sum of \$14,283.28*, amount paid for their cattle. And instead of being allowed by the payment for them, as provided in the treaty, this sum is actually charged against them in the accounting for the net proceeds of their lands. Thus we pay them for their land with their own cattle.

The Choctaws were—in the Secretary's account for 1859—also charged with the expense of the commissions, appointed by the United States under the laws of Congress of 1837, 1838, and 1842, to determine how much the United States had wronged them—with the scrip we compelled them to take in lieu of their homes that we had sold, and with the expense of delivering the scrip to them, and with attorney's fees and other expenses allowed to our officers in the matter. These items, and others, that will become patent to any one on reading the treaties and Secretary's accounting, are without equity and without justice.

26. The seventeenth article provides for the payment by the United States of an annuity of \$20,000 for twenty years, aggregating in the twenty years \$400,000. Upon this, however, there was no interest.

27. The twentieth article provides that the United States shall make the following expenditures for the Choctaws:

First. The education, under the care of the President, of forty youths, continuing the succession for twenty years. This expense aggregated.	\$217,260 73
Secondly. The erection of a Choctaw council-house, which cost the United States.....	9,446 75
Thirdly. The support of three teachers, at \$2,500 per year, for twenty years.	50,000 00
Fourthly. Three blacksmiths, for sixteen years.....	38,988 86
Fifthly. One millwright, for five years.....	3,050 00
Sixthly. Two thousand one hundred blankets.....	7,496 70
Seventhly. To warriors who emigrated, a rifle, mold, wipers, and ammunition, in all.....	43,969 31
Eighthly. One thousand axes, plows, hoes, wheels, and cards, each.....	11,420 20
Ninthly. And four hundred looms.....	7,193 53
Tenthly. Iron and steel to each district, for sixteen years, making in the aggregate.....	8,051 15
Total.....	396,947 25

28. The twenty-first article provides for the payment to "a few Choctaw warriors" who "yet survive, who marched and fought with General Wayne," (the whole number stated not to exceed twenty,) of \$25 a year each, while they should live, after the date of said treaty. This was in the nature of a pension of one-fourth what was allowed white

soldiers. And yet, by the wording of the treaty, it is held, to the full amount thus paid, as a payment on the lands we purchased of the Choctaws by this treaty, as will be seen by the Secretary's report to the Senate, March 9, 1859. That this is an unjust thing needs no proof. Its recital is its own condemnation, and yet the Choctaws submitted to it in order to secure a settlement of their claim for the lands they sold by the treaty of 1830.

29. The fourteenth article is here inserted, as it opens the door widely for any Choctaw head of a family to reserve his homestead, amounting to 640 acres, and 320 for each child over ten years of age, and 160 acres for each child under ten years, and to be adjacent to the homestead of the parent. It is in these words:

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.

This article evidently applies to any Choctaw head of a family, a widow as well as a warrior, and could extend to any other person who was the head of a family.

30. The great latitude given in this article to "each Choctaw, head of a family," together with the amount of land that could be by each family reserved, made this the most valuable article in the treaty to the Choctaws, and, if it had been faithfully carried out, would have done much to save them from the great waste of property that fell upon them as the result of its violation. The more civilized Choctaws could have had the benefit of their labors, and prospered in the civilization and citizenship that they were willing to adopt. But that the Choctaws were deprived of treaty-rights under this fourteenth article almost entirely is proven by the small amount of land secured by them under it, and by the laws of Congress passed to make amends for it, and especially the act of 1842, directly confirming the fact, and in part making restitution, by the issue of certificates of entry, (afterward, by the law of 1845, called "scrip,") in lieu of their homestead reservations under the treaty of 1830, to those Choctaw heads of families and their children whom the Government, by its own commissioners, showed had been wronged.

31. While the fourteenth article of the treaty of September 27, 1830, provided that "each Choctaw, head of a family, who applied in six months," &c., could hold a reservation, it will be seen that it was entirely indefinite as to the amount of lands it would cover, because indefinite as to the number who would apply for such reservations, and therefore proof of the number of claimants under the fourteenth article of the treaty was not only admissible, but absolutely necessary to an intelligent settlement of these claims; and this view was officially recognized and re-affirmed by the action of Congress in the passage of the acts of 1837, 1838, and 1842, appointing commissioners to investigate the facts, and partially settling them by the issue of scrip, and by the treaty of 1855, providing especially for the mode and fact of their final settlement, and the

settlement of other claims, under the treaty of 1830, by the Senate, the providing especially for the mode and fact of their final settlement, the consummation of which the Choctaws now ask. But the land-reservations provided for in the fifteenth and nineteenth articles, and in the supplement to the treaty, (see 7th vol. Statutes at Large, page 340,) are fixed and definite, either as to the persons and amounts or to the class of persons and amount, with such limitations as render it certain as to the amount of lands to be claimed. But still these articles and the supplement to the treaty of 1830, though more definite in terms, would avail little to the Indians if the parties entitled were by force or fraud prevented from taking under these treaty provisions. They were, under the fourteenth article, as the Government records prove, and the law of 1842 with the proceedings under it establish the fact, that four-fifths of the Choctaw heads of families entitled, under the fourteenth article, were deprived of their homes and reservations for the reason that their homes were sold by the Government years ago, in direct violation of the treaty.

32. The landed provisions of the fifteenth article are to the three chiefs in the Choctaw Nation, namely, Greenwood Laflore, Nutackachie, and Mushulatubbe, four sections each, or 7,680 acres in all.

33. The nineteenth article reserves to a David Folsom four sections, or 2,560 acres; to I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchlynn, Charles Juzan, Johoketotubbe, Eazchachia, Ofeloma, two sections each, or 10,240 acres in all. And further—

To not more than 40 persons, 640 acres each.....	25, 600
To not more than 460 persons, 480 acres each.....	220, 800
To not more than 400 persons, 320 acres each.....	128, 000
To not more than 350 persons, 160 acres each.....	56, 000
To not more than 350 persons, 80 acres each.....	28, 800
To 90 captains, 320 acres each, additional.....	28, 800
To 134 ophans, 160 acres each.....	21, 440
Whole amount of reservation in supplementary treaty, being.....	59, 040
Number of acres which the Choctaws are entitled to reserve, under nineteenth articles treaty of 1830.....	571, 280

34. The whole amount of special reservations, being all of those provided for in articles fifteen and nineteen, and the supplement, aggregate 578,960 acres. The whole amount of lands "allowed and secured," under all the provisions of the treaty of 1830, was only 334,101.69 so that there was a deficiency of 244,859 acres to cover the fifteenth and nineteenth articles, and supplement, and not an acre to cover the fourteenth article. But if the 334,101.69 acres were allowed to heads of families under the fourteenth article, and are to be applied on that article, then the fifteenth and nineteenth, and supplement, are deficient to the whole amount of the 578,960 acres.

25. The Choctaw estimate of the number of families who desired to avail themselves of the benefits of the reservations provided for in the fourteenth article, was 1,600, taking the estimate of seven persons to a family, as is claimed by the Solicitor's report is the proper estimate. It gives one head to the family, and at least five children, and, if one of the parents be dead, then six children; but count one head and five children, and the account will stand thus:

1,600 heads of families, at 640 acres.....	1, 024, 000
4,300 children, over ten years, at 320 acres.....	1, 536, 000
3,200 children, under ten years, at 160 acres.....	512, 000

**Making the total number of acres to which those who desire to take under the fourteenth article to be.....** 3, 072, 000

But the committee believe that this estimate is too high, as seven is more than an average of numbers of white families. And it is a fact well known that persons living nomadic or exposed lives do not increase in population so rapidly as those who have the protection and care of civilized and quiet life. The committee think that five would be a high number, allowing one head of family and three children. In proof of this, the certificates or scrip allowed by the law of 1842 in lieu of lands that the United States had sold from the Indians, the number stands thus: Heads of families, 1,155; children over ten years, 1,470; children under ten years, 1,219; *about two children to a family. This scrip issue is conclusive on that point and needs no further proof.* The statement of Solicitor Banfield that seven (7) was an average Choctaw family grates harshly on the action of the Government in the issue of scrip for only *two children to a family, or four persons at most.* Mr. Banfield's report is unfortunately based upon the gleanings of the records of attorneys, who labored, under a prospective fee of \$30,000, to defeat the Choctaws in their demands for redress under the treaties of 1830 and 1855.

It is not just to the House or to the public service.

#### INDORSEMENTS OF THE NET-PROCEEDS CLAIM.

36. The committee call attention to the following indorsement of this *Choctaw net-proceeds claim* made by the Government and by different officers thereof. *It is founded on the treaty of September 27, 1830.*

37. Under the several provisions of that treaty the United States entered upon, surveyed, and sold all the lands granted under the treaty to the United States, excepting the 334,101 reservation acres, the United States receiving and disposing of 10,089,038 $\frac{67}{100}$  acres for its own use.

38. March 3, 1837, Congress passed "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830 with the Choctaw Indians," thus recognizing the violation of the treaty by the United States. (See vol. 5, Statutes at Large, page 180.)

39. February 22, 1838, (see Statutes at Large, vol. 5, page 211,) Congress passed an act amending the act of March 3, 1837, above referred to, relative to commissioners, enlarging their powers and directing their action. This act recognizes the fact that the treaty of 1830 had been violated by the United States.

40. August 23, 1842, (see Statutes at Large, vol. 5, page 515,) Congress passed an act "providing for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, 1830;" in the third section of which it is enacted as follows: "But if the United States shall have disposed of any tract of land to which any Indian was entitled under the provision 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, or the adjoining lands, the said commission 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 agents as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw terri-

tory west of the Mississippi River." This is full acknowledgment of the fact that the United States had violated the former nineteenth and fourteenth articles of the treaty of 1830.

41. Extract from a report of the Commissioner of Indian Affairs to the Secretary of the Interior, dated May 15, 1858, showing the amount of scrip allowed to Choctaw Indians, in lieu of lands to which they were entitled under the provisions of 1830. The following table shows when this scrip was issued and paid. This is the half of the scrip that was delivered to the Choctaws before they went west of the Mississippi River:

Names of agents and when they paid it.	Heads of families.	Children.	
		Over 10.	Under 10.
John J. McRae, from June, 1843, to March, 1845 .....	95	120	125
Maj. William Armstrong, from February, 1845, to June, 1847 .....	406	535	460
Col. S. M. Rutherford, from April, 1848, to June, 1849 .....	229	276	169
Col. John Drennen, from August, 1849, to May, 1851 .....	143	171	127
Col. John Drennen, by William Wilson, clerk, from May, 1850, to July, 1851 ..	24	31	25
Col. J. H. Bowman, from August to November, 1851 .....	253	335	309
Whole amount paid out .....	1,150	1,468	1,215
Eleven pieces of scrip returned by Colonel Bowman .....	5	2	4
Whole amount allowed and issued .....	1,155	1,470	1,219

42. But if the United States shall have disposed of any tract of land to which *any Indian* was entitled, "and so that it is now impossible to give *said Indian* the quantity to which he was entitled," &c., together with the law and issue of the (scrip) certificates, leaves no question of the aggression upon the Indians and the violation of the treaty rights, the only question now being the extent of the aggressions.

43. That the United States should by law compel the Choctaws to take scrip or certificates of equal acres of wild land for their improved homes from which they had been driven, and the land sold in violation of the solemn treaty provisions, seems to be hardship enough; but when only half of those certificates were allowed to them while they were where they could lay them, and the other half only allowed to be paid when they should have gone outside of either of the States in which they were authorized to lay them, adds to the wrong, and leaves no doubt on any fair mind that the Choctaws were harshly dealt with by the United States. The following is the same referred to in the above table, being that first half of the scrip which was issued under the law of August 23, 1842, to the Choctaw claimants who had lost their land before they went west; 1,155 pieces were issued in favor of heads of families, being for one-half section each; 1,470 pieces of a quarter-section each, for children over ten; and 1,219 pieces of eighty acres each, for children under ten at the date of the treaty; making an aggregate of 702,320 acres, which is only half of the land these claimants were entitled to under the fourteenth article of the treaty of 1830. The other half was not deliverable until claimants had gone west, which became the item of \$872,000, receipted for by the Choctaw council, which has been so unjustly quoted against all claimants.

44. March 3, 1845, (see Statutes at Large, vol. 5, page 777,) Congress, in an appropriation act, provided that of the scrip which *has been awarded* or which *shall be awarded* to the Choctaw Indians under the provisions of the law of the 23d of August, 1842, that portion thereof *not deliverable east*, by the third section of said law, "*shall carry an interest*



of five per cent., which the United States will pay annually to the reserves under the treaty of 1830, respectively, or to their heirs or legal representatives forever, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre." The amount of scrip funded for the benefit of fourteenth-article claimants, by the act of March 3, 1845, was \$872,000, counting it at \$1.25 per acre; representing 702,320 acres, (being last half of scrip,) and should have been \$877,900, less \$2,875, being for eleven pieces of scrip returned, equaling in the aggregate 2,300 acres, so that the exact amount funded for the scrip-claimants should have been \$875,025, showing a loss in the item to the Indians of \$3,025, and the act then repeals conflicting statutes.

By this law the United States, of its own will, dictates that it will fund this part of the scrip debt, and pay interest, and not deliver the last half of the certificates of entry to those persons entitled to them by the law, of 1842, and it confirms all former actions in the premises, and provides for interest on those certificates "*which shall be awarded*" by the commissioners under the law of 1843. (For act of March 3, 1842, see Statutes at Large, vol. 5, page 777, confirming the unsettled condition of this matter in 1845, and the Government's liability in prospective.)

45. July 21, 1852, (see Statutes at Large, vol. 10, page 19.) Congress enacted, in a deficiency bill, as follows: "For interest on the amounts awarded Choctaw claimants, under the fourteenth article of the treaty of Dancing Rabbit Creek, of September 27, 1830, for lands on which they resided, but which it is impossible to give them, and in lieu of the scrip that has been awarded under the act of August 23, 1842, not deliverable east by the third section of said law, per act of March 3, 1845, for the half year ending June 30, 1852, twenty-one thousand eight hundred dollars: *Provided*, That after the 30th day of June, 1852, 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 authorities of the Choctaws, in such form as shall be prescribed by the Secretary of the Interior."

46. By this act of July 21, 1852, the United States again peremptorily orders payment of a fund that it had as peremptorily funded on the 30th of March, 1845, at five per cent. interest, forever. It is in connection with the receipting by the Choctaw Nation for these awards, due, as they were, to individuals, arises the error of supposing that the receipts of the Choctaw claims of November 6, 1852, covered the entire claims of the Choctaws under the fourteenth article of the treaty of 1830; when in truth and in fact the receipts only covered one-half of the scrip, namely, that which was not payable east (meaning while claimants remained east of the Mississippi River) under the law of August 23, 1842, and on which interest at five per cent. was allowed by the law of March 3, 1845, and which was ordered paid by the law of July 21, 1852, and had no wider significance than the individual claimants to whom the scrip had been awarded, leaving all claimants under the fourteenth article, to whom no scrip or certificates of entry, in lieu of the homesteads, had been issued, still entitled to satisfaction.

47. The treaty of September 27, 1830, and the laws of Congress of

March 3, 1837, February 22, 1838, August 23, 1842, March 3, 1845, and July 21, 1852, all treat these claims as individual *claims*, in words and in fact, and also the receipt itself refers to the fourteenth article as its basis, and recites the United States failure to comply with its treaty stipulations. And, referring to the appropriation act of July 21, 1852, then says: "Now, be it known that the said general council of the Choctaw Nation do hereby ratify and approve the final payment and satisfaction of said awards, [meaning the awards by the commissioners, under act of 1842, to the claimants named, and to whom scrip was issued,] agreeably to the provisions of the act aforesaid, [meaning act of July 21, 1852,] as a final release of all claims of *such parties*, under the fourteenth article of said treaty," [meaning treaty of 1830.] The words "said awards," and "such parties," render the meaning of the receipt plain, and clearly limit it to the one-half scrip certificates to individual claimants.

48. The committee here append the receipt or release given by the Choctaw council for the amount of \$872,000, being the half of the scrip that was, by the act of Congress of August 23, 1842, not to be paid the individual claimants, under the fourteenth article of the treaty of 1839, until they had gone west of the Mississippi River, and which scrip was funded by act of March 3, 1845, at 5 per cent., forever, and which was ordered paid in the above amount by proviso in an appropriation act of July 21, 1852, (see vol. 10, page 19, United States Statutes at Large,) and upon the receipt of which many of the Choctaw council gave the following release, which is for individual claims only, as fully shown above, and by the scrip itself.

*Copy of release of Choctaw council.*

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 is 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 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 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.

49. The law of July 21, 1852, appropriating \$872,000 to pay for this funded scrip, and ordering that the above receipt be given thereon, directed the Secretary of the Interior to pay said claimants the amount of principal awarded in each *case respectively*. The form of the receipt or release was ordered to be "prescribed by the Secretary of the Interior," so the entire records are in the Secretary's hands, and could have been found there by the Solicitor of the Treasury, and were well

known to the committees of the House and Senate, and are fully covered in the account rendered by the Secretary of the Interior to Congress, made under order of the Senate, March 9, 1859. (See scrip account.)

50. This release can have no further significance than to prevent recovery by any Choctaw head of a family, or child of such, to whom scrip had been issued by the proceedings under the law of August 23, 1842, the half of which lay in the Treasury until 1852, and was, by the law of July 21, 1852, directed paid and received for as above.

51. The United States cannot afford to become a trickster and pettifogger in the management of its business, and nothing short of that intention could account for pleading a special receipt for payment to certain parties whose names are on our own records, to whom this scrip issued as a payment to other claimants whose names are not, and never have been, on that record as holding scrip. That receipt of the Choctaws is for a balance of individual scrip, and for nothing else. There is no fraud in it, for it complies with the law of 1852 directing it. The Choctaws claim nothing that is covered by it, but claim what they have not had, and what they believe they are entitled to—claims for which no scrip ever issued, but which has merged now in the mode adopted by the Senate under treaty of 1855.

52. The law of July 21, 1852, (see p. 19, vol. 10, United States Statutes at Large,) directing the payment of the Choctaws, awards to the several "claimants the amount of principal awarded in each case respectively," provided that the *Secretary of the Interior should pay the claimants*, and also that the *Secretary of the Interior should prescribe a form of release, to be executed by the Choctaw council for the principal of said awards* when paid.

53. The law itself directs where the receipts or release *should be found*. As the *Secretary makes the payment and prescribes the form of release*, it is perfectly plain that he would hold the release when executed by the Choctaw council, and it is hardly probable that at that time the officers of the Government did not know what it was or where it was. An officer who, with the statute of 1852 before him, could not find this receipt, would not be good legal authority upon this case. The receipt was a condition precedent to the payment.

54. With the treaty of September 27, 1830, ceding the 10,423,139.69 acres of land to the United States, the Indian appropriation bills coming annually before the President, the Secretaries of the Interior and Treasury and War, and Congress, in which the Choctaw matters were before them and appropriation made for them annually. And in connection with the provisions of this treaty of 1830, and for expenditures of commissioners sent to investigate these Choctaw claims under the fourteenth and nineteenth articles. Reports of these three several commissions with the report of the Indian agents for the Choctaws; the complaints of the State and people of Mississippi; the reports of the surveyors of these Choctaw lands; the public and private sales of these lands, as known to the public, and recorded in the Land-Office; the act of Congress of March 3, 1837, (vol. 5, page 180, Statutes at Large,) for the appointment of commissioners to examine the Choctaw matters touching the fourteenth article of the treaty of 1830; the act of February 22, 1838, (vol. 5, Statutes at Large; page 211,) amending the act of 1837; the act of August 23, 1842, (see Statutes at Large, vol. 5, page 515,) authorizing the issue of (scrip) "certificates" of entry in lieu of part of these Choctaw claims.

55. The issue under this law by the Secretary of the Interior of 3,844

pieces of scrip, which was delivered, and as many pieces that were to be delivered when the claimants moved west of the Mississippi River, covering in the aggregate 1,399,920 acres of land.

WAS THERE FRAUD OR DECEPTION IN PROCURING THE TREATY OF 1858 ?

The committee think not; and refer to the Government records, official action, and current history, as evidence in support of this view, in addition to the reasonable presumption that there was not.

The act of March 3, 1845, (see vol. 5, page 777, Statutes at Large,) funding the half of the scrip that was to be paid west of the Mississippi River, under third section of the act of August 23, 1842.

The act of July 21, 1852, (Statutes at Large, vol. 10, page 19,) appropriating the \$872,000 to pay this scrip, (funded by the act of March 3, 1845,) and ordering a release of these individual scrip-claims of the parties holding the same under the fourteenth article; the preparation by the Secretary of this release with the payments made under it; the return and filing of this release with the Secretary of the Interior; the removals of Choctaws west from Mississippi, with the notoriety and trouble attending the same, that extended through several years.

56. The reports of the commissioners who removed the Choctaws west of the Mississippi River; the act of Congress of August 30, 1852, (10 vol., page 42, Statutes at Large,) relative to scrip for Choctaws, known as Bay Indians; the act of Congress, March 3, 1853, (10 vol., page 227, Statutes at Large,) relative to Choctaw scrip; the current history of the times of all these varied acts and circumstances, all of which occurred within the space of time from the confirmation of the treaty of 1830, that is, on the 24th day of February, 1831, to the treaty of June 22, 1855, before them in these numerous records. The President, Secretary of the Interior, Secretary of the Treasury, Secretary of War, Commissioner of Indian Affairs, Committees on Indian Affairs of the Senate and the House of Congress, and the Senate and Congress itself, would not all be so careless of duty, or not so disposed against the Government, as to negligently, wrongfully, or fraudulently make, or permit to be made unchallenged, the treaty of June 22, 1855, with direct reference, as set forth in the eleventh and twelfth articles thereof, to a settlement of these Choctaw claims, directing the mode of their settlement, if they did not understand its equities and intend to do justice to Government and Choctaws. With all his information before the President and Senate, and before the Indian Department, Interior Department, and Treasury Department, with all the records of all these facts in our possession as fully as we have now, the President, without opposition or objection from any citizen or official, made the treaty of June 22, 1855, with the Choctaws, and the Senate confirmed it, for the proper adjustment of the case provided for by the eleventh and twelfth articles of that treaty. (See Statutes at Large, page 611, vol. 11.)

57. The eleventh article of the treaty of June 22, 1855, makes the Senate of the United States the umpire to determine the mode of settlement between the Choctaws and United States; and by the twelfth article of the same treaty, the whole subject of the Choctaw unsettled claims arising under the treaty of 1830 are submitted to it for adjustment.

The committee here insert the eleventh and twelfth articles of the treaty of 1855 entire :

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.

58. The Senate of the United States having been, by the eleventh article of the treaty of June 22, 1855, made the umpire to settle the Choctaw claims, and the only record-accounts of the transactions with the Choctaws and between the officers and agents of the United States and the head-men and warriors of that people being in the ownership and possession of the United States Government, the power and the opportunity to do justice to the Government lay fully in the hands of its executive officers and in the Senate, and, through them, in Congress.

59. While the Choctaws, without records of the many facts connected with these matters, with only a knowledge of what justice demanded for them, but without ability to represent or power to enforce their rights, were humbly asking its administration by our Government, under the treaty of September 27, 1830, by the rules laid down in the treaty of June 22, 1855, and in accordance therewith, the Senate of the United States, with full knowledge of all the facts, and in pursuance of the provisions of eleventh and twelfth articles of that treaty, on the 18th day of March, 1856, referred the subject of the Choctaw claims, and the Senate's responsibility thereunder, to the Committee on Indian Affairs of the Senate, for its action and report.

60. On the 15th day of February, 1859, the Committee on Indian Affairs of the Senate submitted to that body an elaborate report, introducing therewith 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 lands 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 had been sold by the United States on the — day of —, deducting therefrom the costs

of survey and sale, and all proper expenditures and payments under said treaty, estimating all the reservations allowed and secured, or the scrip issued in lieu of reservations, at the rate of \$1.25 per acre; and, further, that it is the judgment of the Senate that the lands remaining unsold after said period are worth nothing after deducting expenses of sale.

*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 committee's report, No. 374, 2d session 35th Congress.)

61. And on the 9th of March, 1859, the Senate adopted 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 lands 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, 2d session 35th Congress, page 493.)

62. The action of the Secretary of the Interior is the act of the Senate, as that body was the *umpire*, and directed the accounting to be made in that capacity, under the treaty of 1855. And as the Senate, acting as such umpire, ordered the Secretary of the Interior to report his accounting to CONGRESS, not to the *Senate* only, it waived the further action, and confirmed the Secretary's accounting, and had no further power in the premises as an umpire.

63. In pursuance of this award, the Secretary of the Interior, as directed by the closing resolution, proceeded to state an account between the United States and the Choctaw Indians, upon the principles decided by the Senate in the first resolution, and reported the same to the Senate, May 28, 1860, (Ex. Doc. No. 82, 1st session 36th Congress,) as follows:

64. This subject and the report of the Secretary of the Interior were referred to the committee on Indian Affairs of the Senate, which made to the Senate on June 19, 1860, a labored report, going fully into this whole case, from which the committee make the following extracts:

*Statement of account with the Choctaw Indians, in conformity with the resolutions and decision of the Senate of the United States of March 9, 1859.*

	Acres.
Total area of lands ceded by the Choctaws by the treaty of 27th September, 1830.....	10, 423, 139. 69
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account.....	334, 101. 02
Leaving.....	10, 089, 038. 67
Quantity sold up to January, 1, 1859.....	5, 912, 664. 63
Residue of said lands.....	4, 176, 374. 04

Of this residue, 2,292,766 acres have been disposed of under the swamp-land act, and grants for railroads and school-purposes, up to January 1, 1859.

The proceeds of the sales of the lands sold up to January 1, 1859, viz, 5,912,664.63 acres, amounted to .....	\$7,556,578 05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to .....	522,046 75
	<hr/> 8,078,614 80

From which sum the following deductions are to be made :

- 1st. The cost of the survey and sale of the lands, viz,  
10,423,139.96 acres, at 10 cents per acre ..... \$1,042,313 96
- 2d. Payments and expenditures under the treaty which  
are as follows :

FIFTEENTH ARTICLE.

Salaries of chiefs for twenty years.....	\$12,921 25	
Pay to speaker of three districts for four years.....	354 66	
Pay of secretary for same period.....	550 00	
Outfit and swords to captains, ninety-nine in number .....	4,930 50	
Pay to the same, at \$50 per year, for four years.....	19,604 65	
	<hr/>	38,361 12

SIXTEENTH ARTICLE.

Removal and subsistence, per statement of Second Auditor.....	\$813,927 07	
On same account, per additional statement made in this office for expenditures from 1838 to date .....	401,556 17	
Amount paid for cattle .....	14,283 28	
	<hr/>	1,229 766 52

SEVENTEENTH ARTICLE.

Annuity for twenty years .....	400,000 00
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NINETEENTH ARTICLE.

Fifty cents per acre for reservations relin- quished.....	\$24,840 00	
Amount to orphan reservations .....	120,826 76	
	<hr/>	145,666 73

TWENTIETH ARTICLE.

Education of forty youths for 20 years.....	\$217,260 76	
Council-house, house for each chief, and church for each district.....	9,446 75	
Two thousand five hundred dollars annually for the support of three teachers for 20 years .....	50,000 00	
Three blacksmiths for sixteen years.....	38,988 86	
Millwright for five years .....	3,050 00	
2,100 blankets.....	7,496 70	
Rifles, molds, &c., to each emigrating warrior .....	43,969 31	
1,000 axes, plows, hoes, wheels, and cards..	11,490 20	
400 looms .....	7,193 53	
One ton iron, and two hundred-weight of steel, annuity to each district for sixteen years .....	8,051 15	
	<hr/>	396,947

## TWENTY-FIRST ARTICLE.

Annuity to Wayne warriors.....	\$1,818 76	
3d. Scrip allowed in lieu of reservations, viz, 1,399,920 acres, at \$1.25 per acre .....	1,749,900 00	
Payments made to meet the contingent expenses of the commissioners appointed to adjust claims under the 14th article of the Choctaw treaty of 27th September, 1830.....	51,320 79	
For various expenses growing out of the location and sale of Choctaw reservations, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., incurred in executing the act of 3d March, 1837, and subsequent acts relative to adjusting claims under the fourth article of the treaty of 1830 .....	21,408 36	
For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September, 1830 .....	19,864 00	
Total amount of charges.....	5,097,367 50	\$8,078,614 80
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre .....		5,097,367 50
Leaves a balance due to Choctaws of .....		2,981,247 30

OFFICE OF INDIAN AFFAIRS, *March 22, 1860.*

## APPENDIX B.

DEPARTMENT OF THE INTERIOR, *May 28, 1860.*

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, asking for a statement of the amounts paid and to be paid to the State of Mississippi, under the compact by which she was to receive 5 per cent. of the net proceeds of the sale of the land within her limits, and to inclose, for your information, a copy of the report of the Commissioner of the General Land-Office, to whom it was referred.

It is proper to add that the apparent discrepancy (as to the amount of net proceeds of lands sold up to January 1, 1859) between the report of the Commissioner and the report submitted by me to Congress on the 8th instant, grows out of the fact that, in the latter, the cost of surveying, &c., was estimated at ten cents per acre, while the Commissioner has deducted merely the actual cost of *selling* the land. Should the amount due the State of Mississippi be calculated according to the principles adopted in the report of May 8, the account would stand thus:

Gross proceeds of 5,912,664.63 acres .....	\$7,556,586 05
Deduct cost of survey, &c., at ten cents.....	755,556 80
Net proceeds.....	6,800,911 25
Five per cent. on same.....	340,045 56

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. W. K. SEBASTIAN,  
*Chairman &c., United States Senate.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,  
*May 25, 1860.*

SIR: I have the honor to return herewith the letter, dated 22d instant, from Hon. W. K. Sebastian, chairman of the Committee on Indian Affairs of the United States Senate, by you referred to this office on the 24th of the same. In answer thereto, I have to state that from the books of this office it appears—

1st. That there has been paid to the State of Mississippi, at the rate of 5 per centum on \$7,242,014.29, the net proceeds of the sales, up to the 1st of January, 1859, of 5,912,664.13 acres in the Choctaw cession of 1830, the sum of \$362,100.70. The inquiry in Senator Sebastian's letter is so comprehensive that it may be proper to add—

2d. That there are 282,954.88 acres embraced as *permanent Indian reserves* in said cession, upon which a percentage required by the act of 3d March, 1857, rating the lands at \$1.25 per acre, has been paid to the State, amounting to \$10,610.80.



3d. And likewise upon *Choctaw scrip*, that has been issued, equal to 169,402 acres, valued in like manner, there has been paid \$10,588.62.

The foregoing is not strictly the result of an adjusted account, but is based upon such an investigation as to render it substantially correct.

I am, sir, very respectfully, your obedient servant,

JOSEPH S. WILSON,  
*Commissioner.*

HON. JACOB THOMPSON,  
*Secretary of the Interior.*

JUNE 19, 1860.—Ordered to be printed.

MR. SEBASTIAN made the following report :

*The Committee on Indian Affairs, having had under consideration the report of the Secretary of the Interior, and the account stated under his direction, showing the amount due the Choctaw tribe of Indians, according to the principles of settlement prescribed by the award of the Senate, made by the resolution of March 9, 1859, report :*

That the award in question was made upon the submission contained in the eleventh article of the treaty of 1855, by the twelfth article whereof it is provided that the adjudication and decision of the Senate shall be final.

That in conformity to the terms of the submission, the award of the Senate adjudged and decided that the Choctaws should be allowed the net proceeds of the sales of such of the lands ceded by them to the United States by the treaty of 27th September, 1830, as had been sold up to the 1st day of January, 1859, deducting therefrom the cost of their survey and sale, and all proper expenditures and payments under said treaty, excluding such reservations as had been allowed and secured, and estimating the scrip issued in lieu of reservations at one dollar and twenty-five cents an acre ; and also, that for the residue of said ceded lands they should be allowed twelve and a half cents an acre.

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

On the 19th of March, 1859, the Secretary of the Interior referred the resolution to the Office of Indian Affairs, and on the 8th of May, 1860, after a thorough and searching investigation of nearly fourteen months, the account, finally stated, was reported to Congress, and on the 10th of May was ordered to be printed by the House of Representatives. In the Senate it was referred to this committee, and is appended to this report.

By the account the balance due the Choctaws is shown to be \$2,981,247.30.

This balance is arrived at by crediting the Choctaws with the proceeds of the sales of their lands up to 1st of January, 1859, \$7,556,568.05, and with 12½ cents an acre for the whole residue of the same, except such portions as were covered by reservations allowed and secured, making \$522,046.75 ; or, together, \$8,087,614.85 ; and deducting therefrom—

1st. Ten cents per acre, as the estimated cost of surveying and selling, on all the lands ceded, including all the reservations.

2d. All expenditures and payments under the treaty of 1830, including \$401,556.17, expenses incurred in removing and subsisting the Choctaws, between the years 1838 and 1859 ; and all the expenses incurred in adjusting claims of the Choctaws, under acts of Congress subsequent to the treaty.

The net proceeds of the ceded lands having been by the Senate awarded to the Choctaws, not as a matter of legal right upon the letter of the treaty of 1830, but under the power given by the submission in the treaty of 1855, not alone to decide whether the Choctaws were entitled to those net proceeds, but also whether they should be allowed them, in fulfillment of the duty created by that treaty, to give the rights and claims of the Choctaw people " a just, fair, and liberal consideration ;" because of the impossibility of ascertaining the real amount to which upon a fair settlement the Choctaw Nation and individuals were entitled ; but which amount, it was evident, was of startling magnitude ; as the only mode by which equal justice could by any possibility be done between them and the United States ; and because, under the treaty of 1830, taken in connection with the discussions and propositions that preceded the treaty, their equities to have the net proceeds were very strong indeed ; therefore, it seemed to the committee to be an equitable construction of the award and its true intention that the United States should return to the Choctaws only so much as remained in their hands as profits from the lands ceded by the treaty of 1830, after payment of all expenses and disbursements of all kinds ; and twelve and a half cents per acre for such lands only as still remain in the possession of the United States unsold.

The committee have therefore thought that there should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the 5 per cent. on the net proceeds of the actual sales of said lands, [\$5,912,664.13,] which the United States have paid to the State of Mississippi, amounting to \$362,100.70.

And also that the phrase "*the residue of said lands*" in the award [used instead of the words "*the lands remaining unsold,*" in the submission] should not be construed to include such of the lands as have been given the State of Mississippi under the swamp-land act, nor the grants for railroad and school purposes; but that so much as in the account is allowed for such lands, at twelve and a half cents an acre, [or \$286,595.75,] should also be deducted.

These two amounts, deducted from the balance as found by the account, leave the sum of \$2,332,560.85 due and owing to the Choctaws, according to the award of the Senate, by virtue of articles eleven and twelve of the treaty of 1855.

The magnitude of this sum and the misconceptions that prevail in respect to the nature of the debt itself make it proper for the committee to remark that, in order to arrive at the foregoing result, every charge against the Choctaws and every deduction has been made that any equity would warrant; and that certainly no less sum than \$2,332,560.85 would ever be adjudged by a court of justice to be due and owing upon the award of the Senate, upon the most strict rules of construction against the Choctaws; and that the amount *actually* due them for actual loss and damage sustained by the non-performance of the stipulations of the treaty of 1830, if the *actual* value at the time of all the reservations they lost was brought into account, would be found to be much larger than that sum, and probably three or four times as large.

65. By every principle of law, equity, and business transaction the United States is bound, by the accounting of the Secretary of the Interior, showing \$2,981,247.30 due to the Choctaws at the date of the Secretary's report.

The deductions of internal-improvement fund paid to Mississippi and for lands donated for railroad and swamp land, as shown in Senate committee report. (See Senate Report 283, 36th Congress, 1st session.) These deductions are no part of the Senate award, as they were not included in the Secretary's accounting to Congress; but even this draft on their claim was acquiesced in by the Choctaws in order to secure a settlement of their claims, and have confirmed this acquiescence by receiving the \$250,000 in money, appropriated by act of March 2, 1861.

First. The Senate was the umpire, and, in the language of the treaty of 1855, which made it such, its decision was to be final:

Secondly. The Senate, in the exercise of its power under the treaty of 1855, chose to allow the net proceeds of the land as the better of the two modes of settlement proposed by that treaty, and not to allow a sum in gross.

Thirdly. The Senate directed the Secretary of the Interior to make the accounting, which he did, March 9, 1859, as shown above.

Fourthly. The Senate did not, as umpire, or otherwise, reject this accounting; but, on March 2, 1861, made an appropriation of \$500,000 on it, and the Senate has not, since the Secretary's report, rejected any part of it, though nearly fourteen years have elapsed.

66. As above stated, Congress, in the appropriation bill of March 2, 1861, made a partial appropriation on this award of the Senate, on the showing of the Secretary, made by him under the Senate resolutions passed in pursuance of its power or duty as umpire, under the eleventh and twelfth articles of the treaty of 1855, as follows:

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 22d of June, 1855, the sum of \$500,000; \$250,000 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, page 238.)

Under this act the \$250,000 in money was paid in the year 1861. But

the bonds were not delivered, on account of the interruption occasioned by the war of 1861.

By our treaties continually, including that of Hopewell, on the Keowee, of January 10, 1786, we had promised to protect the Choctaws, and they promised to be under our protection. Yet the circumstances surrounding the Government in 1861 left the United States unable to protect or defend the Choctaws, and they unable to defend themselves against the confederate forces.

A few days since the House passed a law giving to Black Beaver, an Indian, \$5,000, for valuable services in piloting Colonel Emery out of the Indian country in 1861, by which act we abandoned the Choctaws to their rebellious white neighbors. Our Indian agent, D. H. Cooper, then with the Choctaws, betrayed the United States and joined the rebellion, and urged the Indians under his charge to do the same, and took command of them in the rebel service. This is the first time the Choctaws ever opposed the United States. Intercourse between the Choctaws and the United States was interrupted. The bonds were not delivered, and for no other reason.

67. By the treaty of April 28, 1866, between the United States and the Choctaws, it is provided that—

The United States re-affirms all obligations arising out of treaty-stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, 1866. (Statutes at Large, vol. 14, page 774.)

68. The Secretary of the Treasury, on the 29th day of September, 1870, referred to the Attorney-General the question of his authority to deliver the \$250,000 bonds to the Choctaws, under appropriation of March, 1861, and March 3, 1871.

69. On the 15th of December, 1870, the Attorney-General gave his written opinion, which was referred to the House and Senate by the Secretary of the Treasury, December 20, 1870.

The Attorney-General closes his opinion as follows:

Waiving all discussion of the desirableness, on grounds of expediency, of immediate authority from Congress, and responding to your question according to my judgment of the law of the case, I am of the opinion that you may lawfully issue bonds to the Choctaws. (See Ex. Doc. No. 25, 41st Congress, 3d session.)

70. This matter was referred to the Committee on Indian Affairs of the Senate, which, by Mr. Garrett Davis, on the 5th of January, 1871, made the following report:

*The Committee on Indian Affairs, to whom was referred the communication of the Secretary of the Treasury to Congress, transmitting a copy of the opinion of the Attorney-General of the United States upon the claim of the Choctaw Nation of Indians for \$250,000 of United States bonds, have had the same under consideration, and report:*

They have examined the opinion of the Attorney-General and concur with him in his reasonings and conclusions. There is a subsisting treaty between the United States and the Choctaw Nation of Indians which entitles said nation to two hundred and fifty thousand dollars of bonds of the United States of America, and which requires the President to make and deliver that amount of said bonds to said Indian nation. This treaty is the supreme law of the land, and the President is charged with its execution as a ministerial function. He has full authority to execute that law by the making and delivering of those bonds, in compliance with the treaty, to the proper authorities of the Choctaw Nation; wherefore they report this resolution:

*Resolved,* That the President having full authority under existing law to issue and deliver to the Choctaw Nation of Indians two hundred and fifty thousand dollars of United States bonds, no other legislation by Congress is necessary to that end. (Senate Committee Reports, 3d session 41st Congress.)

71. On May 10, 1860, the Committee on Indian Affairs of the House reported on the net-proceeds claim, and the Secretary's accounting of March 9, 1859. (See House Ex. Doc. 82, 1st session, 36th Congress.)

72. On the 20th day of February, 1871, the Judiciary Committee of the House, by Mr. Kerr, reported in favor of the delivery of the \$250,000 bonds, being part of the net-proceeds claim. The committee indorsed the opinion of the Attorney-General, and quoted his opinion made to the Secretary of the Treasury December 15, 1870, in full.

The committee presented to the House, as the conclusion of its report, the following resolution :

*Resolved*, That the President having full authority under existing laws and the treaty of April 28, 1866, between the United States and the Choctaw Nation of Indians, to issue and deliver to said nation \$250,000 of United States bonds, no further legislation of Congress is necessary to that end." (Report No. 41, 41st Congress, 3d session.)

73. On May 30, 1868, the Committee on Appropriations of the House, by Mr. Butler, reported in favor of appropriating the balance of the Choctaw net-proceeds claim, being \$1,832,560.85.

This is the amount of balance of the \$2,332,560.85, Senate's award, after deducting the \$500,000 appropriated by act of March 2, 1861. (See Globe, vol. 67, folio 2708.)

74. On the 22d day of June, 1870, the Judiciary Committee of the Senate, by Mr. Rice, reported an amendment to Senate bill No. 979, (see 41st Congress, 2d session,) providing for funding the balance of this Choctaw net-proceeds claim in five per cent. bonds of the United States, in the sum of \$1,832,460.85.

75. On the 6th day of July, 1868, the Committee on Indian Affairs of the House, by Mr. Windom, reported in favor of House bill No. 1195, for the payment of the sum of \$1,832,560. 85, being balance of the Choctaw net-proceeds claim, after taking out the \$500,000 appropriated by the act of 1861. (See Report No. 77, 40th Congress, 2d session.)

76. On the 3d day of March, 1871, Congress, in the Indian appropriation bill, passed the following act touching this issue of these \$250,000 bonds, part of the net-proceeds claim, viz :

"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,' thus reviving the act of March 2, 1861, and re-affirming the validity of the claim of the Choctaws to the bonds and to the award of the Senate under the treaty of 1855.

77. And on the 22d day of January, 1873, the Committee on Indian Affairs reported to the Senate in favor of the issue of these \$250,000 in bonds, part of the net-proceeds claim appropriated as stated by the law of March 2, 1861, and re-appropriated by the law of March 3, 1871. (See Senate Report No. 317, 42d Congress, 3d session.)

Said committee also reported in favor of the payment of the remainder of \$1,832,560.85 balance of Choctaw net-proceeds claim, after deducting the \$250,000 cash paid under the appropriation of March 2, 1861, and the \$250,000 bonds appropriated by same act March 2, 1861, and which was re-appropriated by act of March 3, 1871.

There has been the most perfect unanimity in the action of the executive and legislative branches of the Government down to Mr. Banfield's report, and in that there is nothing new, of record or of fact.

#### CONCLUSIONS.

1. The committee is of the opinion that the Choctaw people were not disposed of their own free will to make the treaty of 1830, disposing of their homes in Mississippi.

2. That the eighteenth article of the treaty of September 27, 1830, makes the United States a trustee, and puts it in possession of the property of the Choctaws ceded by that treaty, and, as such, bound to a faithful accounting with them, and that this fact is recognized and provided for by the treaty of 1855 in the mode of settlement provided for by that treaty.

3. That the Choctaws were deprived of many of the valuable privileges to which they were entitled under the said treaty of 1830.

4. That the United States fully recognized the fact that the Choctaws were deprived of their just rights by the action and permission of the Government.

5. That the United States made partial satisfaction to a portion of the disappointed claimants under the fourteenth article of that treaty by the issue of scrip, in pursuance of the third section of the law of Congress of August 23, 1842.

6. That one-half of this scrip was delivered to the claimants entitled thereto, and the other half was retained by the United States until 1852, when the sum of \$872,000 was appropriated and paid in full for the said last half of scrip, which was a full and final payment to those claimants under the fourteenth article of the treaty of 1830 who had received scrip, but to none other.

7. That the receipt of November 6, 1852, given by the Choctaw council, was for this balance of scrip only, and had no wider significance—was a special receipt for a special thing.

8. That the treaty of 1855 was made by the President through the Interior and Indian Departments with full knowledge of all the facts; the records being as ample on all points connected with the case to that date as they are now.

9. That with these records before the country this treaty was made and confirmed.

10. That the eleventh article of the treaty of 1855 especially refers the subject-matter of this report, by the most explicit reference, to the Senate for final settlement.

11. That the twelfth article of the treaty of 1855 clearly points out two modes of settlements, and directs the Senate to choose one of these modes.

12. That the Senate did choose one of the modes thus named, which was to allow the Choctaws the net proceeds of the lands ceded to the United States by the treaty of 1830.

13. That for that portion of said cession which we had sold up to January 1, 1859, (having deducted the reservations secured,) being 5,912,664 $\frac{63}{100}$  acres, they should be allowed \$1.25 per acre, amounting to \$7,556,578.05.

14. That for the residue, being 4,176,374 $\frac{4}{8}$  acres, they should be allowed 12 $\frac{1}{2}$  cents per acre, amounting to \$522,046.75.

15. That the Choctaws should be charged with all proper charges against the net proceeds of their lands.

16. That the Senate, acting under the power conferred in the treaty of 1855, ordered the Secretary of the Interior to render an account with the Choctaws on this basis.

17. That the Secretary was by the Senate ordered to render the account to Congress, (not specially to the Senate.)

18. That the Secretary of the Interior did, on the 9th day of March, 1859, render that account to Congress, showing the balance due the Choctaws, after deducting all proper—and, the committee think, some im-

proper—charges, to be, at that date, \$2,981,247.30, which must be considered as the Senate's award.

19. That the Committee on Indian Affairs of the Senate recommended to the Senate the further deduction of \$362,100.70, being the amount of internal-improvement fund which the United States had paid the State of Mississippi on the basis of the Choctaw lands ceded by the treaty of 1830, but paid long after the treaty and our possession of the lands.

20. That the Committee on Indian Affairs of the Senate further recommended to the Senate that there should be a further reduction of \$286,595, being the price, at 12½ cents per acre, of 2,292,766 acres of these Choctaw lands that Congress had given to railroad companies and ceded to Mississippi as swamp-lands and for school purposes.

21. That after these recommendations, for which, however, there seems to be but little reason, there would still be, as shown, a balance of \$2,332,560.85 due the Choctaws, and no further balance found to charge with them.

22. That in reducing the net-proceeds claim to this amount, it was necessary to charge the Choctaws with pensions that had been paid to Choctaw warriors who served under Wayne.

23. That they were charged the moneys we had paid them for cattle purchased and received of them in Mississippi, on which we fed them while removing them, and for which removal we charged them heavily also.

24. That we charged them the expense of committees appointed under our laws to ascertain how far we had wronged them by depriving them of their rights under the fourteenth article of the treaty of 1830.

25. That we charged them with attorneys' fees and the expense of paying to them the scrip which we forced them to take in lieu of the land that we had forced them off and sold from them.

26. That on the 2d day of March, 1861, Congress appropriated \$500,000 in part payment of the net-proceeds claim, one-half of this amount payable in money and the other in bonds of the United States.

27. That the \$250,000 payable in money was paid, but that the bonds were not delivered because of the interruption between the Choctaws and the United States caused by the rebellion.

28. That on the 5th day of July, 1862, Congress, by law, prevented the payment of any moneys to any tribe or nation of Indians that were in whole or in part at war with the United States.

29. That on the 22d day of February, 1862, Congress, by law, directed the amount of the \$250,000 bonds to be expended by the Secretary of the Interior for refugee Indians of various tribes therein named.

30. That by the treaty of April 28, 1866, the Choctaws were restored to all their rights and privileges under law and former treaties that they held when the war commenced.

31. That with these facts before Congress by the letter of the Secretary of the Treasury, the opinion of the Attorney-General, the report of the Committee on Indian Affairs of the Senate, and the Judiciary Committee of the House, Congress, on the 3d day of March, 1871, re-appropriated the \$250,000 bonds, and ordered them delivered.

32. That the balance due on the Senate award was \$2,981,247.30.

33. That the amount further reported for deduction by Senate Committee on Indian Affairs, being swamp-lands, railroad-lands, school-lands, and internal-improvement fund, was \$648,686.45, after deducting this.

34. That the balance, as shown June 19, 1860, by Senate Committee on Indian Affairs, was \$2,332,560.85, and that the amount appropriated out of this amount by act of March 2, 1861, was \$500,000.

35. That the balance not yet appropriated, and to which the Choctaws are entitled, as well as to the bonds referred to, is \$1,832,560.85.

36. That these \$250,000 bonds, with their interest since March 2, 1861, to the date, should be funded for the benefit of the Choctaw people.

37. That the remaining \$1,832,560.85 should be appropriated and funded.

38. That these two amounts should be funded at fair interest for the Choctaws, for the benefit of schools among them, as a mode of securing it from claim-agents and extortioners.

39. And that it should be strictly provided by law that no person other than the Choctaws should receive any part of said claims on any account whatsoever.

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### EXHIBIT C.

House Report No. 391, Forty-third Congress, first session.

Mr. I. U. Parker, from the Committee on Appropriations, submitted the following report, (to accompany bill H. R. 2189 :)

*The Committee on Appropriations, to whom was referred the bill (H. R. 2189) "to provide for the payment of the award made by the Senate of the United States in favor of the Choctaw Nation of Indians, on the 9th day of March, 1859," respectfully submit the following report :*

The object and purpose of this bill is to provide for the satisfaction of an award made by the Senate of the United States in favor of the Choctaw Nation of Indians, on the 9th day of March, 1859. This award was made in pursuance of treaty stipulations, and was to carry into effect obligations assumed by the United States to the Choctaw Nation, under the treaty with the said nation concluded June 22, 1855. So much of the said treaty as relates to the manner in which the indebtedness of the United States to the said nation should be ascertained and determined is as follows :

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, 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 lia-

bilities 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 Large, page 611.)

In pursuance of this agreement between the two contracting parties, the Senate of the United States, acting in the character of arbitrator, or as commissioners under a treaty, proceeded to an adjudication of the questions submitted to it under the eleventh article of said treaty; and on the 9th day of March, 1859, the matter having been previously considered and investigated by the Senate, the following award was made and declared in favor of the Choctaw Nation :

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 lands 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, 2d session 35th Congress, page 493.)

In pursuance of this award the Secretary of the Interior, as directed by the second of the above resolutions, proceeded to state an account between the United States and the Choctaw Nation, upon the principles decided by the Senate as the basis of such account, as declared in the first resolution; and the result of such accounting, as shown in the report of the Secretary of the Interior, was an indebtedness on the part of the United States to the Choctaw Nation, amounting to *two million nine hundred and eighty-one thousand two hundred and forty-seven dollars and thirty cents*.

The Committee on Indian Affairs of the House of Representatives, in its report made at the last session of Congress, speaking of this award, used the following language :

By every principle of law, equity, and business transaction, the United States is bound by the accounting of the Secretary of the Interior, showing \$2,981,247.30 due to the Choctaws at the date of the Secretary's report.

First. The Senate was the umpire, and, in the language of the treaty of 1855, which made it such, its decision was to be final.

Secondly. The Senate, in the exercise of its power under the treaty of 1855, chose to allow the net proceeds of the land as the better of the two modes of settlement proposed by that treaty, and not to allow a sum in gross.

Thirdly. The Senate directed the Secretary of the Interior to make the accounting, which he did, May 28, 1860, as shown above.

Fourthly. The Senate did not, as umpire, or otherwise, reject this accounting; but, on March 2, 1861, Congress made an appropriation of \$500,000 on it, and the Senate has not, since the Secretary's report, rejected any part of it, though near fourteen years have elapsed.

(House Report No. 80, Forty-second Congress, third session.)



The Senate Committee on Indian Affairs having had this subject under consideration, at the last session of Congress, speaking of this award and of the obligation of the United States to pay it, said :

If the case were re-opened and adjudicated as an original question, by an impartial umpire, a much larger sum would be found due to the said Indians, which they would undoubtedly recover were they in a condition to compel justice.

Your committee, from a most careful examination of the whole subject, concur in these conclusions, and refer to them only for the purpose of showing that the honesty, the fairness, or the integrity of the award thus made in favor of the Choctaw Nation cannot successfully be called in question or denied. It was a final settlement and award, conclusive alike upon the Choctaw Nation and the United States. Neither party to the treaty could rightfully disavow it, or refuse to be bound by it.

The United States has recognized the conclusiveness of this award by legislative enactment; for in the Indian appropriation bill, approved March 2, 1861, it was provided that the sum of \$500,000 should be paid to the said nation *on account of this award*. (12 Stats. at Large, p. 238.)

In pursuance of this act the sum of \$250,000 in money was paid to the said nation, but the bonds for a like amount, which the Secretary of the Treasury was directed to issue, were not delivered on account of the interruption of intercourse with the said nation caused by the war of the rebellion. These bonds have never been issued or delivered to the said nation, and all that has ever been paid to the said nation on account of the said award, therefore, is the sum of \$250,000, paid (under the said act of March 2, 1861) on the 12th day of April, 1861. The balance remaining unpaid on the said award since the 12th day of April, 1861, therefore, is \$2,731,247.30.

#### THE OBLIGATION TO PAY INTEREST ON THE AMOUNT AWARDED THE CHOCTAW NATION.

Your committee have given this question a most careful examination, and are obliged to admit and declare that the United States cannot, in equity and justice, nor without national dishonor, refuse to pay interest upon the moneys so long withheld from the Choctaw Nation. Some of the reasons which force us to this conclusion are as follows :

1. The United States acquired the lands of the Choctaw Nation, on account of which the said award was made, on the 27th day of September, 1830, and it has held them for the benefit of its citizens ever since.

2. The United States had in its Treasury, many years prior to the 1st day of January, 1859, the proceeds resulting from the sale of the said lands, and have enjoyed the use of such moneys from that time until now.

3. The award in favor of the Choctaw Nation was an award under a treaty, and made by a tribunal whose adjudication was final and conclusive. (*Comegys vs. Vasse*, 1 Peters, 193.)

4. The obligations of the United States, under its treaties with Indian nations, have been declared to be equally sacred with those made by treaties with foreign nations. (*Worcester vs. The State of Georgia*, 6 Peters, 582.) And such treaties, Mr. Justice Miller declares, are to be construed liberally. (*The Kansas Indians*, 5 Wall., 737-760.)

5. The engagements and obligations of a treaty are to be interpreted in accordance with the principles of the public law, and not in accordance with any municipal code or executive regulation. No statement

of this proposition can equal the clearness or force with which Mr. Webster declares it in his opinion on the Florida claims, attached to the report in the case of Letitia Humphreys, (Senate report No. 93, first session Thirty-sixth Congress, page 16.) Speaking of the obligation of a treaty, he said:

A treaty is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. *It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land, and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.*

A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are *always* to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other, they use the language of nations. Their intercourse is regulated, and their *mutual agreements and obligations* are to be interpreted by that code only which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized states; everywhere speaking with the same voice and the same authority.

Again, in the same opinion, Mr. Webster used the following language:

We are construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details; in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations "sits arbitress."

6. By the principles of the public law, interest is always allowed as indemnity for the delay of payment of an ascertained and fixed demand. There is no conflict of authority upon this question among the writers on public law.

This rule is laid down by Rutherford in these terms:

In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or WITHHOLDEN, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself. (Rutherford's Institutes, Book I, chap. 17, sec. 5.)

In laying down the rule for the satisfaction of injuries in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his work on the law of nations, says:

If a nation has taken possession of that which belongs to another, IF IT REFUSES TO PAY A DEBT, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former and apply it to [his] its advantage, till it obtains payment of what is due, together with INTEREST and damages. (Wheaton on International Law, p. 341.)

A great writer, Domat, thus states the law of reason and justice on this point:

It is a natural consequence of the general engagement to do wrong to no one, that they who cause any damages, by failing in the performance of that engagement, are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offense, or other cause on his part, and to the loss which has happened thereby. (Domat, Part I, Book III, Tit. V, 1900, 1903.)

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, the loss which one has suffered, and the gain which he has failed to make. The Roman

law defines it as "quantum mea interfruit; id est, quantum mihi abest, quantumque lucrâci potui." The two elements of it were termed "lucrum cessans et damnum emergens." The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of this profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment, and, during the delay, have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. *He holds them, in reality and essentially, in trust; and a trustee is always bound to pay interest upon moneys so held.*

In closing these citations from the public law, the language of Chancellor Kent seems eminently appropriate. He says: "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law."

7th. The practice of the United States in discharging obligations resulting from treaty-stipulations has always been in accord with these well-established principles. It has exacted the payment of *interest* from other nations in all cases where the obligation to make payment resulted from treaty-stipulations, and it has acknowledged that obligation in all cases where a like liability was imposed upon it.

The most important and leading cases which have occurred are those which arose between this country and Great Britain: the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of the treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two governments, which was submitted to the arbitration of the Emperor of Russia, who decided that "the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." A joint commission was appointed for the purpose of hearing the claims of individuals under this decision. At an early stage of the proceedings the question arose as to whether *interest* was a part of that "*just indemnification*" which the decision of the Emperor of Russia contemplated. The British commissioner denied the obligation to pay interest. The American commissioner, Langdon Cheves, insisted upon its allowance, and, in the course of his argument upon this question, said:

Indemnification means a re-imbusement of a loss sustained. If the property taken away on the 17th of February, 1815, were returned now uninjured it would not reimburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be unindemnified for the loss of the use of his property for ten years, which considered as money is nearly equivalent to the original value of the principal thing.

Again he says:

If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property.

In consequence of this disagreement, the commission was broken up, but the claims were subsequently compromised by the payment of \$1,204,960, instead of \$1,250,000, as claimed by Mr. Cheves; and of the sum paid by Great Britain, \$418,000 was expressly for interest.

An earlier case, in which this principle of interest was involved, arose under the treaty of 1794 between the United States and Great Britain, in which there was a stipulation on the part of the British government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the illegal or irregular capture of their vessels, or other property, by British cruisers; and the seventh article provided in substance that "full and complete compensation for the same will be made by the British government to the said claimants."

A joint commission was instituted under this treaty, which sat in London, and by which these claims were adjudicated. Mr. Pinckney and Mr. Gore were commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this commission allowed interest as a part of the damage. In the case of "The Betsey," one of the cases which came before the board, Dr. Nicholl stated the rule of compensation as follows:

To re-imburse the claimants, the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, costs, and damages occasioned by illegal captures. (*Vide* Wheaton's *Life of Pinckney*, p. 198; also p. 265, note; and p. 371.)

By a reference to the American State Papers, Foreign Relations, vol. 2, pages 119-120, it will be seen by a report of the Secretary of State of the 16th February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of these claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the board of commissioners. In consequence of some difference of opinion between the members of this commission, their proceedings were suspended until 1802, when a convention was concluded between the two governments, and the commission re-assembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American commissioner claimed, and though it was at first resisted by the British commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretary of State, of 25th March, 1803, 23d April, 1803, and 30th April, 1803, American State Papers, Foreign Relations, vol. 2, pp. 387-388.)

Another case in which this principle was involved arose under the treaty of the 27th October, 1795 with Spain; by the twenty-first article of which, "in order to terminate all differences on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of His Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of commissioners, to be appointed in the following manner," &c., the commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third, and the award of the commissioners, or any two of them, was to be final, and the Spanish government to pay the amount in specie. This commission awarded interest as part of the damages. (See American State Papers, vol. 2, Foreign Relations, p. 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor,

United States minister, interest was claimed and allowed. (See Ex. Doc. No 32, first session Twenty-fifth Congress, House of Representatives, p. 249.)

Again, in the convention with Mexico of the 11th April, 1839, by which provision was made by Mexico for the payment of claims of American citizens for injuries to persons and property by the Mexican authorities, a mixed commission was provided for, and this commission allowed interest in all cases. (House Ex. Doc. No. 291, 27th Congress, 2d session.)

So also under the treaty with Mexico of February 2, 1848, the board of commissioners for the adjustment of claims under that treaty allowed interest in all cases from the origin of the claim until the day when the commission expired.

So also under the convention with Colombia, concluded February 10, 1864, the commission for the adjudication of claims under that treaty allowed interest in all cases as a part of the indemnity.

So under the recent convention with Venezuela, the United States exacted interest upon the awards of the commission, from the date of the adjournment of the commission until the payment of the awards.

The Mixed American and Mexican Commission, now in session here, allows interest in all cases from the origin of the claim, and the awards are payable with interest.

Other cases might be shown, in which the United States, or their authorized diplomatic agents, have claimed interest in such cases, or where it has been paid in whole or in part. (See Mr. Russell's letters to the Count de Engstein of October 5, 1818, American State Papers, vol. 4, p. 639, and Proceedings under the Convention with the Two Sicilies of October, 1832, Elliot's Diplomatic Code, p. 625.)

It can hardly be necessary to pursue these precedents further. They sufficiently and clearly show the practice of this Government with foreign nations, or with claimant under treaties.

8th. The practice of the United States in its dealings with the various Indian tribes or nations has been in harmony with these principles.

In all cases where money belonging to Indian nations has been retained by the United States, it has been so invested as to produce *interest*, for the benefit of the nation to which it belongs; and such interest is *annually* paid to the nation who may be entitled to receive it.

9. The United States, in adjusting the claim of the Cherokee Nation for a balance due as purchase-money upon lands ceded by that nation to the United States, in 1835, allowed interest upon the balance due them, being \$189,422.76, until the same was paid.

The question was submitted to the Senate of the United States as to whether interest should be allowed them. The Senate Committee on Indian Affairs, in their report upon this subject, used the following language:

By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges the money has been withheld from them. It has been the uniform practice of this Government to pay and demand interest in all transactions with foreign governments, which the Indian tribes have always been said to be both by the Supreme Court and all other branches of our Government, in all manners of treaty or contract. The Indians, relying upon the prompt payment of their dues, have, in many cases, contracted debts upon the faith of it, upon which they have paid, or are liable to pay, interest. If, therefore, they do not now receive interest on their money so long withheld from them, they will, in effect, have received nothing. (Senate Report No. 176, first session Thirty-first Congress, p. 78.)

10th. That upon an examination of the precedents where Congress has passed acts for the relief of private citizens, it will be found that, in almost every case, Congress has directed the payment of interest, where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain.

The following precedents illustrate and enforce the correctness of this assertion, and sustain this proposition :

1. An act approved January 14, 1793, provided that lawful interest from the 16th of May, 1776, shall be allowed on the sum of \$200 ordered to be paid to Return J. Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the United States, in Congress assembled, on the 28th of September, 1785. (6 Stats. at L., p. 11.)

2. An act approved May 31, 1794, provided for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt and till his return, and for services in the business of Indian treaties, and "allowed interest on the balance found to be due him." (6 Stats. at L., p. 16.)

3. An act approved February 27, 1795, authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly-authorized attorney, certificates for the amount of \$254.43, bearing interest at six per cent, from the 1st of July, 1783, being for his services in the Corps of Sappers and Miners during the late war. (6 Stats. at L., p. 20.)

4. An act approved January 23, 1798, directed the Secretary of the Treasury to pay to General Kosciusko an interest at the rate of six per cent. per annum on the sum of \$11,289.54, the amount of a certificate due to him from the United States from the 1st of January, 1793, to the 31st of December, 1797. (6 Stats. at L., p. 32.)

5. An act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of \$4,550, advanced by him for the use of the United States, with interest at the rate of six per cent. per annum from the 1st of November, 1795, at which time the advance was made. (6 Stats. at L., p. 48.)

6. An act for the relief of John Coles, approved January 14, 1804, authorized the proper accounting officers of the Treasury to liquidate the claim of John Coles, owner of the ship Grand Turk, heretofore employed in the service of the United States, for the detention of said ship at Gibraltar from the 10th of May to the 4th of July, 1801, inclusive, and that he be allowed demurrage at the rate stipulated in the charter-party, together with the interest thereon. (6 Stats. at L., p. 50.)

7. An act approved March 3, 1807, provided for a settlement of the accounts of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, with interest until paid. (6 Stats. at L., p. 65.)

8. An act for the relief of Stephen Sayre, approved March 3, 1807, provided that the accounting officers of the Treasury be authorized to settle the account of Stephen Sayre, as secretary of legation at the court of Berlin, in the year 1777, with interest on the whole sum until paid. (6 Stats. at L., p. 65.)

9. An act approved April 25, 1810, directed the accounting officers of the Treasury to settle the account of Moses Young, as secretary of legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, with interest thereon, should be paid. (6 Stats. at L., p. 89.)

10. An act approved May 1, 1810, for the relief of P. C. L'Enfant, directed the Secretary of the Treasury to pay to him the sum of

\$666, with legal interest thereon from March 1, 1792, as a compensation for his services in laying out the plan of the city of Washington. (6 Stats. at L., p. 92.)

11. An act approved January 10, 1812, provided that there be paid to John Burnham the sum of \$126.72, and the interest on the same since the 30th of May, 1796, which, in addition to the sum allowed him by the act of that date, is to be considered a re-imbusement of the money advanced by him for his ransom from captivity in Algiers. (6 Stats. at L. p. 101.)

12. An act approved July 1, 1812, for the relief of Anna Young, required the War Department to settle the account of Col. John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half pay, and interest thereon. (6 Stats. at L., p. 110.)

13. An act approved February 25, 1813, provided that there be paid to John Dixon the sum of \$329.84, with six per cent. per annum interest thereon from the 1st of January, 1785, "being the amount of a final-settlement certificate, No. 596, issued by Andrew Dunscomb, late commissioner of accounts for the State of Virginia, on the 23d of December, 1786, to Lucy Dixon, who transferred the same to John Dixon." (6 Stats. at L., p. 117.)

14. An act approved February 25, 1813, required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan-certificates for \$1,000, with interest from the 29th of March, 1782, issued in the name of said Murray, signed Francis Hopkinson, treasurer of loans. (6 Stats. at L., p. 117.)

15. An act approved March 3, 1813, directed the accounting officers of the Treasury to settle the accounts of Samuel Lapsley, deceased, and that they be allowed the amount of two final-settlement certificates, No. 78,446, for \$1,000, and No. 78,447, for \$1,300, and interest from the 23d day of March, 1783, issued in the name of Samuel Lapsley, by the commissioner of Army accounts for the United States on the 1st day of July, 1784. (6 Stats. at L., p. 119.)

16. An act approved April 13, 1814, directed the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settlement certificate for \$183.23, dated February 1, 1785, and bearing interest from the 1st of January, 1783, issued to said Brevard by John Pierce, commissioner for settling Army accounts. (6 Stats. at L., p. 134.)

17. An act approved April 18, 1814, directed the receiver of public moneys at Cincinnati to pay the full amount of moneys, with interest, paid by Dennis Clark, in discharge of the purchase-money for a certain fractional section of land purchased by said Clark. (6 Stat. at L., 141.)

18. An act for the relief of William Arnold, approved February 2, 1815, allowed interest on the sum of \$600 due him from January 1, 1873. (6 Stats. at L., p. 146.)

19. An act approved April 26, 1816, directed the accounting officers of the Treasury to pay to Joseph Wheaton the sum of \$836.42, on account of interest due him from the United States upon \$1,600.84, from April 1, 1807, to December 21, 1815, pursuant to the award of George Youngs and Elias B. Caldwell, in a controversy between the United States and the said Joseph Wheaton. (6 Stats. at L., p. 166.)

20. An act approved April 26, 1816, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the 18th of August, 1784, for

\$480.87, by John Pierce, commissioner for settling Army accounts, bearing interest from the first of January, 1782. (6 Stats. at L., p. 167.)

21. An act approved April 14, 1818, authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an act approved the 11th of May, 1812, and "to allow the said John Thompson interest at six per cent. per annum from the 4th of March, 1787, to the 20th of May, 1812, on the sum which was found due to him, and paid under the act aforesaid." (6 Stats. at L., p. 208.)

22. An act approved May 11, 1820, directed the proper officers of the Treasury to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the 1st of February, 1785, for his services as a lieutenant in the Army of the United States during the revolutionary war, together with interest on the said certificates, at the rate of six per cent. per annum, from the time they bore interest, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid. (6 Laws of U. S., 510; 6 Stats. at L., p. 249.)

23. An act approved May 15, 1820, required that there be paid to Thomas Leiper the specie-value of four loan-office certificates, issued to him by the commissioner of loans for the State of Pennsylvania, on the 27th of February, 1779, for \$1,000 each; and also the specie-value of two loan-certificates, issued to him by the said commissioner on the 2d day of March, 1779, for \$1,000 each, with interest at six per cent. annually. (6 Stats. at L., p. 252.)

24. An act approved May 7, 1822, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of \$123.30, being the amount of a final-settlement certificate, with interest at the rate of six per cent. per annum, from the first day of January, 1788. (6 Stats. at L., p. 269.)

25. An act for the relief of the legal representatives of James McClung, approved March 3, 1823, allowed interest on the amount due at the rate of six per cent. per annum from January 1, 1788. (6 Stats. at L., 284.)

26. An act approved March 3, 1823, for the relief of Daniel Seward, allowed interest to him for money paid to the United States for land to which the title failed, at the rate of six per cent. per annum from January 29, 1814. (6 Stats. at L., p. 286.)

27. An act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of \$6,215, "being for interest on moneys advanced by him for the use of the United States, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department, for superintending the making of Army clothing and for issuing the public supplies." (6 Stat. at L., p. 298.)

28. An act approved March 3, 1824, directed the proper accounting officers of the Treasury to settle and adjust the claim of Stephen Arnold, David and George Jenks, for the manufacture of three thousand nine hundred and twenty-five muskets, with interest thereon from the 26th day of October, 1813. (6 Stat. at L., p. 331.)

29. An act approved May 20, 1826, directed the proper accounting officers of the Treasury to settle and adjust the claim of John Stemman and others for the manufacture of four thousand one hundred stand of arms, and to allow interest on the amount due from October 26, 1813. (6 Stat. at L., p. 345.)

30. An act approved May 20, 1826, for the relief of Ann D. Taylor, directed the payment to her of the sum of \$354.15, with interest thereon



at the rate of six per cent. per annum from December 30, 1786, until paid. (6 Stat. at L., p. 351.)

31. An act approved March 3, 1827, provided that the proper accounting officers of the Treasury were authorized to pay to B. J. V. Valkenburg the sum of \$597.24, "being the amount of fourteen indents of interest, with interest thereon from the 1st of January, 1791, to the 31st of December, 1826." (6 Stat. at L., p. 365.)

In this case the United States paid interest on interest.

32. An act approved May 19, 1828, provided that there be paid to the legal representatives of Patience Gordon the specie value of a certificate issued in the name of Patience Gordon by the commissioner of loans for the State of Pennsylvania, on the 7th of April, 1778, with interest at the rate of six per cent. per annum from the 1st day of January, 1788. (7 Stat. at L., p. 378.)

33. An act approved May 29, 1830, required the Treasury Department "to settle the accounts of Benjamin Wells, as deputy commissary of issues at the magazine at Monster Mills, in Pennsylvania, under John Irvin, deputy commissary-general of the Army of the United States, in said State, in the Revolutionary war;" and that "they credit him with the sum of \$574.04, as payable February 9, 1779, and \$326.67, payable July 20, 1780, in the same manner, and with such interest, as if these sums, with their interest from the times respectively as aforesaid, had been subscribed to the loan of the United States." (6 Stat. at L., p. 447.)

34. An act approved May 19, 1832, for the relief of Richard G. Morris, provided for the payment to him of two certificates issued to him by Timothy Pickering, Quartermaster-General, with interest thereon from the 1st of September, 1781. (6 Stat. at L., p. 486.)

35. An act approved July 4, 1832, for the relief of Aaron Snow, a Revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late commissioner of Army accounts, and dated in 1784, with interest thereon. (6 Stat. at L., p. 503.)

36. An act approved July 4, 1832, provided for the payment to W. P. Gibbs of a final-settlement certificate dated January 30, 1784, with interest at six per cent. from the 1st of January, 1783, up to the passage of the act. This act went behind the final certificate and provided for the payment of interest anterior to its date. (6 Stat. at L., p. 504.)

37. An act approved July 14, 1832, directed the payment to the heirs of Ebenezer L. Warren of certain sums of money illegally demanded and received by the United States from the said Warren as one of the sureties of Daniel Evans, formerly collector of direct taxes, with interest thereon at the rate of six per cent. per annum from September 9, 1820. (6 Stat. at L., p. 373.)

38. An act for the relief of Hartwell Vick, approved July 14, 1832, directed the accounting officers of the Treasury to refund to the said Vick the money paid by him to the United States for a certain tract of land which was found not to be the property of the United States, with interest thereon at the rate of six per centum per annum, from the 23d day of May, 1818. (6 Stat. at L., p. 523.)

39. An act approved June 18, 1834, for the relief of Martha Bailey and others, directed the Secretary of the Treasury to pay to the parties therein named the sum of \$4,837.61, being the amount of interest upon the sum of \$200,000, part of a balance due from the United States to Elbert Anderson on the 26th day of October, 1814; also the further sum of \$9,595.36, being the amount of interest accruing from the deferred payment of warrants issued for balances due from the United States to the said Anderson from the date of such warrants until the payment

thereof; also the further sum of \$2,018.50 admitted to be due from the United States to the said Anderson by a decision of the Second Comptroller, with interest on the sum last mentioned from the period of such decision until paid. (6 Stat. at L., p. 562.)

40. An act approved June 30, 1834, directed the Secretary of the Treasury to pay balance of damages recovered against William C. H. Waddell, United States marshal for the southern district of New York, for the illegal seizure of a certain importation of brandy, on behalf of the United States, with legal interest on the amount of said judgment from the time the same was paid by the said Waddell. (6 Stat. at L., p. 594.)

41. An act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stat. at L., p. 622.)

42. An act approved February 17, 1836, for the relief of the executor of Charles Wilkins, directed the Secretary of the Treasury to settle the claim of the said executor, for interest on a liquidated demand in favor of Jonathan Taylor, James Morrison, and Charles Wilkins, who were lessees of the United States of the salt-works in the State of Illinois. (6 Stat. at L., p. 626.)

43. An act approved July 2, 1836, for the relief of the legal representatives of David Caldwell, directed the proper accounting officers of the Treasury to settle the claim of the said David Caldwell for fees and allowances, certified by the circuit court of the United States for the eastern district of Pennsylvania, for official services to the United States, and to pay on that account the sum of \$496.38, with interest thereon at the rate of six per centum from the 25th day of November, 1830, till paid. (6 Stat. at L., p. 664.)

44. An act approved July 2, 1836, provided that there be paid Don Carlos Delossus, interest at the rate of six per centum per annum on \$333, being the amount allowed him under the act of July 14, 1832, for his relief, on account of moneys taken from him at the capture of Baton Rouge, La., on the 23d day of September, 1810, being the interest to be allowed from the said 23d day of September, 1810, to the 14th day of July, 1832. (6 Stat. at L., p. 672.)

In this case the interest was directed to be paid four years after the principal had been satisfied and discharged.

45. An act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly consular agent of the United States at Cadiz, in Spain, and to allow him, among other items, the interest on the money advanced, under agreement with the minister of the United States in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States from the time the advances respectively were made, to the time at which the said advances were re-imbursed. (6 Stat. at L., p. 734.)

46. An act approved August 11, 1842, directed the Secretary of the Treasury to pay to John Johnson the sum of \$756.82, being the amount received from the said Johnson upon a judgment against him in favor of the United States, together with the interest thereon from the time of such payment. (6 Stat. at L., p. 856.)

47. An act approved August 3, 1846, authorized the Secretary of the Treasury to pay to Abraham Horbach the sum of \$5,000, with lawful interest from the 1st of January, 1836, being the amount of a draft drawn by James Reeside on the Post-Office Department, dated April

18, 1835, payable on the 1st of January, 1836, and accepted by the treasurer of the Post-Office Department, which said draft was indorsed by said Abraham Horbach at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and, at maturity, said draft was protested for non-payment, and said Horbach became liable to pay, and, in consequence of his indorsement, did pay the full amount of said draft. (9 Stat. at L., p. 677.)

48. An act approved February 5, 1859, authorized the Secretary of War to pay to Thomas Laurent, as surviving partner, the sum of \$15,000, with interest at the rate of six per cent. yearly, from the 11th of November, 1847, it being the amount paid by the firm on that day to Major-General Winfield Scott, in the city of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities. (11 Stat. at L., p. 558.)

49. An act approved March 2, 1847, directed the Secretary of the Treasury to pay the balance due to the Bank of Metropolis for moneys due upon the settlement of the account of the bank with the United States, with interest thereon from the 6th day of March, 1838. (9 Stats. at L., 689.)

50. An act approved July 20, 1852, directed the payment to the legal representatives of James C. Watson, late of the State of Georgia, the sum of \$14,600, with interest at the rate of 6 per cent. per annum, from the 8th day of May, 1838, till paid, being the amount paid by him under the sanction of the Indian agent, to certain Creek warriors, for slaves captured by said warriors while they were in the service of the United States against the Seminole Indians in Florida. (10 Stats. at L., 734.)

51. An act approved July 29, 1854, directed the Secretary of the Treasury to pay to John C. Fremont \$183,825, with interest thereon from the 1st day of June, 1851, at the rate of 10 per cent. per annum, in full for his account for beef delivered to Commissioner Barbour, for the use of the Indians in California, in 1851 and 1852. (10 Stats. at L., 804.)

52. An act approved July 8, 1870, directed the Secretary of the Treasury to make proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date the *fourth* of June, 1867, in the case of the British brig Volant, and her cargo; and also another decree of the same court, bearing date the *eleventh* of June, in the same year, in the case of the British bark Science, and cargo, vessels illegally seized by a cruiser of the United States; such payments to be made as follows, viz: To the several persons named in such decrees, or their legal representatives, the several sums awarded to them respectively, *with interest to each person from the date of the decree under which he receives payment.* (16 Stats. at L., 650.)

53. An act approved July 8, 1870, directed the Secretary to make the proper payments to carry into effect the decree of the district court of the United States for the district of Louisiana, bearing date July 13, 1867, in the case of the British brig Dashing Wave, and her cargo, illegally seized by a cruiser of the United States, which decree was made in pursuance of the decision of the Supreme Court, *such payments to be made with interest from the date of the decree.* (16 Stats. at L., 651.)

An examination of these cases will show that, subsequent to the seizure of these several vessels, they were each sold by the United States marshal for the district of Louisiana as prize, and the proceeds of such sales deposited by him in the First National Bank of New Orleans. The bank, while the proceeds of these sales were on deposit there, became insolvent. The seizures were held illegal, and the vessels not subject to capture as prize. But the proceeds of the sales of these

vessels and their cargoes could not be restored to the owners in accordance with the decrees of the district court, because the funds had been lost by the insolvency of the bank. In these cases, therefore, Congress provided indemnity for losses resulting from the acts of its agents, and made the indemnity complete by providing for the payment of interest.

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often-repeated assumption that "the Government never pays interest." It will readily be admitted that there is no statute-law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and departments refusing to allow interest generally in their accounts with disbursing officers, and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom or usage is so "reasonable," well known, and "certain," as to give it the force and effect of law, and to override and trample under foot the law of nations and also the well-settled practice of the Government itself in its intercourse with other nations.

11th. Interest was allowed and paid to the State of Massachusetts, because the United States delayed the payment of the principal for twenty-two years after the amount due had been ascertained and determined. The amount appropriated to pay this interest was \$678,362.41, more than the original principal. (16 Stats. at L., 198.)

Mr. Sumner, in his report upon the memorial introduced for that purpose, discussing this question of interest, said :

It is urged that the payment of this interest would establish a bad precedent. If the claim is just, the precedent of paying it is one of which our Government should wish to establish. Honesty and justice are not precedents of which either Government or individuals should be afraid.

Senate Report 4, 41st Cong., 1st sess., p. 10.

12th. Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances during the revolutionary war were adjusted and settled under the provision of the acts of Congress of August 5, 1790, and of May 31, 1794. By these acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances of States during the war of 1812-'15, a more restricted rule was adopted, viz: That States should be allowed interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812-'15, with the exception of Massachusetts. Here are the cases :

Virginia, Stats. at L., vol. 4, p. 161.

Delaware, Stats. at L., vol. 4, p. 175.

New York, Stats. at L., vol. 4, p. 192.

Pennsylvania, Stats. at L., vol. 4, p. 241.

South Carolina, Stats. at L., vol. 4, p. 499.

In Indian and other wars the same rule has been observed as in the following cases :

Alabama, Stats. at L., vol. 9, p. 344.

Georgia, Stats. at L., vol. 9, p. 626.

Washington Territory, Stats. at L., vol. 11, p. 429.

New Hampshire, Stats. at L., vol. 10, p. 1.

13th. The Senate Committee on Indian Affairs, in the report to which

reference has heretofore been made, speaking of this award and of the obligation of the United States to pay interest upon the balance remaining due and unpaid thereon, used the following language :

Your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom \$250,000, paid to them in money, as directed by the act of March 2, 1861; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the aforementioned act, and the act of March 3, 1871, by the delivery of the bonds therein described, with accrued interest from the date of the act of March 8, 1861.

Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor establish such a precedent as would be inconsistent with the practice or duty of the United States in such cases. Therefore, your committee have considered it not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government in its action in like cases has furnished for our guidance. Your committee cannot believe that the payment of interest on the moneys awarded by the Senate to the Choctaw Nation would either violate any principle of law or establish any precedent which the United States would not wish to follow in any similar case, and your committee cannot believe that the United States are prepared to repudiate these principles, or to admit that because their obligation is held by a weak and powerless Indian nation, it is any the less sacred or binding, than if held by a nation able to enforce its payment and secure complete indemnity under it. Could the United States escape the payment of *interest* to Great Britain, if it should refuse or neglect, after the same became due, to pay the amount awarded in favor of British subjects by the recent joint commission which sat here? Could we delay payment of the amount awarded by that commission for fifteen years, and then escape by merely paying the principal? The Choctaw Nation asks the same measure of justice which we *must* accord to Great Britain; and your committee cannot deny that demand unless they shall ignore and set aside those principles of the public law which it is of the utmost importance to the United States to always maintain inviolate.

Your committee are not unmindful that the amount due the Choctaw Nation under the award of the Senate is large. They are not unmindful, either, that the discredit of refusing payment is increased in proportion to the amount withheld and the time during which such refusal has been continued. That the amount to be paid is large is no fault of the Choctaw Nation. The whole amount was due when, on the 2d day of March, 1861, Congress authorized the payment, on account of the award, of the sum of two hundred and fifty thousand dollars; and if, at that time, the bonds of the United States had been issued in satisfaction of the award, the Choctaw Nation would have received interest on them from that time, and thus derived such advantage as would have resulted, from time to time, from the payment of semi-annual interest and the sale of the gold which they would have received in the payment of interest. The bill under consideration provides that the amount due upon the award of the Senate shall be satisfied and paid, (both principal and interest,) in the bonds of the United States of like character and description as those authorized to be issued under the act of Congress entitled "An act authorizing a loan," approved February 8, 1861. They were bonds of this issue that the Secretary of the Treasury

was required to deliver in part payment of the amount authorized to be paid on account of the said award, under the provisions of the act of March 2, 1861. If this award had then been wholly satisfied and discharged, it would have been in bonds of this description. The act of February 8, 1861, authorized the issue of bonds to the amount of \$25,000,000, of which there have been issued \$18,485,000. There is therefore to the credit of this act, bonds to the amount of \$6,515,000, which may be issued for any purpose which Congress shall direct. Your committee, bearing in mind that the moneys so long withheld from the Choctaw Nation are in the nature of trust-funds, and that the United States had the use of these moneys for so many years before the making of the award in favor of the Choctaw Nation by the United States Senate, and that the Choctaw Nation is in a certain sense a ward of the United States, cannot recommend any other payment to them, except such as will do them perfect justice and provide for them complete indemnity. This result will be most nearly accomplished by the issue and delivery to the Choctaw Nation of those bonds which would have been issued to them had the whole award been paid at the time provision was made for its part payment, as provided in the act of March 26, 1861; and interest on the said award should be added from the time the same was made by the United States Senate; and that for these, both principal and interest, bonds of the United States, of the character and description of other bonds issued under the act of February 8, 1861, should be issued for the use and benefit of the Choctaw Nation.

Your committee believe that this course, and nothing less, will satisfy the demands of justice, and relieve the United States from the imputation of bad faith and an inexcusable disregard of treaty obligations.

#### AUTHORITY TO RECEIVE THE BONDS.

The bill under consideration provides that the bonds for which it makes provision shall be delivered to Peter P. Pitchlynn and Peter Folsom, or to either of them who may demand the same on behalf of the Choctaw Nation. The reason for directing these bonds to be delivered to these persons, as the delegates of the Choctaw Nation, results from the fact that for more than twenty years one of these delegates, Governor Pitchlynn, many years principal chief of the Choctaw Nation, has been here pressing the just claims of his nation upon the attention of Congress. He has been the accredited agent and trusted servant of his nation before the Government of the United States, and he has been so recognized by the different Departments of the Government.

The evidence of the authority of the said delegates, submitted to your committee, shows that—

The Choctaw national council, by several legislative enactments, passed respectively November 9, 1853, November 10, 1854, November 17, 1855, November 4, 1857, November 25, 1867, and March 18, 1872, constituted and appointed Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis their special agents for the purpose of securing the payment from the United States of certain claims or demands which the Choctaw Nation and individual members thereof had and asserted against the United States, under the treaty between the United States and the Choctaw Nation, concluded September 27, 1830. The claims are known and styled "The Choctaw Net Proceeds Claims." The first of these acts declared the powers and authority of these delegates in the following language:

That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against

the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the said Government of the United States (Laws of Choctaw Nation, pp. 123, 124, 125.)

By the act of 1854, these agents were further authorized and instructed as follows:

To remain at Washington and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full powers to take all measures and enter into all contracts which in their judgment may become necessary and proper, in the name of the Choctaw people, and to bring to a final and satisfactory adjustment and settlement all claims or demands whatever, which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise.

(Laws of Choctaw Nation, pp. 133, 134.)

The act of November 4, 1857, authorized either of the delegates who might be present in Washington to act for and on behalf of the nation; and the act of November 25, 1867, declared that the terms of service of the said delegates should continue until the whole business of their agency was adjusted and settled.

The delegates or agents named and appointed in and by the first of these acts have all died except Peter P. Pitchlynn, and, in the place of Dixon W. Lewis, Peter Folsom has been appointed a delegate and agent of the nation; so that the delegates or agents of the said nation, under the said legislative enactments, are Peter P. Pitchlynn and Peter Folsom. By the fifth section of the act approved March 18, 1872, it was declared and provided as follows:

And all powers and authorities, heretofore conferred upon said delegates by several acts and resolutions of the general council, are hereby re-affirmed and declared in full force.

The money paid to the said nation under the act of March 2, 1861, was paid directly to the said delegates and receipted for by them, and afterward duly accounted for to that nation.

Your committee have been furnished with no evidence of any purpose on the part of the Choctaw Nation to withdraw from the said delegates any of the authority conferred upon them, and they are still, as they have been for so many years, the authorized and trusted delegates of the said nation. Your committee are of the opinion, therefore, that all the rights and interests of the Choctaw Nation may safely be intrusted to the said delegates, and that the bonds for which the bill under consideration makes provision, may with propriety and safety to the said nation be delivered to the said delegates as provided in the bill which is the subject of this report.

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#### EXHIBIT D.

House Report No. 599. Forty-third Congress, first session.

Mr. COMINGO, from the Committee on Indian Affairs, submitted the following report:

*The Committee on Indian Affairs, to whom was referred the memorial of P. P. Pitchlynn, the authorized delegate and agent of the Choctaw Nation of Indians, relating to the award made by the Senate of the United States in favor of the said nation on the 9th day of March, 1859, having had the same under consideration, respectfully submit the following report:*

The subject to which the memorial relates has, in one or another of its various forms, been pressed upon the attention of Congress, and been

a matter of discussion and consideration there for many years; the delegate who now represents that nation here having been appointed for the express purpose of bringing the claims of the Choctaw Nation against the United States to the attention of Congress, *more than twenty years ago*. A brief review of the origin of the claim to which the ememorial invites attention, and a statement of its history, are both necessary and interesting.

The Choctaws were, for many years, under the protection of the Government of Great Britain. On the 3d day of January, 1786, however, they renounced that protection, and by a treaty concluded on the 10th day of that month, they were, by "the commissioners plenipotentiary of the United States of America," received "into the favor and protection of the United States of America." (7 Stat. at Large, page 21.)

To what extent and with what fidelity that favor and protection have since been given, is not pertinent to our present inquiry; nor would a consideration of those questions increase our national pride, or afford us additional causes for national congratulation.

At that time the Choctaws were a numerous and powerful nation, and were respected, if not feared, by our ancestors. They were treated with as a nation, and were not unworthy of such consideration. Subsequently, and on the 17th day of December, 1801, by a treaty concluded at Fort Adams, on the Mississippi River, this nation ceded to the United States a part of the large domain allotted to them by the terms of the treaty of 1786. (7 Stat. at Large, page 66.)

Still another part of their territory was ceded to the United States by the treaty concluded at Fort Confederation, on the Tombigbee River, on the 17th of October, 1802. (7 Stat. at Large, page 73.)

Three additional treaties were entered into between the United States and this nation as follows: One on the 16th of November, 1805; one on the 24th of October, 1816; and one on the 18th of October, 1820. (7 Stats. at L., pp. 98, 152, 210.)

By each of these treaties the said nation, for what was deemed an adequate consideration, ceded other parts of their territory to the United States.

The treaty from which the claim under consideration originated was concluded between the United States and the said nation on the 27th of September, 1830. By the third article the Choctaws ceded to the United States all their remaining possessions east of the Mississippi River. That article of this treaty is as follows:

In consideration of the provisions contained in the several articles of this treaty, the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi River; and they agree to remove beyond the Mississippi River as early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of the whole number, shall depart during the fall of 1831 and 1832; the residue to follow during the succeeding fall of 1833. A better opportunity in this manner will be afforded the Government to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes. (7 Stat. at L., page 333.)

By this treaty they ceded to the United States 10,423,139.69 acres of land. The recitals in the preamble show certain inducements for the cession; among them is the following:

Now, therefore, that the Choctaws may live under their own laws in peace with the United States, they have determined to sell their lands east of the Mississippi.

It does not clearly appear from the treaty what was the true consideration for the cession of this large and valuable property. At all events, it does not seem that any sufficient or adequate consideration was paid; nor does it appear what was expected by the Choctaws. The lands de-



scribed in the second article of the treaty of 1830 are the same described in the second article of the treaty of October 18, 1820. Hence the lands described in the second article of the treaty of 1830 constitute no part of the consideration for the cession made by the third article; and hence there is an apparent absence of any consideration, or, at least, of such as may be regarded as sufficient for the cession last mentioned. It is also manifest, from what follows, that the Choctaws expected to be paid for their lands lying east of the Mississippi River, with the possession of which they had stipulated to part.

Your committee are of the opinion that the Government of the United States is, by reason of the treaty made with the Choctaws on the 22d of June, 1855, and the subsequent action in pursuance thereof, estopped from inquiring into the intention and effect of the treaty of September 27, 1830. But we, nevertheless, invite the attention of the House to the question of the consideration for the cession made by that treaty, inasmuch as we have stated there is no adequate consideration therefor, except on the hypothesis that the lands ceded were to be paid for. A glance at the provisions of the said treaty will verify this proposition. The first article merely pledges mutual peace and friendship, and repeals inconsistent provisions of antecedent treaties; the second re-describes the lands west of the Mississippi River that had been ceded by the treaty of October 18, 1820; the third cedes the 10,423,139.69 acres to the United States; the fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth relate chiefly to the mutual obligations that exist, and were thereafter to exist, between the contracting parties; and the remaining nine articles of the treaty contain the sole consideration our Government was to pay for the cession of a valuable territory, provided the Choctaws shall be denied the net proceeds they seek to recover.

The fourteenth article provides for certain reservations out of the ceded territory, dependent on stated conditions and contingencies. It has been ascertained that the reservations made in pursuance of this provision covered an area of 334,101.02 acres, which, deducted from the total area of the ceded territory, leaves 10,089,038.67 acres actually acquired by the United States under said treaty, and we may with safety assume that the total value thereof was at least \$10,000,000.

The Secretary of the Interior, in an account stated between the Choctaws and the United States by order of the Senate of the United States, as we shall presently see, stated the total expenditures under the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first articles of the treaty at \$4,055,053.54.

It is insisted, however, that the Secretary included in that estimate various large sums that cannot, by any provision of the treaty nor by any principle of justice, be charged against these Indians. But even according to this extraordinary account stated, it appears we paid for the ceded territory \$5,944,946.49 less than its actual value. This, of course, was an act of "friendship" to the Choctaws, and was doubtless performed in pursuance of the first article of the treaty of 1830. But your committee invite your attention to the fact that in the account stated by the Secretary of the Interior are included various sums that ought to have been excluded. Under the sixteenth article the Secretary charged the Indians with \$1,229,766.52 on account of removal, subsistence, and amount paid for cattle. It is extremely doubtful whether a single dollar of this amount is justly chargeable to them; and it is expressly provided in the next article of the treaty that all "well-founded" doubts as to its construction shall be resolved in favor of the Choctaws.

Your committee are also at a loss to find a sufficient reason for charging said Indians with several of the items specified in the Secretary's statement as coming under the twenty-first article of the treaty. None of these items are properly chargeable against the Choctaws, except the item for scrip, allowed in lieu of reservations, amounting to \$1,749,900.

It appears that the chiefs, captains, and head-men of the Choctaw Nation were willing to reward the Wayne warriors by allowing them to receive a small amount out of the proceeds of their lands east of the Mississippi River, and that it was paid them by the United States, and charged against the nation in pursuance of article 21 of the treaty; but we repeat that we can find no warrant for the other charges under said article. If these erroneous charges were deducted, it would appear that our Government, in performing its covenant of friendship with the Choctaws, purchased from them 10,089,038.67 acres of land for the sum of about \$2,000,000; for if those who maintain that they are not entitled to the net proceeds are right in their construction of the treaty of September, 1830, the nation could not have received more than that sum for their said lands under the provisions of said treaty, as will, we think, fully appear from an examination of the treaty, in connection with the statement of the account prepared and reported to Congress by the Secretary of the Interior in pursuance of the Senate resolution of March 9, 1859.

Your committee respectfully report, however, that it is now too late to question the liability of the United States to pay said net proceeds to the Choctaw Nation, and it is also too late for the latter to inquire whether they were awarded the full amount due them, as hereinafter shown, even if they desired to disturb said award.

The question as to their rights under the treaty of September, 1830, had been agitated and urged until our Government, on the 22d of June, 1855, for this and other reasons, concluded a treaty with the Choctaws and Chickasaws; the eleventh and twelfth articles of which are as follows:

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, 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 indi-

vidual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

(11 Stats. at Large, p. 611.)

The Senate was thus constituted an umpire or arbitrator, and, in pursuance of the authority thus delegated, that body assumed the functions of an umpire, and on the 9th of March, 1859, made an award, which is as follows:

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, 2d session, 35th Congress, page 493.)

But two things then remained to be done in order to finally settle the matter in controversy. The first was for the Secretary of the Interior to state the account as required by the second resolution, and the next was for our Government to pay the balance, if any, that might be found against it, on a fair adjustment. The former has been done, the latter has not.

Let it be borne in mind that almost nineteen years have elapsed since the terms of submission, as agreed upon in said treaty, were adopted; and that on the 28th of May, 1860, the Secretary of the Interior reported the result of his findings to Congress. This report having been referred to the Committee on Indian Affairs of the Senate, that committee, on the 19th of June following, reported fully and favorably on the claim. It has been almost fourteen years since said report was made, and yet the powerless Choctaws stand entreating our Government for the payment of the award made by an umpire of its own selection. It is doubtless withheld in pursuance of that covenant and pledge of friendship given almost half a century ago; but such uniform and persistent kindness must have become a little irksome to a nation as *proud and powerful as the Choctaws were in former days*.

Your committee invite attention to the following extracts from the Senate committee's report of June 19, 1860. They are the accounts stated by the Secretary, and the observations made thereon by the Senate Committee on Indian Affairs:

*Statement of account with the Choctaw Indians in conformity with the resolutions and decisions of the Senate of the United States of March 9, 1859.*

	Acres.
Total area of lands ceded by the Choctaws by the treaty of September 27, 1830 .....	10, 423, 139. 69
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account.....	334, 101. 02
Leaving .....	10, 089, 038. 67

	Acres.
Quantity sold up to January 1, 1859.....	5,912,664.63
Residue of said lands .....	4,176,374.04

Of this residue 2,292,766 acres have been disposed of under the swamp-land act, and grants for railroads and school purposes, up to January 1, 1859.

The proceeds of the sales of the lands sold up to January 1, 1859, viz, 5,912,664.63 acres, amounted to .....	\$7,556,578 05
The residue of said lands, viz, 4,176,374.04 acres, at 12½ cents per acre, amounted to .....	522,046 75
	8,078,614 80

From which sum the following deductions are to be made:

- 1st. The cost of the survey and sale of the lands, viz,  
10,423,139.96 acres, at 10 cents per acre ..... \$1,042,313 99
- 2d. Payments and expenditures under the treaty, which  
are as follows:

FIFTEENTH ARTICLE.

Salaries of chiefs for twenty years.....	\$12,921 25	
Pay of speaker of three districts for four years .....	354 66	
Pay of secretary for same period.....	550 00	
Outfit and swords to captains, ninety-nine in number .....	4,930 50	
Pay to the same, at \$50 per year, for four years .....	19,604 65	
	38,361 12	

SIXTEENTH ARTICLE.

Removal and subsistence, per statement of Second Auditor .....	\$813,927 07	
On same account, per additional statement made in this office for expenditures from 1838 to date.....	401,556 17	
Amount paid for cattle .....	14,283 28	
	1,229,766 52	

SEVENTEENTH ARTICLE.

Annuity for twenty years.....	400,000 00
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NINETEENTH ARTICLE.

Fifty cents per acre for reservations relin- quished.....	\$24,840 00	
Amount to orphan reservations.....	120,826 76	
	145,666 73	

TWENTIETH ARTICLE.

Education of forty youths for twenty years.	\$217,260 76	
Council-house, house for each chief, and church for each district.....	9,446 75	
Two thousand five hundred dollars annu- ally for the support of three teachers for twenty years.....	50,000 00	
Three blacksmiths for sixteen years.....	38,988 86	
Millwright for five years .....	3,050 00	
2,100 blankets .....	7,496 70	
Rifles, molds, &c., to each emigrating war- rior.....	43,969 31	
1,000 axes, plows, hoes, wheels, and cards..	11,490 20	
400 looms.....	7,193 53	
One ton iron, and two hundred-weight of steel, annuity to each district for sixteen years .....	8,051 15	
	396,947 23	

## TWENTY-FIRST ARTICLE.

Annuitv to Wayne warriors .....	\$1,818 76	
Third scrip allowed in lieu of reservations, viz, 1,399,920 acres, at \$1.25 per acre .....	1,749,900 00	
Payments made to meet the contingent expenses of the commissioners appointed to adjust claims under the 14th article of the Choctaw treaty of 27th of September, 1830 .....	51,320 79	
For various expenses growing out of the location and sale of Choctaw reservations, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., incurred in executing the act of 3d March, 1837, and subsequent acts relative to adjusting claims under the 4th article of the treaty of 1830 .....	21,408 36	
For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with the said tribe of 27th September, 1830 .....	19,864 00	
	5,097,367 50	\$8,078,614 80
Total amount of charges .....		
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre .....		5,097,367 50
		2,981,247 30
Leaves a balance due to Choctaws of .....		

OFFICE INDIAN AFFAIRS, March 22, 1860.

## APPENDIX B.

DEPARTMENT OF THE INTERIOR, May 28, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, asking for a statement of the amounts paid and to be paid to the State of Mississippi, under the compact by which she was to receive 5 per cent. of the net proceeds of the sale of the land within her limits, and to inclose, for your information, a copy of the report of the Commissioner of the General Land-Office, to whom it was referred.

It is proper to add, that the apparent discrepancy (as to the amount of net proceeds of lands sold up to January 1, 1859,) between the report of the Commissioner and the report submitted by me to Congress on the 8th instant, grows out of the fact that, in the latter, the cost of surveying, &c., was estimated at ten cents per acre, while the Commissioner has deducted merely the actual cost of *selling* the land. Should the amount due the State of Mississippi be calculated according to the principles adopted in the report of May 8, the account would stand thus:

Gross proceeds of 5,912,664.63 acres .....	\$7,556,586 05
Deduct cost of survey, &c., at ten cents .....	755,556 80
Net proceeds .....	6,801,029 25
Five per cent. on same .....	340,045 56

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. W. K. SEBASTIAN,  
*Chairman, &c., United States Senate.*

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,  
May 25, 1860.

SIR: I have the honor to return herewith the letter, dated 22d instant, from the Hon. W. K. Sebastian, chairman of the Committee on Indian Affairs of the United States Senate, by you referred to this office on the 24th of the same. In answer thereto, I have to state that from the books of this office, it appears—

1st. That there has been paid to the State of Mississippi, at the rate of 5 per centum on \$7,242,014.29, the net proceeds of the sales up to the 1st of January, 1859, of 5,912,664.13 acres in the Choctaw cession of 1830, the sum of \$362,100.70. The inquiry in Senator Sebastian's letter is so comprehensive that it may be proper to add—

2d. That there are 285,954.88 acres embraced as *permanent Indian reserves* in said cession, upon which a percentage required by the act of 3d of March, 1857, rating the lands at \$1.25 per acre, has been paid to the State, amounting to \$10,610.80.

3d. And likewise upon *Choctaw scrip* that has been issued, equal to 169,402 acres, valued in like manner, there has been paid \$10,588.62.

The foregoing is not strictly the result of an adjusted account, but is based upon such an investigation as to render it substantially correct.

I am, sir, very respectfully, your obedient servant,

JOSEPH S. WILSON,  
*Commissioner.*

Hon. JACOB THOMPSON,  
*Secretary of the Interior.*

On the 19th of June, 1860, the Senate Committee on Indian Affairs, referring to this account stated, and to these documents, used the following language:

By the account the balance due the Choctaws is shown to be \$2,981,247.30.

This balance is arrived at by crediting the Choctaws with the proceeds of the sales of their lands up to 1st of January, 1859, \$7,556,568.05, and with 12½ cents an acre for the whole residue of the same, except such portions as were covered by reservations allowed and secured, making \$522,046.65; or, together, \$8,087,614.85; and deducting therefrom—

1st. Ten cents per acre, as the estimated cost of surveying and selling, on *all the lands ceded*, including all the reservations.

2d. All expenditures and payments under the treaty of 1830, including \$401,556.17, expenses incurred in removing and subsisting the Choctaws between the years 1838 and 1859, and all the expenses incurred in adjusting claims of the Choctaws, under acts of Congress subsequent to the treaty.

The net proceeds of the ceded lands having been by the Senate awarded to the Choctaws, not as a matter of legal right upon the letter of the treaty of 1830, but under the power given by the submission in the treaty of 1855, not alone to decide whether the Choctaws were *entitled* to those net proceeds, but also whether they should be *allowed* them; in fulfillment of the duty created by that treaty, to give the rights and claims of the Choctaw people "a just, fair, and liberal consideration;" because of the impossibility of ascertaining the real amount to which, upon a fair settlement, the Choctaw Nation and individuals were entitled; but which amount, it was evident, was of startling magnitude; as the only mode by which equal justice could by any possibility be done between them and the United States; and because, under the treaty of 1830, taken in connection with the discussions and propositions that preceded the treaty, their *equities* to have the net proceeds were very strong indeed; therefore it seemed to the committee to be an equitable construction of the award and its true intention that the United States should return to the Choctaws only so much as remained in their hands as profits from the lands ceded by the treaty of 1830, after payment of all expenses and disbursements of all kinds; and twelve and a half cents per acre for such lands only as still remain in the possession of the United States unsold.

The committee have therefore thought that there should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the 5 per cent. on the net proceeds of the actual sales of said lands, [5,912,664 13-100,] which the United States have paid to the State of Mississippi, amounting to \$362,100.70.

And also that the phrase "*the residue of said lands*" in the award [used instead of the words "*the lands remaining unsold*" in the submission] should not be construed to include such of the lands as have been given the State of Mississippi under the swamp-land act, nor the grants for railroad and school purposes; but that so much as in the account is allowed for such lands, at twelve and a half cents an acre, [or \$286,595.75,] should also be deducted.

These two amounts, deducted from the balance as found by the account, leave the sum of \$2,332,560.85 due and owing to the Choctaws, according to the award of the Senate, by virtue of articles eleven and twelve of the treaty of 1855.

The magnitude of this sum, and the misconceptions that prevail in respect to the nature of the debt itself, make it proper for the committee to remark that, in order to arrive at the foregoing result, every charge against the Choctaws and every deduction has been made that any equity would warrant; and that certainly no less sum than \$2,332,560.85 would ever be adjudged by a court of justice to be due and owing upon the award of the Senate, upon the most strict rules of construction against the Choctaws; and that the amount *actually* due them for actual loss and damage sustained by the non-performance of the stipulations of the treaty of 1830, if the *actual* value at the time of all the reservations they lost was brought into account, would be found to be much larger than that sum, and probably three or four times as large.

The Committee on Indian Affairs of the House of Representatives, in its report made upon this subject at the last session of Congress, speaking of the account stated by the Secretary of the Interior, and of the injustice done to the Choctaws by that account, used the following language :

Everything of value that the Choctaws received for the 10,423,139<sup>69</sup>/<sub>100</sub> acres of land lying in Mississippi, ceded by the third article of that treaty of September 27, 1830, may properly be classed under the following headings, namely : First, moneys ; secondly, reserved lands ; thirdly, certificates (called scrip) of entry, compulsorily given by the Government in lieu of the lands that large numbers of the Choctaws were entitled to, but which the United States sold from them in violation of the treaty of 1830. All of which is declared in the laws providing for the scrip.

And of these in their order. Under the fifteenth article, the following payments are provided for, showing, also, amounts paid thereon :

Salary of three chiefs, \$250 each, annually, for twenty years .....	\$15,000 00
Amount paid .....	12,921 25
Salary of principal chief, \$500 per year for twenty years .....	10,000 00
Amount paid .....	None.
Salary of three speakers, at \$25 each per year, \$75 for four years .....	300 00
Amount paid .....	354 66
Salary of three secretaries, \$50 each per year, \$150 for four years .....	600 00
Amount paid .....	550 00
Cloths and swords for ninety-nine captains .....	5,000 00
Amount paid .....	4,930 50
Ninety-nine captains' services in settling Choctaws west, \$50 each, \$4,950 for four years .....	19,800 00
Amount paid .....	16,604 65

The sixteenth article provides for the removal of the Choctaws to the West, and their subsistence for one year at the expense of the United States. It will be seen, however, by reference to the account rendered to the Senate by the Secretary of the Interior under date of March 9, 1859, that this item, amounting to \$1,229,766.52, is charged against the Choctaws in considering their claim to the net proceeds of their lands sold to the United States by the treaty of 1830.

The sixteenth article also provides that the United States shall take the Choctaws' "cattle at the valuation of some discreet person, to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes." Yet it will be found that in the statement of account of March 9, 1859, as above referred to, the Choctaws are charged with the sum of \$14,283.28, amount paid for their cattle. And instead of being allowed by the payment for them, as provided in the treaty, this sum is actually charged against them in the accounting for the net proceeds of their lands. Thus we pay them for their land with their own cattle.

The Choctaws were, in the Secretary's account for 1859, also charged with the expense of the commissions, appointed by the United States under the laws of Congress of 1837, 1838, and 1842, to determine how much the United States had wronged them—with the scrip we compelled them to take in lieu of their homes that we had sold, and with the expense of delivering the scrip to them, and with attorneys' fees and other expenses allowed to our officers in the matter. These items, and others, that will become patent to any one on reading the treaties and Secretary's accounting, are without equity and without justice.

The twenty-first article provides for the payment to "a few Choctaw warriors" who "yet survive, who marched and fought with General Wayne," (the whole number stated not to exceed twenty,) of \$25 a year each, while they should live, after the date of said treaty. This was in the nature of a pension of one-fourth what was allowed white soldiers. And yet, by the wording of the treaty, it is held, to the full amount thus paid, as a payment on the lands we purchased of the Choctaws by this treaty, as will be seen by the Secretary's report to the Senate, March 9, 1859. That this is an unjust thing needs no proof. Its recital is its own condemnation ; and yet the Choctaws submitted to it in order to secure a settlement of their claim for the lands they sold and conveyed by the treaty of 1830.

In order that the injustice done to these people, by this account stated, may be more clearly understood, your committee invite attention

to those items of the account for which neither the treaty nor the *award* of the Senate furnish the slightest authority or justification. Your committee do this not for the purpose or with the view of disturbing in any manner whatever the award made by the Senate, but for the purpose of showing the renewed injustice we would impose on the Choctaws by any longer delay in the payment of an award that cannot be justly questioned. The erroneous items are as follows:

The Choctaws are charged with the expenses of their subsistence and removal; and these, by article sixteen of the treaty, were to be assumed and paid by the United States. The charge on this account is \$1,229,766.52. They are charged, also, *two cents* per acre for the expense of surveying and selling the lands which remained unsold on the 1st day of January, 1859. Under the award, this expense was to be charged *only upon the lands which had been sold*. Clearly here is an overcharge against the Choctaws of \$417,637.40. The reservations allowed and secured by the Choctaws amounted to 334,101.02 acres, and this was deducted from the whole quantity ceded, and the Choctaws were required to pay the expense of surveying and settling these reservations. This is another erroneous charge of \$33,410.10.

The erroneous charges made against the Choctaws as payments made under article 21 of the treaty amount to \$94,411.91. Under the fifteenth article of the treaty the United States agreed to expend for the Choctaws \$50,700, but the account stated shows that the United States paid under this article only \$38,361.12, thus leaving a balance due from the United States under that article amounting to \$12,338.12. The sum of all these amounts is ONE MILLION SEVEN HUNDRED AND EIGHTY-SEVEN THOUSAND FIVE HUNDRED AND SIXTY-FIVE DOLLARS AND FIVE CENTS, (\$1,787,565.05.) There is not in all these items a single one which an honest chancellor would have held properly chargeable against the Choctaw Nation. These facts further illustrate with what degree of fidelity the United States has fulfilled its often-repeated pledges of friendship to the Choctaw Nation. Equally inadmissible and unauthorized, as well as unjust, are the further deductions *suggested, but not made*, by the Senate Committee on Indian Affairs in the report made by that committee on the 19th day of June, 1860. The amount of the deductions there suggested were as follows: \$362,100.70, "for the five per cent. on the net proceeds of the sale of the lands, which had been paid to the State of Mississippi;" and the committee also suggested that the phrase in the award, "*the residue of said lands*," should not be construed to include such as the United States had given away as swamp-lands, and for railroads and school purposes. The quantity so disposed of was 2,292,766 acres, and the amount proposed to be deducted on this account is \$286,595.75. It needs no argument to demonstrate that these items could not be deducted from the account as stated by the Secretary of the Interior.

The award had specified what deductions should be made from these net proceeds, and had not provided for making the Choctaws pay back moneys which the United States had given to Mississippi. The awards spoke of the lands ceded, allowed the net proceeds *of those sold*, and twelve and one-half cents an acre "for the residue of said lands." Nobody but an Indian nation, to whom we had given a solemn covenant of "friendship," and a pledge of "favor and protection," would be compelled to argue that this meant "all that had not been sold, and of which the proceeds were allowed."

Your committee are forced to the conclusion that the AWARD of the Senate, being strictly within and in accordance with the terms of the submission, was conclusive and binding both upon the United States



and the Choctaw Nation. After it had been made, and the amount due under it ascertained and had been declared, the Senate, the tribunal of arbitration, had no power to change it. It could only be impeached and called in question for the fraud or misconduct of the arbitrators. It is not pretended or claimed that either of these exist. If the Senate had awarded *three* millions of dollars to the Choctaws as the "*gross sum*" which should be paid by the United States in full satisfaction of their claims, will it be claimed that the Senate could, more than a year afterward, rightfully change their award, and reduce the "*gross sum*" to be paid to *two* millions of dollars? It seems very clear to your committee, that when the Senate had decided the questions submitted to them, their duties as arbitrators under the treaty were at an end. If their decision involved the statement of an account, and they directed by whom the account should be stated, and the principles upon which it should be stated, they were bound by that statement, unless it was erroneous and in violation of the *award*. It is not pretended that the account stated by the Secretary of the Interior can be *now* objected to for either of these reasons; nor is it shown that the Choctaw Nation has ever assented to any change or modification of the award, or to any reduction of the amount due under it, as shown by the account stated. Your committee must, therefore, in the interest of honesty and fair-dealing, and to preserve the honor and good faith of the United States, declare that the amount it is bound to pay to the Choctaw Nation is the amount found due by the account stated by the Secretary of the Interior, less such sums as the United States may have paid in satisfaction of that account since it was rendered. The only amount paid by the United States upon or in satisfaction of that account is the sum of \$250,000, paid to the said nation under the provisions of the act of Congress approved March 2, 1861.

The balance remaining due to the Choctaw Nation under the said award, therefore, is the sum of *two million seven hundred and thirty-one thousand two hundred and forty-seven dollars and thirty cents*, (\$2,731,247.30.)

The Committee on Indian Affairs of the House of Representatives, in its report (No. 80) made at the last session of Congress, used the following language in regard to the obligations of the United States under this award and the account stated in pursuance thereof by the Secretary of the Interior.

The language of that committee was as follows :

By every principle of law, equity, and business transaction the United States is bound by the accounting of the Secretary of the Interior, showing \$2,981,247.30 due to the Choctaws at the date of the Secretary's report.

First. The Senate was the umpire, and in the language of the treaty of 1855, which made it such, its decision was to be final.

Secondly. The Senate, in the exercise of its power under the treaty of 1855, chose to allow the net proceeds of the land as the better of the two modes of settlement proposed by that treaty, and not to allow a sum in gross.

Thirdly. The Senate directed the Secretary of the Interior to make the accounting, which he did, May 2<sup>d</sup>, 1860, as shown above.

Fourthly. The Senate did not, as umpire, or otherwise, reject this accounting; but, on March 2, 1861, Congress made an appropriation of \$500,000 on it, and the Senate has not, since the Secretary's report, rejected any part of it, though near fourteen years have elapsed.

(House Report No. 50, Forty-second Congress, third session.)

Your committee, for the purpose of showing that the conclusions at which they have arrived are not new, invite attention to the fact that the subject-matter of this memorial has many times received the favorable consideration of both the Senate and House of Representatives. In addition to the report of the Senate Committee on Indian Affairs of the 19th of June, 1860, attention is directed to the report by the Committee

on Indian Affairs of the House of Representatives, made through its chairman, Hon. J. P. C. Shanks, on the day of February, 1873; also to Report No. 318, made by the Senate Committee on Indian Affairs on the 22d of January, 1873; and especially to the report from the Committee on Appropriations, made by the Hon. I. C. Parker on the 9th day of April, 1874, being House Report No. 391. These reports are all in perfect accord, so far as they relate to and discuss the perfect justice of this claim, and the legal obligation of the United States to pay it, according to the award of the Senate. In each of these reports, too, the opinion is expressed that the grossest injustice was done to the Choctaws in the adjustment and statement of the account, and that,

If the case were re-opened and adjudicated as an original question by an impartial umpire, a much larger sum would be found due to the said Indians, which they would undoubtedly recover were they in a condition to compel justice.

Your committee concur in these conclusions, and express the conviction that any person who now for the first time examines this claim will be amazed at the persistent and long-continued injustice with which we have treated them, and by which we have deprived them of that which is legally and justly due them. We by solemn treaty stipulations promised them the "favor and protection of the United States." To what extent we have performed our high covenant in this behalf, let the history of the nation, whose delegate appeals to us in behalf of his people, furnish an answer. They were virtually driven from their homes in Mississippi, and compelled to seek others in an untrodden wilderness of the West, remote from the beneficent influences of our advancing Christian civilization. We promised to pay the expenses of their removal, and to subsist them in their new homes for one year after their arrival there; yet we charged them all these expenses, and deducted them from the proceeds arising from the sale of the lands they had reluctantly ceded that they might live "under their own laws in peace with the United States." But the story of the wrongs inflicted upon these people is too long to be fully embraced in a mere report.

Your committee are called upon to devise some means by which the injustice so long practiced upon the Choctaws shall be brought to an end, and their rights fully secured and protected, and to that end your committee recommend as follows:

1st. That the balance due the Choctaw Nation under the award of the United States Senate, to wit, the sum of \$2,731,247.30, be paid to the said nation without further delay.

2d. That interest be allowed on the said sum from the 2d day of March, 1861, at the rate of 5 per cent. per annum; and that the balance of the said award, with interest thereon, be satisfied by the issue and delivery to the Choctaw Nation, or to its authorized delegates, of bonds of the United States, as provided in the bill (H. R. 2189) now pending before the Committee on Appropriations of the House of Representatives.

Your committee does not submit for the consideration of the House a bill to carry into effect these recommendations, for the reason that the Committee on Appropriations are now considering such a bill as will meet the recommendations of your committee.

Your committee, therefore, ask to be discharged from the further consideration of the said memorial, and recommend that the same, together with this report, be referred to the Committee on Appropriations. Your committee also recommend that said sum of \$2,731,247.30 be paid said nation, with interest thereon, at 5 per cent. per annum, from the 2d of March, 1861.