

6-19-1860

Report on Amount Due the Choctaw Indians

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IN THE SENATE OF THE UNITED STATES.

JUNE 19, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany bill S. 515.]

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 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 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, \$8,078,614 80; 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 Choctaws, between the years 1838 and 1859; and all 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 in 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 profit 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 has therefore thought that there should be charged against the Choctaws, as a further deduction not made by the Secretary of the Interior, the five per cent. on the net proceeds of the actual sales of said lands, [5,912,664¹³/₁₀₀,] 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.

It is also to be observed that of the amount claimed by the Choctaws, near the whole was for *individual* claims of persons entitled to reservations of land, and who were prevented from securing them. By article twelve of the treaty of 1855, whether the Senate awards the Choctaws a gross sum or the net proceeds of their lands, and whether the sum it awards is large or small, in either case, the nation is to and must receive and accept it in full satisfaction of *all* claims, of itself and individuals, against the United States, arising under the treaty of 1830; and the Choctaw nation becomes liable for and bound to pay *all* such individual claims; and that these claims, as appears by official evidence, amount to more than the sum which the committee now reports as due the Choctaws under the award. The claimants have waited many years to be paid for their losses, and many of them, the committee are informed, are poor; and the Choctaw authorities, constantly urged and entreated by them, anxiously desire to investigate and provide for paying their claims.

The Commissioner of Indian Affairs, in his report to the Secretary of the Interior, transmitting the account, called the Secretary's attention to the facts that, under the treaty of 1830, a patent was issued to the Choctaws for their country west of Arkansas; that afterwards, [in 1837,] the Chickasaws purchased an interest in these lands, for \$530,000, which was paid the Choctaws for the Chickasaws, by the United States, out of moneys of the Chickasaws, in their hands; and that by the treaty of 1855 the United States procured from the Choctaws a lease of the western part of their country, for which they paid them \$600,000 and the Commissioner said: "If these sums are to be regarded as payments under the treaty of 1830, the amount due the Choctaws will be \$1,851,247 30."

The Secretary of the Interior reported the account, as stated to Congress, without in any way deciding whether it was or was not a pertinent response to the Senate's award.

The sums mentioned by the Commissioner can only be deducted, or charged against the Choctaws, if, to use the words of the treaty of 1855 itself, they were "just and proper *expenditures* and *payments* under the provisions of said treaty" of 1830, because, by article eleven of the treaty of 1855, nothing *else* was to be deducted, except the costs of survey and sale.

The United States, in 1832, took all the lands of the Chickasaws in trust, and agreed to sell them and pay that tribe the net proceeds. Having no country west of the Mississippi to sell or give them, and

they speaking the same tongue as the Choctaws, the two tribes, in 1837, made a convention, by which the Choctaws agreed to receive the Chickasaws among them, and give them a joint interest in their country. For this, the *Chickasaws* agreed to give them \$530,000. Of this sum, \$30,000 was paid, and the residue the United States, having Chickasaw moneys in their hands, agreed to hold in trust for the Choctaws, and pay them interest on it. By the treaty of 1855, they agreed to *continue* to hold it.

Was this an *expenditure* or a *payment* under the provisions of the treaty of 1830? It was neither paid or expended by the United States. It was a payment by the *Chickasaws*, by a transfer of funds held for *them* by the United States. How then can this same amount be charged by the United States against the Choctaws? Suppose it were charged; that is, the Choctaws were made to repay it to the United States, would the latter *retain* it? in which case the Chickasaws would be made to pay *them* for what they had no right to sell—a joint right of occupancy of the Choctaw lands; or would they *return* it to the Chickasaws? in which case the latter would pay no money to anybody for their joint interest in the Choctaw lands.

If this principal sum should be charged against the Choctaws, why not charge them the interest on it which has been paid them since 1837?

The committee cannot conceive how the conclusion is reached that this sum should be deducted in stating this account. It seems to be in some way connected with the notion that the Choctaws received a higher and better title to their lands west by the treaty of 1830 than they previously had; and that this additional title was part of the consideration for the cession of their eastern lands by that treaty, and therefore to be deemed a *payment* or *expenditure* under its provisions. But if that were an argument fit to be made, how would it justify deducting the whole sum received by the Choctaws for a joint interest in both their old and new title. The premises and conclusion do not agree. If the argument is sound, that which should be deducted is *what the difference between the old and new title was worth in 1830*, of which what the Chickasaws paid them is surely no test.

Moreover, the whole foundation of the argument fails. The premises do not exist in fact. All the questions of law and fact arising under the submission were before the committee, were very fully considered, decided, and their conclusions submitted to the Senate, and affirmed by its final award. No new question has since been stirred that was not then considered and disposed of.

It was decided, for the question was legitimately raised and discussed before the committee, that the Choctaws obtained, by the cession from the United States in 1820, a right of perpetual occupancy and usufruct, without power of alienation, and with reversion to the United States, on extinction of or abandonment by the tribe, to all the land confirmed to them west of the Mississippi by the treaty of 1830; and that they had that title, identically the same, no more and no less, under the latter treaty, the fee remaining in the United States, so that the country west was no part of the consideration for the cession *by* the Choctaws of their country east in 1830.

The Choctaws had a complete right in 1837, without the consent of the United States, to receive the Chickasaws among them, and give them a joint interest in their title, such as it was, and agree what should be paid for this interest, and receive it. If the United States thought otherwise, and that anything paid by the Chickasaws for an interest in the country, and the privilege of becoming an integral part of the Choctaw nation, ought to be paid to *them*, certainly the ordinary rules of fair dealing required them to put forward that pretense *then*, when, there is no doubt, the Choctaws would unhesitatingly have refused to enter into any such arrangement on such terms; and not to agree that the consideration of right was payable to, and should be paid to, the Choctaws, and that they would hold it in trust for them, and *now* to claim that it shall go to reduce the amount which they owe the Choctaws, on the ground that *it was a payment or expenditure under the treaty of 1830*.

The other proposition is still worse. By the treaty of 1855 the United States received of the Choctaws and Chickasaws a lease of so much of their country as lies between the ninety-eighth and one hundredth parallels of west longitude, and a relinquishment of their title to all the country west of the one hundredth parallel. For *both* the United States agreed to pay the Choctaws \$600,000 and the Chickasaws \$200,000. What proportion of each was for the lease and what for the relinquishment we do not know.

The suggestion is, that perhaps this sum of \$600,000 *also* ought to be charged against the Choctaws—this sum that we *owe* them—as a *payment* under the treaty of 1830. The suggestion needs no other answer than this, that to do so would make the treaty of 1855 a fraud upon the Choctaws. Certainly, that is not the meaning of the treaty of 1855. It was never so understood. If it had been, the lease and relinquishment would never have been made; *because the proposition is now to take from the Choctaws what we agreed to pay them and what the treaty admits we owe them*, just as the first suggestion is, to take from them, against their consent, what the Chickasaws paid them.

On the same principle, we should have to charge them at once with the *present* value of their whole country. We had no right to *demand* a release of any of it, or a cession or relinquishment of any of it. We agreed to pay them, if the Senate should so decide, the net proceeds of lands they ceded in 1830, deducting *only* payments and expenditures under *that* treaty; *and, also*, to pay them on a different account, the \$600,000. To *deduct* the latter from the former, is for the debtor to insist on his right to offset one of his debts against another, when he owes both to the same person; and so, the more he owes, owe the less.

If the Choctaws are thus compelled to refund this \$600,000, will the United States require the Chickasaws also to refund the \$200,000 paid *them* on the same condition?

If anything more were needed to show how much this suggestion, only calculated to obscure and complicate a plain proposition, is to be regretted, it may be found in this, that, by article thirteen of the treaty of 1855, after having provided for this award, and carefully defined what charges should be made against the net proceeds, it was stipu-

lated that the funds then held in trust, for the benefit of the Choctaws, under former treaties or otherwise, [which included the sum of \$500,000, paid by the Chickasaws under the treaty of 1837,] should *continue* to be so held, with the sum of \$500,000, out of the \$600,000, to be paid for the release and relinquishment.

Without further remark upon this suggestion, presenting as it does a proposition that no ingenuity can defend or even invest with plausibility, and finding the account, as corrected by them, to have been taken and stated in strict accordance with the spirit and equity of the award, and so to have become a part of it, the committee recommend the payment of the sum of \$2,332,560 85; for which, it is understood from the Choctaw delegates, their people are willing to receive the stocks of the United States.

APPENDIX A.

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.

	<i>Acres.</i>
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 has 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 96

2d. Payments and expenditures under
the treaty, which are as follows:

AWARD TO CHOCTAW INDIANS.

FIFTEENTH ARTICLE.

Salaries of chiefs for 20 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, 99 in number....	4,930 56	
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 of \$20,000 for twenty years....	400,000 00
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NINETEENTH ARTICLE.

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

TWENTIETH ARTICLE.

Education of forty youths for twenty years.....	\$217,260 73
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 twenty years	50,000 00

Three blacksmiths, sixteen years.....	\$38,988 86	
Millwright for five years..	3,050 00	
2,100 blankets.....	7,496 70	
Rifles, moulds, &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 23

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 contingent expenses of the commissioners appointed to adjust claims under the fourteenth 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	
	<hr/>	
Total amount of charges.....	5,097,367 50	<hr/>
		\$8,078,614 80
Which deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre....	5,097,367 50	<hr/>
		2,981,247 30
		<hr/> <hr/>

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 five per cent of the net proceeds of the sales of all lands 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.....	\$7,556,568 05
Deduct cost of survey, &c., at ten cents.....	755,656 80
	<hr/>
Net proceeds.....	6,800,911 25
Five per cent on same.....	\$340,045 56
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Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. W. K. SEBASTIAN,
Chairman, &c., &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 five 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 as 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

AWARD TO CHOCTAW INDIANS.

169,402 acres, valued in like manner, there has been paid the sum of \$10,587 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.