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INDIAN TREATIES OF 1866.

MEMORIAL

OF

CHICKASAW, CHOCTAW, CREEK, CHEROKEE, AND SEMINOLE
INDIANS,

In relation to the treaties of 1866.

FEBRUARY 16, 1874.—Referred to the Committee on the Territories and ordered to be printed.

WASHINGTON, D. C., February 9, 1874.

To the Congress of the United States :

We, the undersigned, beg leave very respectfully to represent that we are respectively citizens of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations of Indians, in the Indian Territory, and the most of us are at present the legal representatives of these nations before the Government of the United States.

We desire still further to say that in the year 1867 we were also legally constituted delegates, and with those who were then our colleagues we represented before the Government the several nations to which we belong respectively, for the purpose of adjusting the unsettled affairs then pending between our nations and the United States. We were the signers of treaties of that year (1866) made between our several nations and the Government. We fully understood the purport, intent, and scope of these treaties at the time they were made, as they were repeatedly interpreted and fully explained to us by the United States commissioners, and were discussed by us in detail, article by article.

Yet we see, with deep regret, that strenuous efforts have been repeatedly made to misrepresent and distort the meaning and intent of the articles of these treaties which provide for the organization of a general council of the nations and tribes inhabiting and to inhabit the Indian Territory. We are satisfied, however, that these efforts at misconstruing our treaties have been made, and are still being made, by those who are either ignorant of the real design of these treaties or by those actuated by selfish motives. The result aimed at by these men would be alike injurious and unjust to the Indians and dishonorable to the Government. We therefore feel it to be a duty which we owe to our own nations and to the Government to protest, as we now do, against the misconstruction of our treaties referred to, and in that connection to state what was our distinct understanding, at the time we signed them, of the several articles in the treaties of 1866 relating to the "General Indian Council." In the respectful performance of this

duty we do hereby most solemnly and emphatically declare that the articles of the treaties of 1866 which authorize the establishment of a "general council" of the Indians do not authorize the formation by Congress of a territorial government of the United States over the Indians of the Indian Territory. On the contrary, the agreement on our part, in assenting to the establishment of said council, was entered into for the very purpose of obviating the alleged necessity of such a territorial government. We well knew that that country had been set apart by the act of Congress of May 28, 1830, and by subsequent Indian treaties, as an Indian country exclusively, and that the lands therein belonged to the Indians, having been purchased by them from the Government for a valuable consideration, which purchase is evidenced by the highest title the Government can confer, viz: patents in fee simple, which are of record in the General Land-Office of the Government, and that therefore the country was not a territory of the United States, nor were its owners, the Indians, citizens of the United States. Hence we held that that country was exclusively an Indian country, as contradistinguished from a territory of the United States; and we treated upon that basis, each nation therein having its right of soil and self-government, and its boundaries marked by well-defined lines, and all being circumscribed by a general exterior boundary, marked by permanent landmarks, and situated outside the limits of any State or Territory of the United States.

It was our understanding that Congress had the right, secured to it by former treaties, to regulate trade and intercourse between the Government of the United States and its citizens, on the one hand, and the Indian governments and their citizens on the other; and with that understanding we re-affirmed in our treaties of 1866 the obligations of these prior treaties, and specified, among other things, that Congress might legislate for the better administration of justice and the protection of persons and property within the Indian Territory. In order to restrict such legislation to the matter of trade and intercourse, we provided especially that such legislation should "not in any manner interfere with or annul our present tribal organizations, rights, laws, privileges, and customs."

The schemes contemplated by the territorial bills now before Congress were proposed to us in 1866. We unanimously rejected them. Our reasons for so doing were substantially the same as those that subsequent delegations from our respective nations have urged upon Congress, year by year.

If you organize a territorial government over us you will do so simply by virtue of your superior power, and without the shadow of authority from any concessions made by us.

We agreed to a general Indian council, or a confederation of Indian tribes and nations, then in and to come into the Indian country, for the purposes specified in the treaties of 1866, and for no other purposes, and with the distinct understanding that no territorial government should be placed over the Indians without their express consent. We also agreed that other friendly Indians who were located within the limits of the States or Territories of the United States might be settled in this Indian country, and be confederated with us in the said general council, and for that purpose we agreed to specific provisions in our treaties. Accordingly, from year to year, such Indians have been located in said country, and have become a part of said confederation, which has been established for several years. It was established by order of the President, and has been indorsed by Congress from year to year.

As another matter altogether separate and distinct from the general council or confederation above named, we also inserted in our treaties of 1866 articles providing that Congress might establish a United States court or courts in the Indian country for the administration of justice; but it is especially provided that such court or courts shall not have the power to interfere with our local or national governments; neither can such courts be vested with power to affect our rights of soil. But neither the right to establish these courts, nor the right to regulate trade and intercourse, had any connection with the establishment of any territorial government over us. They were considered as distinct propositions, and cannot, without manifest violation of our treaties, be used as a pretext for the extension of a territorial government over us.

We, the signers of the treaties of 1866, certainly understand the purport and intent of those treaties, and it was with our interpretation of them that the people of our nations received them as the supreme law of the land.

Now, in the name of our people, and on their behalf, we do most solemnly and firmly protest against any perversion of these treaties whereby they may be construed as authorizing the establishment of a territorial government over our respective nations and tribes, unless it be with the express consent of these nations and tribes.

We have the honor to be very respectfully, your obedient servants,

JAMES M. C. SMITH,
COWEETA MICCO,
D. N. McINTOSH,

Signers of Treaty of 1866 with Creeks.

JOHN B. JONES,
Signer of Treaty of 1866 with Cherokees.

JOHN CHUPCO,
Seminole Chief, and Signer of Treaty of 1866 with Seminoles.

ROBERT JOHNSON,
Interpreter of Seminole Treaty of 1866.

P. P. PITCHLYNN,
*Signer of the Choctaw and Chickasaw Treaty of 1866,
and at the time Chief of the Choctaws.*

I was a witness to the Creek treaty of 1866, and at the time understood the meaning of that treaty as it is expressed in the foregoing statement.

W. P. ADAIR.

I was a witness to the treaty of 1866 between the Government and the Choctaw and Chickasaw nations of Indians, and my understanding of that treaty was as stated in the foregoing statement of the signers of the treaty of 1866.

ALFRED H. JACKSON.

I witnessed the Choctaw and Chickasaw treaty of 1866, and my understanding of the meaning of that treaty at the time was the same as that set forth in the foregoing statement.

C. S. MITCHELL.

My name was attached as a witness to the Cherokee treaty of 1866, and I participated in aiding to make it, in all its stages, and I know that the above statement correctly represents the parties to that treaty, and that they made it with that understanding.

WM. A. PHILLIPS.