

4-12-1852

Report : Claim of the Choctaw Indians

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Recommended Citation

S. Rep. No. 181, 32nd Cong., 1st Sess. (1852)

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IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1852.
Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT:

[To accompany bill S. No. 92.]

The Committee on Public Lands respectfully report:

By the treaty of September, 1830, the Choctaw Indians ceded their lands east of the Mississippi, and agreed to emigrate, as a tribe, to the country provided for them west of Arkansas. Many of them, however, being unwilling to remove, the 14th article stipulated that all who desired to remain and "become citizens of the States," might do so on signifying their intention to the agent for the tribe, and should be thereupon entitled to a reservation of a section of land for each head of a family, to include their improvements, with an additional quantity for each unmarried child. A residence on the reserved lands of five years after the ratification of the treaty, was prescribed as the evidence of an intention to "become citizens of the States;" after which, on the one hand, a grant in fee-simple, as in cases of purchases made by white settlers, was to issue to the Indian reservee; and on the other hand, he was to be perpetually debarred from all participation in the Choctaw annuities. About 7,000 Indians, constituting one-third of the tribe, determined to avail themselves of this provision in the treaty. They remained the prescribed time; they were recognised as citizens of Mississippi by the constitution of that State; the government ceased to extend to them its guardian care; they no longer derived any aid whatever from the United States in the shape of schools, blacksmith shops, annuities, or the protection of an agent. They were placed, in all respects, on the same footing with other citizens of the different States. The disadvantages of their new position they felt to the fullest extent. But the privilege for which they had paid so large a price, the undisturbed possession of their property, of their homes, they were not permitted to enjoy. Owing to the neglect and mismanagement of those whose duty it was to ascertain their names and locations, their intention to remain, and the fact that they had actually remained, was not, with a few inconsiderable exceptions, officially reported until after the lands embraced in their claims had been sold, and were, of course, beyond the control of the government.

To remedy the flagrant injustice thus done, Congress directed, in the third section of an act "to provide for the satisfaction of claims arising under the 14th article of the treaty concluded with the Choctaw Indians on the 30th September, 1830," that when the United States had disposed of lands

covered by claims of this description, other lands should be allowed them, and that certificates, or scrip, receivable in the land offices to that effect, should be issued, with this proviso: "that not more than one-half of which (certificates) shall be delivered to said Indian, until after his removal to the Choctaw territory, west of the Mississippi river;" a provision intended not for the benefit of the Indian, but to induce him to surrender his rights as a citizen of Mississippi, and reunite with the main body of the tribe.

Subsequently, by the third section of the Indian appropriation act of 3d March, 1845, it was provided that the half thus withheld should not be issued or delivered at all, but that "the amount of said scrip, estimating the land at one dollar and twenty-five cents per acre, shall carry an interest of five per cent., which the United States will pay annually to the reservees respectively, or to their heirs and legal representatives forever."

The aggregate funded is reported by the Commissioner of Indian Affairs to be \$872,000. The Indian claimants, through their chiefs and the general council of the tribe, petition for the payment of the principal. The government agent and the Choctaw delegate strongly recommend the measure, and the Commissioner of Indian Affairs concurred in the recommendation.

The investment was evidently conceived in a spirit of benevolence, and intended to protect the Indian from his own improvidence. All the evidence before the committee, however, goes to show that the policy on which it is based is erroneous. The Indian claimants have uniformly insisted that the interference of Congress, in funding the half of their scrip payable west, is at war with the spirit of the treaty under which their claims originated, inasmuch as their lands were to be held absolutely in their own right, and they themselves were recognised as competent to manage their own affairs. The United States agent reports that it is the unanimous wish of all concerned that the amount funded be paid. The Choctaw general council, a body which has always maintained, in its relations with the government, a high character for discretion and good sense, concurs with the agent that annuities are a source of infinite mischief; that instead of furnishing any remedy for improvidence, they tend directly to increase it; that they paralyze energy, and stimulate a ruinous credit system. They add, that in this particular case the evils incident to annuities generally, are greatly aggravated by the peculiar individual proprietorship of the funds, leading to infinite subdivisions among the heirs of decedents, and giving rise to litigation and fraud. So far as the Indians are concerned, it seems to be admitted on all sides that the annual payment of interest is a positive evil, and that the principal should be turned over in bulk.

Independent of these particular considerations, affecting only the payment of annuities to small classes of persons entitled, there are others which experience has shown are applicable to the system at large, and which make that policy, in our Indian relations, of questionable propriety. After all the efforts of the United States—by means of schools and missionaries, a policy of enlarged philanthropy and paternal care, seconded by these annual contributions in goods and money intended to entice them from the chase to the field, and allure them to the habits of civilized life; it may be doubted whether annuities have not, in most instances, done more to retard and frustrate our humane policy than they have to advance it. These agencies intended to operate on the transformation of the Indian character, must be of that stern nature which leaves no choice in their adoption, and must be exerted upon the rising generation. The annual sti-

pend of money originated in the idea that it was a necessary aid in enabling the Indian to cast aside the fixed ideas and traditional customs of the aboriginal race, and assume the new duties and relations of civilization. This policy is proved by experience to have originated in a false estimate of his character and capacities. With a constitutional indolence which nothing but want and necessity can subdue, it is in vain to expect that the scanty annuity which alleviates his wants shall also prompt him to industry. With whatever virtues this system may be endowed in its adaptation to the wild race, in effecting the first steps towards their amelioration; it loses all the arguments in its favor in its application to the civilized tribes. These, by the constant exertions of our government, acting upon a succession of generations at a vast outlay of expenditure, have approached the confines of civilization just at the period of their history when they have almost reached national extinction. The Choctaws, of all the civilized tribes, are said to have attained the highest civilization. Their schools and their Christianity—their written constitution and laws—their fixed habits of life and agricultural pursuits—have qualified them long since to become their own guardians. They not only desire the final payment of the principal, but such a disposition seems necessary to enable the claimants to engage more fully and profitably in their agriculture, to which that nation has long since devoted itself.

As a financial arrangement it is equally desirable to the government. The constant addition, by successive treaties, is rapidly swelling our annual expenditures and virtually increasing our national debt. The treasury is now in a condition to enable it to discharge this annuity, and thus, at the same time, accomplish an object beneficial to both parties, besides an act of justice more in consonance with the objects of the treaty than the payment of the annuity heretofore.

While the provisions of the act of Congress referred to contemplated the issuance of scrip, yet, under the subsequent act of 1845, this was in terms countermanded, and the amounts funded, with interest, payable "to the reservees respectively, or to their heirs and legal representatives, forever." These annuities are thus constituted strictly private claims of Choctaws, and not a debt due to the nation; claims which are represented by their owners, and *not by their government*. The consent of the Choctaw nation was, indeed, unnecessary. They are not rights arising under treaty, but a satisfaction for the violation of it. The fourteenth article of the treaty secured lands to those who should remain and become citizens of the States. These lands they never received; and for this violation of their rights an act of Congress gave them scrip, which they accepted, and one-half of which they received. It was thus an adjustment of a question between the United States and citizens of Mississippi. The nation had emigrated, where the reservees afterwards emigrated; interest was substituted for the principal, and again this arbitrary arrangement of the United States was acquiesced in, the interest since 1847 paid, and received by the reservees and their heirs respectively. Their names, and the amounts due, are ascertained by a pay-roll; hence there have been, and could be, no assignments and transfers of their claims to others. To effect a legal payment of these claims, consistently with their true character, it would seem to follow that the amounts should be paid, respectively, to each claimant, or his heirs or legal representatives, and not to the nation or to an assignee. As a measure of precaution, however, it would be well to obtain the formal sanction

of the national authorities of the tribe, which, having been given to the original application, will, no doubt, be readily accorded again to the final measure here proposed.

The committee have no hesitation in expressing the opinion, that the claims should be paid, the interest arrested, and that without any treaty for that purpose. An act of Congress, as it created these rights, is competent to provide for their satisfaction.