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Letter from the Secretary of the Treasury, accompanying a report of the Solicitor of the Treasury relative to the claim of the Choctaw Indians, known as the "Net Proceeds Claim."

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LETTER

FROM

THE SECRETARY OF THE TREASURY,

ACCOMPANYING

A report of the Solicitor of the Treasury relative to the claim of the Choctaw Indians, known as the "Net Proceeds Claim."

JUNE 7, 1872.—Ordered to lie on the table and be printed.

TREASURY DEPARTMENT,
Washington, D. C., June 6, 1872.

SIR: Several weeks since a statement was made to the Department that the claim of the Choctaw Indians, known as the "net proceeds claim," was not founded in equity, and that an examination would show that it ought not to be paid by the Government.

Upon this representation, I directed the Solicitor of the Treasury to hear the parties who professed to have knowledge of the circumstances connected with the treaty of 1855 with the Choctaw Nation, of the statement of the account between that nation and the United States under that treaty, and of the action of the Senate in the year 1859; and he was also directed to examine all the treaties with that nation for the purpose of ascertaining whether there was any foundation for the statements made to the Department.

The Solicitor has made the examination as directed, and submitted his report, a copy of which I have the honor to transmit herewith.

The account as stated by the Department of the Interior, under the treaty of 1855, and the resolution of the Senate of March 9, 1859, showed a balance due to the Choctaw Nation of \$2,232,500.85. The sum of \$250,000 was appropriated to the Choctaw Indians in the year 1861, and at the same time authority was given for an issue of bonds on the same account in the sum of \$250,000.

The bonds have not yet been delivered, but an application is now pending in the Department by persons claiming to represent the Choctaw Indians for their issue without delay. Proceedings are, moreover, pending in the Supreme Court of the United States, seeking to compel the Secretary of the Treasury to issue the bonds to another party claiming them under an order or assignment alleged to have been made by the agents of the Choctaw Nation several years since.

The report of the Solicitor of the Treasury and an examination of the treaties of 1830 and 1855 with the Choctaw Indians, aided by such information as I have been able to obtain from other sources, tend very strongly to show that there is no equitable ground on which the Gov-

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ernment can be required to issue the bonds in question, or make payment of the large sum of money covered by the claim of the Choctaw Nation.

The Department, however, has not had the means of a thorough examination, nor will there be time during the present session of Congress for the proper inquiries by a committee of either House, and I have therefore the honor to suggest that a bill or joint resolution be passed authorizing the Secretary of the Treasury to delay the issue of the bonds until there shall have been further investigation and action by Congress.

Very respectfully,

GEO. S. BOUTWELL,
Secretary.

Hon. SCHUYLER COLFAX,
Vice-President and President of the Senate,
Washington, D. C.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., May 29, 1872.

SIR: I have, at your verbal request, examined certain questions which have been brought to your notice affecting your obligation under the laws of Congress to pay over to the Choctaw Nation certain bonds for the delivery of which claim is made upon you.

I find that no objections to such delivery are made, except such as can be gathered from the various treaties made with the Choctaw Nation and the action taken by Congress upon the claim which has been presented.

I will briefly recite the substantial points of the treaties which are relied upon to sustain the claim, and indicate my views thereon; I see no occasion to go back further than to the treaty of 1820.

This treaty provides for an exchange of a small part of the land of the Choctaws, east of the Mississippi River, for a country beyond the said river, the purpose being that those Indians wishing to become civilized and to be made citizens should remain, and that those who will not work, but prefer to live by hunting, should go to the new country west of the river.

Article I of this treaty cedes a part of the Choctaw lands to the United States, defining the same by bounds.

Article II states that in consideration of said cession by the Choctaw Nation, and in part satisfaction therefor, a certain tract west of the Mississippi River, defined by bounds, is ceded by the United States to the Choctaws.

The other articles of this treaty are beneficial to the Indians, engaging to subsist those who remove over the river until they arrive at their new home, and that a part of the land ceded to the United States shall be sold to create a school fund for the benefit of the Indians on both sides of the river, and making other provisions for the comfort and necessities of the Indians.

From the subsequent history of the relations between the United States and the Choctaw Nation, I infer that this treaty, by its various provisions, gave full consideration for the cession to the United States.

The treaty of 1825 retroceded to the United States a part of the lands granted to the Choctaws west of the Mississippi River by the

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treaty of 1820, and in consideration therefor the United States agreed to pay to the Choctaw Nation \$6,000 annually, forever.

By the treaty of 1830, the Choctaw Nation, in consideration of the several articles thereof, cede to the United States the entire country they own and possess east of the Mississippi River, and agree to remove beyond the river as soon as practicable.

An examination of the various articles of this treaty will show that many of them contain a consideration for this cession highly valuable in its nature.

In Article IV self-government is secured to the Choctaw Nation.

In Article V the United States agree to protect the Choctaw Nation from domestic strife and foreign enemies.

In Article XIV it is provided that each Choctaw head of a family desiring to remain and become a citizen of the United States shall, upon notice, become entitled to a reservation of one section of 640 acres; to one-half section for each unmarried child over ten years of age living with such head of a family; and to one-quarter section for every child under ten years of age.

This is the reservation clause which has, I believe, been sometimes considered as the foundation of the present claim.

In Article XV certain specific grants of reservations and annuities are made to chiefs.

In Article XVI the United States agree to be at expense of removing and subsisting the Indians to their country west of the river.

In Article XVII former annuities are secured and further annuities are provided.

In Article XVIII there is a provision for the survey of the ceded Choctaw lands, and also this provision: "And for the payment of the several amounts secured in this treaty, the lands hereby ceded are to remain a fund pledged to that purpose until the debt shall be provided for and arranged."

I can discover no evidence that full provision has not been made for the payment indicated in the foregoing quoted passage, nor do I understand that any claim is set up under that clause.

If there is no such claim it would seem that the lands are free in the possession of the Government and relieved of all incumbrance under the pledge.

In Article XIX certain specific reservations are admitted and confirmed.

Article XX contains important stipulations for the benefit of the Choctaw Nation, to be performed by the United States.

The treaty of 1830 appears to me, therefore, to provide a consideration understood and accepted to be ample, which was certainly valuable in character, for the cession by the Choctaw Nation of "the entire country they own and possess east of the Mississippi River."

In 1855 a new treaty was made with the Choctaws and Chickasaws, from the preamble of which it would seem two objects were had in view:

1. To settle dissensions and controversies between the two tribes of Indians.

2. To originate what is termed the "net proceeds" claim of the Choctaw Nation.

As I have already said, the treaty of 1830 gave a full consideration for what it received from the Indians, consisting of certain specific things to be done by the United States, which, so far as anything to the contrary appears, were all performed.

That treaty, as I read it, by no language or implication gives coun-

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renance to the idea that the United States, after giving the Choctaws a vast country west of the Mississippi River, for that given up by them east, after paying all the expenses of the removal of those who migrated and their subsistence on the journey; after giving all the stipulated reservations to those who chose to remain on their old lands; after making what looks like very liberal provision for personal annuities, for schools and various other necessities and conveniences of the tribe, still further agreed to hold the lands in the State of Mississippi ceded by them for these various considerations, in trust, as it were, and to pay over to them the "net proceeds" which might accrue from the sale of these lands.

The United States, by the treaty of 1855, do not assent to the "net proceeds" claim thus set up, as arising under the treaty of 1830; but it is agreed by the XIth Article of the treaty of 1855 that the questions be submitted for adjudication to the Senate of the United States:

1. Whether the Choctaws are entitled to, or shall be allowed the proceeds of the sale of the lands ceded by them by the treaty of 1830, in order to a final settlement; or,

2. Whether they shall be allowed a gross sum in further and full satisfaction of all their claims against the United States, national and individual, and, if so, how much. Under this article of the treaty, the Senate, on March 9, 1859, adopted the following preamble and resolutions:

Whereas the XIth Article of the treaty of 1855 provides that the following questions be submitted for decision to the Senate, first, (quoting the words of the article:)

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, (1859), deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservation allowed and secured, and estimating the scrip issued in lieu of reservation at the rate of \$1.25 per acre; and further, that they be also allowed 12½ cents per acre for the residue of said lands.

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

By this the Senate resolved that the Choctaws be allowed the net proceeds of the land ceded by the treaty of 1830, but did not make an award of the amount of those proceeds. They resolved, however, that the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due according to the award, and report the same to Congress.

On May 10, 1860, the Secretary of the Interior made his report which, in the House, was laid on the table and ordered to be printed.

In the Senate, the matter was referred to the Committee on Indian Affairs; the chairman of which, on the 19th of June, 1860, made a report in relation thereto, to accompany Senate bill 515, which was read twice and ordered to be printed.

Nothing else was done in either branch of Congress toward carrying out the resolve of the Senate of March 9, 1859.

By the report of the Senate Committee on Indian Affairs it appears that they came to the conclusion that the Choctaws were entitled to \$2,332,560.85 as the net proceeds, and bill 515, accompanying the report, provided for the appropriation and disposition of the amount in accordance with the treaty of 1855.

The XIIth and XIIIth Articles of this treaty detail precisely what disposition is to be made of the money found due the Choctaws by the resolve of 1859.

1. The net proceeds shall be received in full satisfaction of all claims

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against the United States, national and individual; and the Choctaws shall thereupon become liable and bound to pay all individual claims as shall be adjudged by the tribe to be just; the settlement and payment to be made with advice and under the direction of the United States agent, and so much of the fund awarded by the Senate as shall be necessary to pay the just liabilities of the tribe shall, on their requisition, be paid.

2. The balance of the amount allowed to the Choctaws under the XIIth Article of the treaty shall be held in trust by the United States, yielding an interest of not less than 5 per cent., &c.

The legislation of 1861, appropriating \$250,000 in money and \$250,000 in bonds, and any further legislation looking to the payment of the sum found by the Committee on Indian Affairs in 1860 to be due to the Choctaws, is manifestly not in accordance with the treaty of 1855; for, first, nothing can be paid by Congress until the individual claims, which the Choctaws, by the treaty, assumed to pay, shall be adjudicated by the proper authorities of the tribe, and then only to the amount of such adjudication; and, second, the balance can, under the treaty, never be paid, but must be held in trust by the United States, the interest only being payable to the Indians.

No claims have ever been adjudicated by the tribe.

The impression made upon me by this review is, that the appropriation of 1861 was not sanctioned by the terms of the treaty, and that it was made either in forgetfulness of the terms of the treaty, as a payment in advance of any adjudication of individual claims by the tribe, or as a pure gratuity.

It also seems to me that no further appropriation can be wisely made except upon the basis of the Senate bill 515, reported by Mr. Sebastian, before referred to, or after a careful review of the whole subject.

I am, very respectfully,

E. C. BANFIELD,
Solicitor of the Treasury.

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