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Recommended Citation

H.R. Rep. No. 808, 45th Cong., 2nd Sess. (1878)

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ARREARS DUE CHICKASAW NATION.

MARCH 8, 1878.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

MAY 18, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GUNTER, from the Committee on Indian Affairs, submitted the following

REPORT :

[To accompany bill H. R. 3729.]

The Committee on Indian Affairs, to whom was referred the petition of B. F. Overton, governor, and Josiah Brown and John E. Anderson, commissioners, of the Chickasaw Nation, respectfully submit the following report :

In the years 1832 and 1834 the Chickasaw Nation, then occupying their ancient lands in the State of Mississippi, entered into four treaties with the United States, whereby they sold to the United States all of their lands east of the Mississippi River, and agreed to emigrate to territory west of that river, and the United States agreed to dispose of the proceeds of sales of their lands in Mississippi in accordance with the following stipulation :

The funds thence resulting, after the necessary expenses of surveying and selling and other advances which may be made are repaid to the United States, shall, from time to time, be invested in some secure stocks, redeemable within a period of not more than twenty years, and the United States will cause the interest arising therefrom annually to be paid to the Chickasaws. (7 Stat., 382, 385, 454)

In 1852 the United States and the Chickasaw Nation entered into a treaty which contains the following provision :

ARTICLE 5. The Chickasaw Nation desires that the whole amount of their national fund shall remain with the United States in trust for the benefit of this people, and that the same shall on no account be diminished. It is therefore agreed that the United States shall continue to hold the said fund in trust as aforesaid, and shall constantly keep the same invested in safe and profitable stock, the interest upon which shall be annually paid to the Chickasaw Nation : *Provided*, That so much of said fund as the Chickasaws may require for the purpose of enabling them to effect the permanent settlement of the tribe, as contemplated by the treaty of 1834, shall be subject to the control of their general council. (10 Stat., 975.)

By the treaty entered into April 28, 1866, between the United States and the Choctaw and Chickasaw Nations, it is provided as follows :

ARTICLE 5. A general amnesty of all past offenses against the laws of the United States committed before the signing of this treaty by any member of the Choctaw or Chickasaw Nations is hereby declared ; and the United States will especially request the States of Missouri, Kansas, Arkansas, and Texas to grant the like amnesty as to all offenses committed by any member of the Choctaw or Chickasaw Nations ; and the Choctaws and Chickasaws, anxious for the restoration of kind and friendly feelings among themselves, do hereby declare an amnesty for all past offenses against their respective governments, and no Indian or Indians shall be prosecuted, or any act of

Forfeiture or confiscation passed against those who may have remained friendly to the United States, but they shall enjoy equal privileges with other members of said tribes, and all laws heretofore passed inconsistent herewith are hereby declared inoperative.

ARTICLE 10. The United States reaffirms 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.

ARTICLE 40. 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. (14 Stat., 770, 774, 779.)

These articles, construed together, afforded a general amnesty to all members of the Chickasaw Nation for all past offenses against the United States committed by any member of said nation before the signing of the treaty; the United States reaffirming all obligations arising out of treaty stipulations or acts of legislation with regard to the Chickasaw Nation, entered into prior to the late rebellion, not inconsistent with the stipulations of the treaty of April 28, 1866.

This action on the part of the United States, taken on the 28th day of April, 1866, restored the Chickasaw Nation, from and after said date, to the same rights and privileges which they held before the war of the rebellion, in accordance with their treaty stipulations. But no provision was then made for the payment of the accrued interest which was due or might have been due on the 30th day of June, 1866. The provision then made was this:

That the United States agrees to renew the payment of all annuities and other moneys accruing under treaty stipulations and acts of legislation from and after the close of the fiscal year ending on the 30th day of June, in the year 1866.

The Secretary of the Interior, in a written communication to the committee, dated January 25, 1878, states that from the records of his department it appears that there is due the Chickasaw Nation, as accrued and unpaid interest on bonds held by the United States in trust for the use of said Chickasaw Nation, the sum of \$222,290.25, as follows:

For arrears of interest from January 1, 1861, to July 1, 1866, on 616,000	
Tennessee bonds, at 6 per cent. per annum, for 5½ years.....	\$203,280 00
For arrears of interest from January 25, 1865, to July 1, 1866, \$66,666.66½,	
Tennessee bonds, at 5½ per cent. per annum, 5 years and 157 days.....	19,010 25

The petitioners claim that there is due as interest on said trust-fund, which accrued prior to July 1, 1866, the sum of \$297,890.25. This proves to be a mistake, and is explained as follows:

The United States purchased, for the use of the Chickasaw Nation, bonds of the State of Arkansas in the sum of \$90,000. On these bonds the State of Arkansas failed to pay the interest, and on the 1st day of July, 1866, there was due on the bonds interest at 6 per cent. per annum from July 1, 1852, fourteen years, at 6 per cent., amounting to \$75,600.

In accordance with the provisions of an act approved December 13, 1872 (17 Stat., 397) these bonds of the State of Arkansas, originally purchased in the sum of \$90,000, were funded in new bonds of that State, and the interest then due from the State was also funded by the issue of bonds.

The accrued interest (\$75,600) and the amount of the principal of the bonds originally purchased of the State of Arkansas (\$90,000), with some additional interest added at the time of payment, making in all the sum of \$168,300, was funded, in 1873, in accordance with the provisions of the act of December 13, 1872, and now stands to the credit of the Chickasaw Nation on the books of the Interior Department

The reasons for the non-payment of the interest which accrued on the Tennessee bonds between the dates of January 1, 1861, and July 1, 1866, in the sum of \$222,290.25, may be briefly stated as follows:

First. Congress has not as yet made any appropriation for the payment of said interest.

Second. The first section of the act of July 3, 1862 (12 Stat., 582) provides 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 Chickasaws, may and shall be suspended and postponed, wholly or in part, at and during the discretion and pleasure of the President.

During this period of the fiscal years from July 1, 1861, to July 1, 1872, no estimates appear to have been made to Congress by the Interior Department for the payment of the accrued interest in question.

On the 13th day of April, 1872, the Acting Secretary of the Interior submitted to Congress an estimate of appropriation for payment to the Chickasaw Nation of Indians of the balance of accrued interest then due, and requested the favorable action of Congress upon the said estimate.

On the 23d day of April, 1874, the Secretary of the Interior resubmitted to Congress the estimate of appropriation required to pay the said accrued interest to the Chickasaw Nation that had been submitted the year before.

It appears that Congress failed to make the appropriation as requested.

The petitioners, having ascertained from the communication of the Secretary of the Interior, to which reference has been made, that by the refunding of the Arkansas bonds and interest the amount due the Chickasaw Nation in the premises has been reduced from \$297,890.25, the amount stated in their petition, to \$222,290.25, now ask that the amount due may be provided for by an investment of \$100,000 in bonds of the United States, to be held in trust for the Chickasaw Nation by the United States, and an appropriation of the sum of \$122,290.25, to be paid in money into the treasury of the Chickasaw Nation.

The Secretary of the Interior, in his communication of January 25, 1878, informs the committee that he is of opinion that the Chickasaw Nation has both a legal and equitable claim against the United States for the sum of \$222,290.25, being for interest which accrued between the dates of January 1, 1861, and July 1, 1866, on certain bonds held in trust by the United States for the use of the Chickasaw Nation.

It has been suggested that the purchase of these railroad and turnpike bonds by the Government of the United States was a full discharge of its duty under article 11 of the treaty of 1834 and article 5 of the treaty of 1852, and that therefore no obligation rests upon the United States to provide for interest on the non-paying stocks. The committee have carefully considered this objection, and are unable to find in it any justification for a refusal to pay the arrears of interest due the Chickasaw Nation.

1. In the first place, the question suggested is not an open question. Few questions have been more effectually settled. Congress has in twenty-one different statutes, covering a period of thirty-three years, asserted and affirmed the obligation of the government to meet the interest on the non-paying stock. Eight of these statutes were enacted before the late war; the first on the 3d of March, 1845, and thirteen have been enacted since the war; the last, on the 3d day of March, 1877. Moreover, the Senate and House of Representatives of the Forty-fifth Congress have, in the Indian appropriation bill, passed at the present

session, affirmed the same obligation by providing for the payment of the current interest on all these non-paying stocks, including those held for the Chickasaws as well as those held for the other nations. In these bills appropriations have been made for every penny of interest which accrued on the non-paying stocks in favor of all the nations *before* the war, *during* the war, and *after* the war, except the interest which accrued in favor of the Chickasaws on these railroad and turnpike bonds *between* the 1st of January, 1861, and the 1st of July, 1866. Every dollar which accrued to the Chickasaws *before* and *after* that period has been appropriated and paid. Of these acts six contained appropriations wholly or partly for *arrears* of interest and the rest for *current* interest.

If legislative action can possibly settle any question, this question would seem to be "res judicata." The present Congress cannot repudiate the obligation to pay this interest without trampling upon the precedents of twenty former Congresses, nor can it repudiate the obligation without stultifying itself; for it has already engrafted on the Indian appropriation bill of the present session an appropriation for the interest on all the non-paying stocks, including those held for the Chickasaws themselves.

2. The treaty stipulations bearing upon this question have already been cited on page 1 of this report. The non-paying stocks on which arrears of interest are due the Chickasaws are the following :

Nashville, Murfreesborough and Shelbyville Turnpike Company bonds (5½ per cent.)	\$66,666 66½
Nashville and Chattanooga Railroad Company bonds (6 per cent.)	512,000 00
East Tennessee and Georgia Railroad Company bonds (6 per cent.)	104,000 00

682,666 66½

These bonds were guaranteed by the State of Tennessee.

In view of the relations between the United States and the Chickasaw Nation, of the history of these relations, of the origin of this fund resulting from the sale of the ancient homes of the Chickasaws, of the treaty stipulations of the United States to "keep the same invested in some secure stocks," to "cause the interest arising therefrom annually to be paid to the Chickasaws," to "constantly keep the same invested in safe and valuable stocks, the interest upon which shall be annually paid to the Chickasaw Nation," and in view of the nature of these investments, the committee are of the opinion that no court of equity, here or elsewhere, if it had jurisdiction of this case, and if the questions involved were open questions, and not, as they are, *res judicata*, could permit the United States to thrust this loss upon the Indians, who, under our Constitution and laws, have never been permitted to enter our courts, as plaintiffs, for the enforcement of their rights.

It has been suggested that the Chickasaws were implicated in the late rebellion, and that the war extinguished this debt.

Your committee have given to this objection the careful consideration which its importance demands, and find it to be invalid for the following reasons:

1. In the first place, the question involved in this objection is not an open question. It has been repeatedly adjudicated by Congress, as well as by the executive departments of the government. The Choctaws, Cherokees, Creeks, and Seminoles were, like the Chickasaws, implicated in the late rebellion; and yet the Government of the United States has paid *all* the interest which accrued on non-paying stocks in favor of those four nations between the 1st of January, 1861, and the 1st of July, 1866.

An estimate was made for the arrears which accrued, in favor of all

the nations except the Chickasaws, between the 1st day of January, 1861, and the 1st day of July, 1866, on pages 110 and 112 of the estimates of the first session of the Thirty-eighth Congress. This estimate was \$350,220.80, and included \$1,925 interest on trust-funds of the Chickasaw "incompetent," together with all arrears due all the other tribes. No appropriation was made at that session. But the next year an estimate was made, on page 160 of the estimates of the second session of the Thirty-eighth Congress, for \$446,433.50, which included interest to July 1, 1866. This whole amount was appropriated in the general act approved March 3, 1865. (13 Stats., 559.) Under that act all the arrears of interest on non-paying stocks due the Choctaws, Cherokees, Creeks, and Seminoles were paid by the United States.

It would, in the opinion of the committee, neither satisfy the demands of justice nor comport with the dignity of the government to adopt one rule for the Chickasaws and a different rule for the other nations.

2. If it were a principle of public law that a state of war discharged antecedent public debts, that principle would, of course, apply to both belligerents alike. Upon that theory, public debts due from the enemy to the United States would have been discharged by the existence of the war equally with those due from the United States to the enemy. Such a rule of law would effectually discharge every dollar of interest which accrued during the war, on bonds of Southern States held in the North, and would also absolutely extinguish all liability for the principal of such bonds.

3. But there is no such principle of public law. The opposite doctrine is universally recognized.

While a state of war may *suspend payments* upon a public debt, it never *extinguishes* the debt itself. On this point there is no conflict in the authorities.

Phillimore states the law as follows: "The subject of debts due from the state, in its corporate capacity, to individuals—money invested in the public funds and the like—has been already discussed. The opinion of Vattel upon this point is thus emphatically expressed: 'The State never touches the moneys which it owes to its enemy; funds intrusted to the government are exempt from confiscation and seizure in case of war.' Emerigon (Des. Assur., t. 1, p. 567) and Martens (vol. 3, c. 2, s. 5) are of the same opinion. Indeed, it is one which now may happily be said to have no gainsayers." (3 Phillimore, 135.)

Vattel further says: "Thus claims founded on a debt, or on an injury which has been done prior to the war, but which made no part of the reasons for undertaking it, still stand on their former footing, and are not abolished by the treaty unless it be expressly extended to the extinction of any claim whatever." (Vattel, 439.)

Grotius says: "Yet those debts which were due to private persons at the beginning of the war are not accounted forgiven, for these are not acquired by the right of war. Therefore, the impediment being removed, *i. e.*, the war ended, they remain in full force." (3 Gro., c. 20, s. 16.)

Kent states the law in these words: "Debts existing prior to the war and injuries committed prior to the war, but which made no part of the reasons for undertaking it, remain entire, and the remedies are revived." (1 Kent, 170.) "Where treaties contemplate a permanent *arrangement* of national rights, or by their terms are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of the war. They revive at peace unless waived, or new or repugnant stipulations be made." (1 Kent, 177.)

4. But then if this obligation, instead of being a public debt due from the government itself to the Chickasaws, which, under the law of nations, is incapable of confiscation, had been a private debt due from individuals to the Chickasaws, and the government could have lawfully confiscated it, nevertheless, when those Chickasaws who took part in the rebellion ceased to be enemies and the possibility of confiscation was extinguished by the amnesty of article 5 of the Choctaw and Chickasaw treaty of April 28, 1866, and by the first clause of article 10 of that treaty, their title to this interest was just as complete as it would have been if none of them had participated in the rebellion.

The first clause of article 5 is in these words: "*A general amnesty of all past offenses* against the laws of the United States, committed before the signing of this treaty, by any member of the Choctaw or Chickasaw Nations, is hereby declared." And the first clause of article 10 is in the following words: "The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation, with regard to the Choctaw or Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, and not inconsistent herewith."

If, therefore, this had been a private debt due to the Chickasaws, and the government had had a right to confiscate it, yet that right, not having been, in fact, exercised, articles 5 and 10 of the treaty of 1866 would have extinguished the right and the possibility of confiscation.

It has also been suggested that the last clause of article 10 of the treaty of 1866 between the United States and the Choctaw and Chickasaw Nations did not provide for the payment of their interest which accrued between January 1, 1861, and July 1, 1866, but only for annuities and other money accruing after July 1, 1866, and, therefore, the arrears of interest due the Chickasaws are not to be paid.

But the committee are unable to see how a failure to provide in that treaty for the *payment* of a debt which was of perfect obligation under the public law, without regard to the treaty, could *extinguish* the debt. Besides, the consequences of the adoption of such a principle would not be limited to the Chickasaws; for this treaty of 1866 was a treaty with the Choctaws as well as with the Chickasaws. If it contains no provision for the payment of the interest which accrued before July 1, 1866, in favor of the Chickasaws, so, also, did it contain no provision for the payment of the interest which accrued before July 1, 1866, in favor of the Choctaws. And yet, by the act of March 3, 1865, all the interest on the non-paying stocks which accrued in favor of the Choctaws between the 1st day of January, 1861, and the 1st day of July, 1866, was appropriated and paid.

Furthermore, treaties were made with many other tribes, including the Cherokees, Creeks, and Seminoles, during the year 1866. In none of these treaties was any provision made for the payment of interest accruing during the period mentioned, and yet every dollar of such interest has been appropriated and paid.

The committee have been unable to find any grounds of fairness or justice for these discriminations against the Chickasaws.

They are of opinion that payment of the arrears of interest in question cannot be refused by Congress unless at the expense of its own consistency, in disregard of treaty obligations, in violation of public law, and in opposition to repeated adjudications by the legislative and executive departments of the government.

They concur in the opinion of the Secretary of the Interior, and recommend the passage of the accompanying bill.

Mr. PAGE, from the Committee on Indian Affairs, submitted the following as the

VIEWES OF THE MINORITY.

The minority of the Committee on Indian Affairs, to whom was referred the bill (H. R. 3729) entitled "A bill to provide for the payment of arrears of interest due the Chickasaw Nation,"

This bill proposes to pay to the Chickasaw Nation the interest on certain railroad bonds guaranteed by the State of Tennessee, arising for the years 1861 to 1866, inclusive. The moneys arose from the sale of Chickasaw lands east of the Mississippi River under treaty of 1834, in the eleventh article of which is the following provision:

The funds thence resulting, after the necessary expenses of surveying and selling and other advances which may be made are repaid to the United States, shall, from time to time, be invested in some secure stocks, redeemable within a period of not more than twenty years, and the United States will cause the interest arising therefrom annually to be paid to the Chickasaws. (7 Stat., 382, 385, 454.)

A considerable sum of money was realized under the provisions of the above treaty, and was in the hands of the government or under governmental control in 1852; and in 1852 the United States and the Chickasaw Nation entered into a treaty which contains the following provision:

ARTICLE 5. The Chickasaw Nation desires that the whole amount of their national fund shall remain with the United States in trust for the benefit of this people, and that the same shall on no account be diminished. It is therefore agreed that the United States shall continue to hold the said fund in trust as aforesaid, and shall constantly keep the same invested in safe and profitable stock, the interest upon which shall be annually paid to the Chickasaw Nation: *Provided*, That so much of said fund as the Chickasaws may require for the purpose of enabling them to effect the permanent settlement of the tribe, as contemplated by the treaty of 1834, shall be subject to the control of their general council. (10 Stat., 975.)

Your committee submit that under the provisions of these treaties the government did not assume any absolute obligation to be responsible for the principal or interest of the moneys arising from the sale of the Chickasaw lands. Had the government intended to assume an absolute responsibility for the moneys, the government would have simply covered the money into the Treasury and held itself liable to pay a stipulated interest, as should be agreed, and to pay to the Chickasaws the principal at such time and in such manner as should be stipulated. On the contrary the government simply assumed the role of trustee and became responsible "to keep the same," *i. e.*, the moneys "*invested in safe and profitable stock, the interest upon which shall be annually paid to the Chickasaw Nation.*" Under this provision the government became responsible to the Chickasaws for the principal and interest to the same extent as other trustees are responsible to their *cestui que trusts*, and to no other or greater extent. Under such a provision a *cestui que trust* could only hold the trustee responsible for investing the funds in stocks fairly *reputed to be safe and profitable* and afterward exercising *adequate vigilance* in relation to it.

These moneys were loaned upon the guarantee of the State of Tennessee, partly in the year 1837 and partly in the year 1851. At that time the investment was considered to be one of the safest investments which it was possible to make.

Under the rules of law and equity prevailing in England and America, the trustee, *i. e.*, the United States, could not be held absolutely responsible for the moneys so *invested*, or for the interest upon it; and for that reason this bill ought not to pass.

But there is a further and better reason why this bill should not become a law. The State of Tennessee, in 1861, went into rebellion against the Government of the United States, and in consequence of such rebellion neglected and refused to pay any of the interest on the investments for the years 1861, '62, '63, '64, '65, and '66. The Chickasaw Nation could scarcely be held to be in allegiance to the United States. They were at least in alliance with, or, in other words, bound to, the United States by treaty stipulations. But the Chickasaws took up arms as open enemies of the United States, and to the best of their power worked for their destruction. By these acts they forfeited all the rights secured by the treaties quoted.

But in process of time peace came, and a forgiving nation in 1866 consented to negotiate a new treaty with this Indian nation.

By the treaty entered into April 28, 1866, between the United States and the Choctaw and Chickasaw Nations, it is provided as follows:

ARTICLE 5. A general amnesty of all past offenses against the laws of the United States committed before the signing of this treaty by any member of the Choctaw or Chickasaw Nations is hereby declared; and the United States will especially request the States of Missouri, Kansas, Arkansas, and Texas to grant the like amnesty as to all offenses committed by any member of the Choctaw or Chickasaw Nations; and the Choctaws and Chickasaws, anxious for the restoration of kind and friendly feelings among themselves, do hereby declare an amnesty for all past offenses against their respective governments, and no Indian or Indians shall be prosecuted, or any act of forfeiture or confiscation passed against those who may have remained friendly to the United States, but they shall enjoy equal privileges with other members of said tribes, and all laws heretofore passed inconsistent herewith are hereby declared inoperative.

ARTICLE 10. The United States reaffirms 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.

ARTICLE 40. 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. (14 Stat., 770, 774, 779.)

By these provisions the Chickasaw Nation were so far restored to their former relations to the government that the government agreed "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.*" Now the report of the majority proposes to go beyond the treaty, and pay to this Indian nation the interest accruing *before* the 30th day of June, 1866. The undersigned cannot assent to this proposition. We deem that the government burdens are sufficiently heavy without adding this additional burden. It is said that we ought to pay this interest because we have paid interest upon other similar bonds on which interest has been suspended. We submit that this case should stand by itself. We shall close this report by stating that the Interior Department now hold bonds issued by States of the Union, or guaranteed by States, on which interest has been entirely suspended since 1861 to the amount of \$156,666.66, and to the amount of \$1,427,800 on which very little interest has been paid, while this government has, except in the case of this portion of the Chickasaw fund, paid over every dollar of the interest to the Indians.

MARTIN J. TOWNSEND.
HORACE F. PAGE.