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**Message from the President of the United States, transmitting a communication from the Secretary of the Interior, in reference to the applications of the Chicago, Texas and Mexican Central, and the Saint Louis and San Francisco Railway Companies, for a right of way across the lands of the Choctaw Nation, in the Indian Territory**

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## M E S S A G E

FROM THE

# PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A communication from the Secretary of the Interior, in reference to the applications of the Chicago, Texas and Mexican Central, and the Saint Louis and San Francisco Railway Companies, for a right of way across the lands of the Choctaw Nation, in the Indian Territory.*

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DECEMBER 15, 1881.—Read, and referred to the Committee on Railroads and ordered to be printed.

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*To the Senate and House of Representatives:*

I transmit herewith a communication from the Secretary of the Interior, with accompanying papers, in reference to the applications of the Chicago, Texas and Mexican Central, and the Saint Louis and San Francisco Railway Companies, for a right of way across the lands of the Choctaw Nation, in the Indian Territory, for the building of a proposed railroad and telegraph line.

The matter is commended to the careful attention of Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,  
December 15, 1881.

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DEPARTMENT OF THE INTERIOR,  
Washington, December 13, 1881.

SIR: I have the honor to inclose, for your information and such action as you may deem proper, duplicate copies of the report of U. J. Baxter, designated, under your instructions of the 8th and 20th of October last, respectively, as a special agent of this department to present to the proper authorities of the Choctaw Nation, in the Indian Territory, the respective applications of the Chicago, Texas and Mexican Central and the Saint Louis and San Francisco Railway Companies, for a right of way across the lands of said nation for the building of a proposed railroad and telegraph line.

Accompanying the same will be found copies of the applications, of the instructions to Mr. Baxter, and of all the papers and correspondence attached to and made a part of his report; also, a copy of the bill passed by general council and approved by the principal chief, granting such right of way to the Saint Louis and San Francisco Railway Company, subject, by express provisions therein contained, to further consideration and ratification by the Congress of the United States.

The whole matter has been examined by the Commissioner of Indian Affairs, and I inclose copies of his report of 12th instant, in favor of the proposed legislation, in which I concur.

Should the terms of the measure meet your approval, I suggest that the same be recommended to the favorable consideration of Congress.

Very respectfully, your obedient servant,

S. J. KIRKWOOD,  
*Secretary.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, December 12, 1881.*

SIR: I am in receipt, by department reference, for report, of a letter from U. J. Baxter, esq., special agent of the department, dated the 30th ultimo, submitting the result of his negotiations with the authorities of the Choctaw Nation respecting the grant of a right of way to the Saint Louis and San Francisco Railway Company through the lands of said nation in the Indian Territory; also, of an official copy of the bill passed by both houses of the Choctaw legislature granting such right of way, together with sundry other papers elucidating the matter contained in said letter.

The bill in question, which bears the approval of the principal chief of the Choctaw Nation, under date of the 10th ultimo, provides (subject to certain stipulations and agreements therein contained) for the grant of a right of way to the Saint Louis and San Francisco Railway Company, a corporation duly organized under the laws of the State of Missouri, for the construction of a railroad and telegraph line; said right of way to be 200 feet in width through the Choctaw Nation, and 400 feet in width at each station for a distance of 4,000 feet in length; said right of way to commence at a point to be selected by said company on the line of said nation immediately contiguous to Sebastian or Scott Counties, in the State of Arkansas, and run thence in a southwesterly direction on the most direct and practicable route through the Choctaw Nation, in the general direction of Paris, in the State of Texas, and to continue to or connect with a proposed road from the city of Paris aforesaid.

For this grant the said railway company is to pay quarter-annually to the national treasurer of said nation, to be used for the benefit of schools therein, the sum of \$500; and until the first of such payments is made no right or power to enter upon said lands, except for the purpose of surveying and locating the line of road and telegraph, is to be acquired under the provisions of the act, which is also subject to ratification by Congress.

In reply to your inquiry whether, in the opinion of this office, there are any legal or other objections to the proposed grant, I have to say that I know of none. The treaty provisions for railroads through the Choctaw country (Article VI, treaty April 28, 1866, 14 Stat., 769), being held by the department to have been exhausted by the location of existing roads under legislative authority and Executive sanction, the grant of a right of way in the present instance would, as stated in department letter to the President of the 20th October last, appear to legitimately fall within the scope of the general power reserved to the nation by the fourth sub-

division of Article VIII of the treaty to legislate for the construction "of works of internal improvement," governed by the limitations of Article XLIII, respecting interference by the United States authorities with such legislation.

I will add that the interests of the Choctaws appear to have been fully cared for, and the reports accompanying the papers show that the bill as passed meets the approval of the nation generally.

The papers, transmitted by you are herewith returned, and a copy of this report is inclosed.

Very respectfully, your obedient servant,

H. P. RICE,  
*Commissioner.*

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *September 30, 1881.*

SIR: The Chicago, Texas and Mexican Central Railway Company, an existing corporation, duly organized pursuant to the general laws of the State of Texas, represents

That said company is organized for the construction and operation of a railroad from a point on the Rio Grande River, Texas, running northeasterly to a point in Lamar County, in said State, as shown on the accompanying map; thence to Fort Smith, in Arkansas, and from thence, by connecting lines now building, to the city of Chicago; the design thereof being to connect said city with the commerce of Texas and Mexico, upon the most direct and practicable railroad route.

That in the construction of said railroad from the northeastern boundary of Texas to Fort Smith, Arkansas, it is found necessary to construct the same across the south-eastern portion of the Indian Territory, through the domain of the Choctaw and Chickasaw Indians.

That such necessity exists:

1. Because the surrounding country, outside said Territory, is rough and mountainous, and the construction of a railroad through the same would involve an enormous cost; and,
2. Construction upon such route would require great divergence from a direct air-line, thus largely increasing the length of said roads.

That by the treaty of 1866, with said Indian nations, authority was given for the construction of one railroad north and south, and one railroad east and west, through said Territory; and that by subsequent executive action the franchise thus created was bestowed upon certain corporations, and the said railroads since constructed in whole or in part.

That section 2116, Revised Statutes, provides that "no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity unless the same be made by treaty or convention entered into pursuant to the Constitution"; and severe penalties are imposed for any infringement of this statutory prohibition.

The said Chicago, Texas and Mexican Central Railway Company is earnestly desirous of securing the lawful right to construct and operate said road through the Territory named; but inasmuch as authority to so construct said railroad is not recognized by any existing treaty, and as the purchase of the necessary right of way involves the acquisition of a property right in the lands of said Indian nation, it can proceed only under the provision of law above quoted.

Therefore said company respectfully requests that you will at once authorize an officer of your department, or your petitioner, to proceed to said Indian Territory and conduct and complete the necessary negotiations with said Indian nations for the purchase of the desired right of way by said company, and that you will thereafter report the same to Congress for ratification.

Necessity for prompt action exists, as the Choctaw legislature, with whom your agent must deal, will begin its session on October 8th, proximo.

Said company is ready and willing to guarantee its good faith in the premises in such manner as you may designate, and to secure the United States against all cost in the premises.

DWIGHT K. TRIPP,  
*General Solicitor.*

Address Britton & Gray, of counsel, Washington, D. C.  
The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,  
Washington, October 6, 1881.

SIR: I have the honor to submit for your consideration a communication dated 30th ultimo, from Dwight K. Tripp, general solicitor of the Chicago, Texas and Mexican Central Railway Company, alleging due organization under the laws of Texas; setting forth the purposes of its existence, the proposed terminal and connecting points of its line, and generally the advantages of its route in aid of the necessities of commerce, and asking, in view of the great difficulties of construction and the obvious objections to a deflection from a direct line, that permission be obtained, through the intervention of the government, to cross the southeastern portion of the lands of the Choctaw Nation, in the Indian Territory, so as to reach from a point on the Rio Grande River, in the State of Texas, a direct connection at Fort Smith, in the State of Arkansas, with regular lines to Saint Louis and Chicago.

Article VI of the treaty of April 28, 1866 (14 Stat., 769), with the Choctaws and Chickasaws, grants a right of way for certain roads which by legislative authority have been duly located under executive sanction, which action is considered as having exhausted the treaty provision for railroads through these nations.

There remains but the general power reserved to the nations or tribes by the fourth subdivision of Article VIII of the treaty to legislate for "the construction of works of internal improvement," governed by the limitation of Article XLIII, respecting interference by the United States authorities with such legislation.

From a consideration of the application, I am of the opinion that the material interests of the people of the United States as well as the prosperity of the Indians, would be promoted by the building of the proposed road; and as I am advised that the national council of the tribe will be during the present month engaged in annual session, I have to recommend, if in consonance with your views, that an officer or employé of this department may be authorized to confer with said council, and negotiate on behalf of the United States an agreement with said Indians for the necessary right of way, to be duly submitted to Congress for its ratification.

I understand that all expenses attending the proposed negotiations can be met without causing any deficiency for which Congress may hereafter be called upon to make appropriation.

Very respectfully,

S. J. KIRKWOOD,  
Secretary.

The PRESIDENT.

EXECUTIVE MANSION,  
October 8, 1881.

I concur in the views of the Secretary of the Interior herein expressed, and, in accordance with his recommendation, direct that he detail some suitable officer or officers of his department to make the contemplated negotiations with the Indians of the Indian Territory mentioned therein, in conformity to general laws and the present treaty stipulations with said Indians; the whole subject to be submitted to Congress.

CHESTER A. ARTHUR.

DEPARTMENT OF THE INTERIOR,  
Washington, October 10, 1881.

SIR: You are hereby detailed from your present duty as a clerk in this department, and will proceed to the seat of government of the Choctaw Nation in the Indian Territory, for special service, concerning which, full instructions will be given you this day.

Very respectfully,

S. J. KIRKWOOD,  
Secretary.

Mr. URI J. BAXTER,  
Secretary's Office. Present.

DEPARTMENT OF THE INTERIOR,  
Washington, October 10, 1881.

SIR: The President of the United States, on the 8th instant, authorized the negotiation of an agreement with the proper authorities of the Choctaw Nation, to be submitted to Congress for its sanction and ratification, providing for a right of way for a proposed railroad and telegraph line through the lands of said nation, in the Indian Territory, to be constructed by the Chicago, Texas and Mexican Central Railway Company. I have, in pursuance of such authority, designated you as a proper person

to represent this department in conducting the proposed negotiations, and have to direct that you proceed to the Choctaw seat of government, and, having made all necessary preliminary arrangements, that you confer with such agents or commissioners on the part of said nation as may be lawfully recognized for such purpose, and after fully considering the various matters relating to the object in view, and clearly representing the advantages and benefits expected to accrue to the people of the United States and of said nation from the construction of such road and telegraph line, that, in case you shall be able to agree upon the terms thereof, you conclude with the said representatives a proper agreement, in due form and execution, covering the necessary provisions, conditions, and stipulations, to be submitted, with your report thereon, for my approval, and for submission thereafter to the President and to Congress.

You are specially charged to conform as near as may be to present treaty stipulations with the said Indians, making no unnecessary changes in existing law, and strictly confining yourself to the legitimate object of your appointment, being governed by the papers and correspondence with the President and this department, copies of which are herewith furnished for your information.

You will call upon the Indian agent at Muscogee for such aid and assistance as you may require at his hands; and in case it shall be deemed necessary he will accompany you to the nation and assist in your negotiations. He will also detail an interpreter and such other employes of his office as may be required.

You will make full and accurate report of all your proceedings in conducting said negotiations. Your salary as law clerk of this department will continue while engaged in this employment. Your necessary expenses will be provided by the railway company in whose behalf the pending negotiations are prosecuted, to whom you will look, without further recourse to this department.

Very respectfully,

S. J. KIRKWOOD,  
*Secretary.*

Mr. URI J. BAXTER. *Present.*

SOUTHERN HOTEL,  
*Saint Louis, Mo., October 20, 1881.*

SIR: I have the honor to report that in obedience to your instructions of 10th instant I left Washington on the following morning, proceeding direct to Chicago. Placing myself in communication with Mr. D. K. Tripp, I proceeded by Thursday's train to Saint Louis, in company with Mr. L. H. Fitzhugh, who had been designated to represent the Chicago, Texas and Mexican Central Railway Company, on whose petition for a right of way through the Choctaw Nation my instructions were predicated; Mr. Tripp remaining in Chicago.

Trains being delayed, we left Saint Louis Friday morning, reaching Muscogee late at night. On Saturday I found Agent Tufts, who went with us by evening train to Caddo, some 12 miles from Armstrong Academy, the seat of the Choctaw national government.

The council not being in session on Sunday, I remained at Caddo, meeting Mr. J. S. Standley, national agent of the Choctaws, and the services of Agent Tufts being no longer necessary, and important business calling him to the Creek Nation, he returned to the agency.

Monday morning, 17th instant, I reached the seat of government, and at once had an interview with J. F. McCurtain, principal chief of the nation, to whom I exhibited my instructions, Hon. Allen Wright, superintendent of public schools, acting as interpreter; for although Governor McCurtain speaks good English, he preferred to get a fuller understanding in his own tongue of the propositions submitted.

After hearing the same, as embodied in your communication to the President of the 6th instant, and sanctioned by the Executive indorsement, he politely informed me that he had no authority to negotiate an agreement, the whole political power being lodged in the national council by the constitution and laws of the nation, and that he would at a later hour give me a more formal reply.

After consideration and consultation with his advisers, he informed me of his desire that I should address his people that evening in the representatives' hall, and they were accordingly assembled.

At the appointed hour I proceeded, speaking through an interpreter, to lay the whole subject before them, urging your desire to confer with them in all fairness for securing an outlet through their nation for the pressing necessities of commercial traffic and industrial supply, and of your fixed determination, as declared both by your written and verbal instructions to myself, that full protection to their persons, property, and interests shall be definitely and specifically guaranteed as fundamental conditions in any grant of the contemplated right of way.

At the same time I endeavored to explain the position of the department (which I found had been seriously questioned), to the effect that the action of 1870 with respect

to the two roads was exhaustive of treaty stipulations respecting railroad rights of way in their country, and that now the only clear and legal course of procedure must lie in a new provision, by some form of agreement, through the agency of the general government.

I found their ideas very crude on this point. Some, and perhaps the best informed among them, were of opinion that the 18th article of the treaty of 1855 provided still existing rights of way for corporations and the government. Yet this opinion was confused and clouded with the inconsistent belief that for the enjoyment of such right an act of their national council is requisite to make a new grant of power and franchises. It was not apparent to them until after several attempts to explain the matter that the joint or rather concurrent action of the United States Government and of the Choctaw council must be had to give effect to any provision sought to be made.

Considerable remark was indulged in by members of the council, citizens, and others, showing to my mind that the idea of independent action through the Choctaw legislature granting a right of way subject to subsequent approval by the Secretary of the Interior and further ratification by Congress, but procured in the first instance by the efforts of the railroad companies themselves, without reference to your authority and supervision; was generally prevailing among the people; and that this idea had been and was being sedulously presented and defended by agents of one or more railroad companies seeking to obtain such action by the council.

The point seemed to be, that after such grant by the Indian Nation the consent of the Interior Department and of Congress would not be withheld, however the preliminary proceedings might have been prosecuted and the legislative action obtained.

This view was openly advanced by Mr. S. J. Wright, of Paris, Tex., who was permitted by the principal chief to address the meeting, and who appeared to advocate the grant of a right of way to the Saint Louis and San Francisco Railway Company instead of to the Chicago, Texas and Mexican Central. It would have been extremely impolitic to make objection to the informal discussion of these matters. The presentation of the conflicting views had the effect to indicate more clearly the drift and sentiment of the people, and to bring their minds to weigh the several issues thus sharply defined at the outset.

At a late hour the meeting adjourned, and I was advised that the principal chief would give me a letter to you, setting forth his views and conclusions. This he did on the next morning, and I have the honor to forward the same, dated the 17th instant, for your consideration. It will be found to embody the prevalent idea above spoken of, modified by an apparently newly-conceived opinion that, after all, the importance and necessity of securing the recognition and supervision of the general government cannot be entirely overlooked and ignored. It is easy to see, however, that he is yet in doubt as to the proper procedure, and is willing to adopt the conclusion that an agent of your department should in some way conduct the negotiations, although the choice of the corporate grantee should be left to the nation.

I had several informal talks with the authorities and with individual members of the council. I gather the opinion that great effort has been made during several months to gain support for a grant of a right of way to the Saint Louis and San Francisco Railway Company, and that there is, perhaps, a bare majority of the legislature in its favor. On the other hand, it is not entirely certain that there is such majority. I have considerable doubt whether such is the case. Whether undue influences have been used I am unable to say. Rumor is always more or less rife concerning such enterprises; but nothing tangible has been brought to my notice. I think whatever of popular favor has grown up has been generated during the election campaign, and may be said to have arisen naturally from the popular discussions attending a change of administration.

While there is much favor for the Saint Louis and San Francisco Company, there is, in my judgment, less preference as to companies than the letter of the chief would appear to indicate; and I apprehend that some members of the council who now avowedly oppose any grant of right whatever, would consent to favor a fair proposition presented by the government in the manner in which we have proceeded. I was privately assured that the opposition was based more on want of guarantees than on real hostility to such a grant.

Having received the answer of the principal chief, I deemed it best to return to this point, which I reached last evening, and where I am in receipt of your telegrams of this date.

This was also in accordance with the desire of the representative of the railway company, and of Mr. Wright, speaking for the Saint Louis and San Francisco Railway Company, who accompanied Mr. Fitzhugh and myself on our return, and who wished to confer here with representatives of each road, to see if an amicable arrangement can be reached by which the right of way may be honorably secured during the present session of the Choctaw council.

Mr. Tripp is already here, and I understand negotiations are in progress. Should such arrangements be made, I will immediately lay the same before you.

Should the proposed amicable adjustment fail, I am of opinion that no right of way should be granted to any company without express provision, in order to secure the paramount interests of the government and the protection of the people, that other companies shall be allowed to unite with the corporate grantee on equal terms, in substantially the same manner as provided in the Union Pacific acts, and as suggested in the papers now in my charge.

I have the honor to remain, very respectfully, your obedient servant,  
U. J. BAXTER.

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior.*

EXECUTIVE OFFICE, CHOCTAW NATION,  
October 17, 1881.

SIR: Mr. Uri J. Baxter, accompanied by a representative of the Chicago, Texas and Mexican Central Railway Company, has appeared and presented his commission from your office, and the object of his mission, viz, to conduct negotiations between the Choctaw Nation and the United States for a grant of right of way through said nation to said company. The general council of the Choctaw Nation are now in session in this place—Armstrong Academy—and have not as yet indicated any desire or purpose to grant a right of way to any company; and in due deference to their authority I shall have to decline to anticipate them, at least while they are in session, though I may say in this connection, in an official way, as the chief executive officer of the Choctaw Nation, that I do not believe the Choctaw people are averse to granting a right of way to some company. You are perhaps not aware that there are a multiplicity of interests here, and all in conflict; that there are other companies desirous of securing the same right of way as the Chicago, Texas and Mexican Central Railway Company desire to secure. Such, however, is the case. I do not understand that you, by sending Mr. Baxter here upon an application of the Chicago, Texas and Mexican Central Railway Company, intend and propose to give said company precedence and preference over any other company, and to the exclusion of any other company. I take it that yourself and the President both desire that the Choctaws shall first be satisfied, and that if the proposition of some other company is more satisfactory to the Choctaws than that of the said Chicago, Texas and Mexican Central Railway Company, then the consent of the government will not be withheld from any arrangement which the Choctaws may make with any other company for a right of way through their nation on the proposed route, whereby the rights and interests of all parties are secured and guaranteed in accordance with the laws and treaties, rules and regulations of your department of the general government.

Of course I understand that whatever is done must be done with the express condition and stipulation that it shall be invalid unless ratified and sanctioned by the United States Government; and I think all the railroad companies and the general council of the Choctaw Nation so understand it. There is no purpose or desire to ignore the authority of your department and the United States Government.

Since Mr. Baxter has come here the subject of a right of way has excited a good deal of interest, and many opinions have been expressed by the people and members of the general council privately; and with all due deference and respect to yourself and the President, and the Chicago, Texas and Mexican Central Railway Company, my candor forces me to say to you that the Saint Louis and San Francisco Railway Company is much more popular here than the former company, and is the only company which is at all likely to succeed here in securing the right of way. I think Mr. Baxter will unite with me in my view.

Now, while, as I said before, the Choctaws are not averse to granting a right of way, yet this multiplicity of interests by their conflict and opposition to each other may defeat any action being taken at all; and in view of this contingency I would most respectfully suggest that Mr. Baxter be granted general powers to superintend the negotiations in behalf of any other company for the same right of way, leaving the selection of that company to the Choctaws.

It seems to be the general purpose to have something done at this session of the council on this subject of a right of way.

Very respectfully,

J. F. McCURTAIN,  
*Principal Chief Choctaw Nation.*

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior, Washington, D. C.*



SOUTHERN HOTEL,  
Saint Louis, Mo., October 21, 1881.

SIR: I have the honor to report further with respect to the pending negotiations for securing the right of way for the Chicago, Texas and Mexican Central Railway through the lands of the Choctaw Nation.

I learned at this afternoon's conference that the enclosed draft of a bill had been months ago universally distributed throughout the nation; which, in view of the statement of the principal chief in his letter to you, that nothing had yet been presented to his people, and of the fact that I had not until to-day known of the existence of such a document, indicated that some design to conceal the same from me may have prevented earlier knowledge of its contents. Had I known their purport I should have pointed out to the Indians the inadequacy of its provisions for their proper security and protection. Some of the defects I have hastily entered as marginal notes on the copy herewith.

I learned from your dispatches that the Saint Louis and San Francisco Railway Company has profited by the conference had by me with the people, as recited in my report of yesterday and has applied in proper form for your sanction and approval. I gather also from the tone of your dispatches that you have considered the various suggestions and propositions growing out of the action already taken, and that my instructions will indicate fully and clearly your views and intentions. I shall cheerfully and faithfully undertake whatever may be embodied therein; and hope to justify the confidence reposed in me by yourself and the representatives of the rival interests. I had hoped that they would unite on an amicable basis, and am persuaded that their mutual interests would be best conserved by such agreement. The conference between them I do not understand to have been finally closed, yet I do not, as at present advised, feel very confident of the result. Without harmonious action on their part, the alarm of the Choctaw people will be likely to be aroused, and both companies will probably fail.

I have the honor to remain, very respectfully, your obedient servant,

U. J. BAXTER.

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior.*

[ President's Office, Saint Louis and San Francisco Railway Company, Drexel Building, Corner Wall and Broad streets, New York.]

NEW YORK, October 18, 1881.

DEAR SIR: I beg to apply for authority, subject to the approval of the President, for this company to treat with the Choctaw Nation for the right of way for our road through its territory.

Our road is now completed and in operation to Fayetteville, Ark., and is in process of construction southwardly from that point.

Very respectfully, your obedient servant,

E. F. WINSLOW.

*President.*

Hon. SAMUEL J. KIRKWOOD,  
*Secretary of the Interior, Washington, D. C.*

WASHINGTON, D. C., October 20, 1881.

SIR: In reference to the foregoing application of E. F. Winslow, president of the Saint Louis and San Francisco Railway Company, I beg to state that said company is a corporation duly created and existing under and by virtue of the laws of the State of Missouri.

That said company has constructed and now controls a line of railway extending from Plymouth, in Missouri, on its main line, in a southwesterly direction in the States of Missouri and Arkansas, to Fayetteville, in the last-named State, and thence in the same general direction to Fort Smith, in said State.

That said line is completed and in operation to said Fayetteville, being a distance of about seventy miles, and the work of construction southwardly from that point is in an advanced state.

That in the further extension of said railway southwardly from Fort Smith, it is deemed necessary to construct the same across the southeastern portion of the Indian Territory, through the domain of the Choctaw and Chickasaw Nations.

That such necessity exists—

1st. Because the surrounding country outside of said Territory is rough and mountain-

ous, and the construction of a railroad through the same would involve an enormous cost.

2d Construction upon such route would require considerable divergence from a direct air-line, and largely increase the length of said road.

That by the treaty of 1866, with said Indian nations, authority was given for the construction of one railroad north and south, and one railroad east and west, through said Territory; and that by subsequent executive action the franchise thus created was bestowed upon certain corporations, and the said railroads since constructed in whole or in part.

That section 2116, United States Revised Statutes, provides that "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians shall be of any validity in law or equity unless the same be made by treaty or convention entered into pursuant to the Constitution"; and severe penalties are imposed for any infringement of this statutory prohibition.

That said Saint Louis and San Francisco Railway Company is desirous of securing the lawful right to construct and operate its said road south of Fort Smith, Arkansas, through the Territory named; but inasmuch as authority to so construct said railroad is not recognized by any existing treaty, and as the purchase of the necessary right of way involved the acquisition of a property right in the lands of said Indian nations, it can proceed only under the provisions of law above quoted.

Therefore the said Saint Louis and San Francisco Railway Company respectfully requests that you will immediately authorize and appoint an officer of your department, or your petitioner, to proceed to said Indian Territory, and conduct and complete the necessary negotiations with said Indian nations for the purpose of the desired right of way by said company, and that you will thereafter report the same to Congress for ratification.

Necessity for prompt action exists, as the Choctaw legislature, with whom your agent must deal, is now in session and will shortly adjourn.

Said company is ready and willing to guarantee its good faith in the premises, in such manner as you may designate and direct, and to secure the United States against all costs in the premises, and pay the expenses of the negotiation.

Annexed hereto is a map of the line of the Saint Louis and San Francisco Railway, showing in red the general direction of the proposed road.

Very respectfully,

T. W. LILLIE,

*Treasurer for Saint Louis and San Francisco Railway Company.*

Address E. F. Winslow, president, No. 3 Broad Street, New York.

The SECRETARY OF THE INTERIOR,  
*Interior Department.*

(For map above referred to, see original application on file in Interior Department.  
U. J. B.)

DEPARTMENT OF THE INTERIOR,  
*Washington, October 20, 1881.*

SIR: I have the honor to submit for your consideration a communication from Mr. E. F. Winslow, president of the Saint Louis and San Francisco Railway Company, dated the 18th instant, and a further communication from Mr. T. W. Lillie, treasurer of said company, of even date herewith, alleging due organization under the laws of the State of Missouri, setting forth the purposes of its existence and the general direction of the proposed road, and asking, in view of the great difficulties of construction and the obvious objections to a deflection from a direct line, that permission be obtained through the intervention of the government to cross the southeastern portion of the lands of the Choctaw Nation, in the Indian Territory, so as to reach a point south of the Red River in Texas, indicated on the map accompanying said letter and herewith submitted.

Article VI of the treaty of April 28, 1866 (14 Stat., 769), with the Choctaws and Chickasaws, grants a right of way for certain roads which, by legislative authority, have been duly located under executive sanction, which action is considered as having exhausted the treaty provision for railroads through these nations. There remains but the general power reserved to the nations or tribes by the fourth subdivision of Article VIII of the treaty, to legislate for "the construction of works of internal improvement," governed by the limitations of Article XLIII, respecting interference by the United States authorities with such legislation. From a consideration of the application I am of the opinion that the material interests of the people of the United

States, as well as the prosperity of the Indians, would be promoted by the building of the proposed road; and I am advised that the national council of the tribe will be during the present month engaged in annual session in said Territory. I have to recommend, if in consonance with your views, that an officer or employé of this department be authorized to confer with said council and negotiate on behalf of the United States an agreement with said Indians for the necessary right of way, to be duly submitted to Congress for its ratification.

The line proposed by the Saint Louis and San Francisco Railway Company is substantially between the two points designated by the Chicago, Texas and Mexican Central Railway Company, in their application for the appointment of a commissioner to negotiate with the Choctaw Indians, dated September 30, 1881, which was favorably acted upon by you under date of the 8th instant.

I understand that all expenses attendant upon the proposed negotiations can be met without causing any deficiency for which Congress may hereafter be called upon to make appropriation.

I have the honor to be, sir, very respectfully, your obedient servant,

S. J. KIRKWOOD,  
*Secretary.*

The PRESIDENT.

OFFICE OF THE PRESIDENT OF THE UNITED STATES,  
*October 21, 1881.*

I concur in the views of the Secretary of the Interior herein expressed, and in accordance with his recommendation direct that he detail some suitable officer or officers of his department to make the contemplated negotiations with the Indians of the Indian Territory mentioned within, in conformity to general laws and the present treaty stipulations with said Indians, the whole subject to be submitted to Congress.

CHESTER A. ARTHUR.

DEPARTMENT OF THE INTERIOR,  
*Washington, October 21, 1881.*

SIR: I inclose herewith a communication, dated the 18th instant, from Mr. E. F. Winslow, president of the Saint Louis and San Francisco Railway Company, and a further communication, of the 20th instant, from Mr. T. W. Lillie, treasurer of said company, asking, for reasons stated, that the lawful right may be secured to said company to construct and operate its line of road through the southeast portion of the Choctaw country in the Indian Territory.

I also inclose a letter addressed by me to the President of the United States under date of 20th instant, wherein the request of the said railway company is submitted for Executive consideration, with recommendations of the department. The indorsement of the President, concurring in the views of the department, will be found upon the letter addressed to him, and in accordance with the direction given by him you have been designated as the special agent of this department for performing the duties indicated in said letter, which are similar to those contemplated in your letter of instructions of 10th instant.

It will be seen from a perusal of the papers submitted that the request of the Saint Louis and San Francisco Railway Company is almost identical with that of the Chicago, Texas and Mexican Central Railway Company, the negotiation for which, with the Choctaw authorities, was the subject of instructions to you from this department under date of the 10th instant. It must be distinctly understood, however, in this connection, that, so far as this department is concerned, in the matter of the rights and privileges to be secured to these roads, both companies stand equal in its consideration; that with due consideration for the perfect protection of the Indian rights in the case, which is the first care of the government, there is to be no priority or privilege extended to one of the railway companies over the other; and in presenting the cases of the companies to the legislative authorities of the tribe you are to act as a fair and impartial representative of the interests of both, explaining to the Indians plainly and unequivocally the benefits or disadvantages that will accrue to them and to the companies, in your judgment, giving such reasons why the rights should or should not be granted as you may deem fair and just.

Very respectfully,

S. J. KIRKWOOD,  
*Secretary.*

Mr. U. J. BAXTER,  
*Special Agent of Interior Department, Saint Louis, Mo.*

RIGHT OF WAY ACROSS LANDS OF CHOCTAW NATION. 11

SAINT LOUIS, MO., October 24, 1881.

SIR: I have the honor to inclose for the information of the department two copies of proposed bill, as prepared in favor of the Chicago, Texas and Mexican Central Company. The fifth section the Saint Louis and San Francisco manager positively refuses to accept.

I have great hopes that the former company will unite in asking that the latter be granted the right of way, and assist to that end in the pending negotiations.

I expect to leave this evening for the Indian country.

Very respectfully, your obedient servant,

U. J. BAXTER.

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior.*

[Telegram. Western Union Telegraph Company.]

WASHINGTON, D. C., October 24, 1881.

U. J. BAXTER,  
*Southern Hotel, Saint Louis, Mo.:*

Present fully to Choctaws all information you may have to aid them in determining intelligently whether they will grant right of way to either or both companies. If they determine to do so, then be careful that the agreement is so drawn as not only to give them fair compensation, but also to guard fully all their treaty rights. Take no part in the contest between the companies. Show this to the Choctaws, and give governor a copy.

S. J. KIRKWOOD,  
*Secretary.*

[Telegram. Western Union Telegraph Company. Dated Chicago, Ill., 10, 25, 1880.]

U. J. BAXTER and L. H. FITZBURGH:

Saint Louis and San Francisco Company has agreed with us in relation to our right, and we have decided to withdraw our bill, depending on Congress for protection in case of non-compliance. Therefore you are instructed to withdraw our bill, and give all possible aid to pass these.

JNO. T. McCANE,  
D. K. TRIPP,  
THOS. HOWARD.

EXECUTIVE OFFICE, CHOCTAW NATION,  
October 27, 1881.

*To the General Council of the Choctaw Nation:*

I herewith submit an application of the Saint Louis and San Francisco Railway Company to the Secretary of the Interior for permission to treat with the Choctaw nation for a right of way through said nation for the extension of their line of railway to Texas.

Also, herewith submitted, are a letter from the Secretary of the Interior to the President recommending the granting of the application and the sending of some officer of the Interior Department to superintend the negotiations, the approval of the President of the same, and a letter of instructions to Mr. U. J. Baxter, who was detailed and commissioned as the special agent of the Interior Department to come here and conduct the negotiations. Mr. Baxter is here, as you all know, for that purpose.

Since I have previously recommended the granting of said right of way, with all needed guarantees, it is needless for me to say much more, except that I am still of that mind. However, I would recommend that some reasonable price per acre be fixed upon the land for its use, to be paid by said company. I further recommend that you authorize the appointment of a select and special committee to consist of, say, three of your best business members from each house, who, by conference with Mr. Baxter, will formulate a bill on a plan which will be mutually satisfactory to the Choctaw people, to the United States Government, and the said railway company. I am glad to state to you that the Chicago, Texas and Mexican Central Railway Company have withdrawn their application in favor of the Saint Louis and San Francisco Railway Company.

I am entirely satisfied that all of our rights and interests can and will be protected by the Government of the United States, and, if for no other reason, I think this subject should be seriously considered out of respect to the Government of the United

States, since they have sent a representative here to give us the government's support and assistance.

Suppose we stand up and say we won't have a railroad through our country; can we enforce our purpose? Can we say and believe that Congress has not the power to authorize the construction of a road through our country? If we cannot, then let us do all we can to retain our jurisdiction as long as possible.

Very respectfully, your obedient servant,

J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation.*

I certify that the above is a true and correct copy of the original now on file in my office.

Given under my hand and the great seal of the Choctaw Nation, this November 8, A. D. 1881.

[SEAL.]

THOMPSON McKINNEY,  
*National Secretary, Choctaw Nation.*

SENATE CHAMBER, CHOCTAW NATION,  
*Chahta Tomaha, I. T., October 28, 1881.*

On motion of Senator Jackson, and seconded, a recommendation from the executive office, in reference to the Saint Louis and San Francisco Railway Company, presented by Uri Baxter, by authority of the Interior Department and approved by the President of the United States, and also to appoint a special committee on the same, was read and interpreted.

The president appointed the following named senators to wit: Hon. Sampson Holson, senator, Hon. Ellis Shoat, senator, Hon. T. H. Byington, senator, a special committee on the Saint Louis and San Francisco Railroad Company or bill.

I do hereby certify that this is a true and correct copy of the original on the journal.

D. B. ROBUCK,  
*Journalist.*

REPRESENTATIVE HALL, CHOCTAW NATION.

On the 27th day of October, 1881, a recommendation of the principal chief in regard to the granting of the right of way to the Saint Louis and San Francisco Railway Company was read and interpreted.

In accordance to the same, on the 31st day of October, 1881, the speaker of the house appoints three of the members of the house to confer with United States agent, namely, Messrs. Alfred Wright, J. P. Folsom, and J. W. Everidge.

Attest:

ISHAM WALKER,  
*Journalist of the House.*

ARMSTRONG ACADEMY, CHOCTAW NATION,  
*November 2, 1881.*

The undersigned, duly appointed by the proper authorities of the United States of America, and by the Choctaw Nation, respectively, to confer upon the subject of a right of way to the Saint Louis and San Francisco Railway Company through the lands of said nation, having met and fully considered the same, have agreed to submit, and do hereby report for submission to the general council of the said nation, the following bill to grant a right of way to said company; and we respectfully recommend that the same do pass, subject, as by its terms provided, to its further consideration and ratification by the Congress of the United States.

URI J. BAXTER,  
*On the part of the United States.*

ELLIS CHOATE,  
T. H. BYINGTON,  
SAMSON HOLSON,  
J. W. EVERIDGE,

*On the part of the Choctaw Nation.*

A BILL to grant a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company.

Whereas, the Saint Louis and San Francisco Railway Company has applied for permission to construct a line of railway and telegraph through the southeasterly part of the Choctaw Nation:

And whereas the United States desires to obtain for the use and benefit of said company a right of way through said lands, with appurtenances thereto;

And whereas the Secretary of the Interior, with the sanction of the President of the United States, has designated Uri J. Baxter as an agent to present such application to the Choctaw Council, and he has duly presented the same;

And whereas the said council, upon the recommendation of the principal chief of said nation, has appointed Ellis Choate, Sampson Holson, Thomas H. Byington, J. P. Folsom, Alfred Wright, and J. W. Everidge on the part of said council to confer with said agent of the United States;

And whereas said parties have agreed to and duly submitted the following:

*Now, therefore, be it enacted by the General Council of the Choctaw Nation assembled,* That a right of way is hereby granted to the Saint Louis and San Francisco Railway Company, a corporation duly organized under the laws of the State of Missouri, for the construction of a railroad and telegraph line, said right of way to be two hundred feet in width at each station for a distance of four thousand feet in length; said right of way to commence at any point to be selected by said company on the line of said nation immediately contiguous to Sebastian or Scott counties, in the State of Arkansas, and run thence in a south westerly direction on the most direct and practicable route through the said Choctaw Nation in the general direction of Paris, in the State of Texas; said road to continue to, or to connect with, a proposed road from the city of Paris aforesaid.

SEC. 2. The said Saint Louis and San Francisco Railway Company shall accept this right of way upon express condition, binding upon itself, its successors, and assigns that they will neither aid, advise, nor assist in any effort looking toward the changing or extinguishing the present tenure of the Choctaws in their lands, and will not attempt to secure from the Choctaw Nation any further grant or its occupancy than is hereinbefore provided.

SEC. 3. The said railway company shall pay for all property injured or destroyed by said company, and for all material taken and used in the construction, operation, or repairs of said road and telegraph line, and shall take no such material except under contract with the proper authorities of the Choctaw Nation, and according to the laws thereof: *Provided*, that before the construction of said railroad through any lands held by individual occupants according to the laws, customs, and usages of said nation, full compensation shall be made to such occupants for all property to be taken or damages to them by reason of the construction of the said road and telegraph line. In case of failure to make amicable settlements in any case, either national or individual, such compensation shall be determined by appraisalment of three disinterested referees, one to be named by the Commissioner of Indian Affairs, one by the principal chief of said nation, and one by said company. This provision shall also apply to all cases of injury to persons and property occasioned by the construction or operation of said road and telegraph line, after the construction thereof shall have been commenced. Said arbitrators shall receive not exceeding four dollars per day for each, with mileage not exceeding six cents per mile, and witnesses shall receive the usual fees allowed by the courts of said nation. Costs shall be made a part of the award and be paid by the losing party.

In case of failure to pay such award, the Secretary of the Interior shall be, and is hereby, authorized to forbid the further passage of trains, or the use of said right of way, and to remove the agents and employes of said company from the limits of said nation as intruders, under the intercourse laws of the United States, until such time as payment shall be made by said company.

And, in addition to the foregoing, the injured parties shall have the right of recourse to all legal remedies that may be applicable in like cases in the judicial tribunals; and consent is hereby given that the civil jurisdiction of the district court of the United States for the western district of Arkansas, and such other courts as may be established by authority of the United States, shall be extended with the territory and limits of the Choctaw Nation, without distinction as to citizenship of the parties, so far as may be necessary for the enforcement of the provisions of this act.

SEC. 4. For and in consideration of the uses and grants aforesaid, the said railway company shall pay annually to the national treasurer of said nation, to be used for the benefit of schools therein, the sum of fifteen hundred dollars; and until the first of such payments be made, no right or power to enter upon said lands, except for the purpose of surveying and locating its line of road and telegraph, shall be acquired under the provisions of this act.

SEC. 5. Before any right shall accrue by virtue of this act, the same shall be ratified by the Congress of the United States; and within one year thereafter the said company shall file with the Secretary of the Interior a map showing the definite location of its line of road and telegraph, and shall complete the said road and telegraph through the lands of said nation within the further period of one year: *Provided*, That after the fixing of the general route by the filing of a map of preliminary survey in the office of the principal chief of said nation, who shall furnish a copy thereof to the Secretary of the Interior, no claim for a subsequent settlement and improvement shall be valid as against the said right of way.

SEC. 6. The said right of way shall not be settled upon by authority of said railway

company by non-citizens of said nation, except such employés of said company as are necessary to the successful operation of said railway and telegraph line and their families, and such persons as may be authorized by law to reside in the said nation: *Provided*, That only agents, operators, depot employés, and section-men shall be exempt, by reason of such employment, from payment of permits, as required of other non-citizens of said nation.

SEC. 7. No greater rates of fare or freight shall be charged in the Choctaw Nation by said railway company than the lowest rate authorized by law in the States of Arkansas and Texas, or either of them, for services or business of the same kind; and said railway company agree to convey all passengers, and to accept and transport all freight that may be offered, and to bill any freight which may be offered for shipment from points on said line in the Choctaw Nation to Chicago, with the privilege of stopping said freight at Saint Louis by the shipper, on the same terms as if the bills had been made for Saint Louis in the first instance.

SEC. 8. The said railroad company shall execute a bond to the United States, to be filed with and approved by the Secretary of the Interior, in the penal sum of five hundred thousand dollars, for the use and benefit of the Choctaw Nation, to cover any and all damages which may accrue by reason of the failure of said railway company to comply with all or any of the provisions and conditions of this act. Said bond shall be good and valid against said company, its successors, and assigns, and shall be renewed at the expiration of every five years, and whenever in the judgment of the Secretary of the Interior a renewal of the same shall be deemed necessary for the protection of the interests of the Indians or of the United States.

SEC. 9. If within ninety days after the passage of this act by the Choctaw Council the company aforesaid shall fail to accept the conditions herein specified, by a resolution of its board of directors, certified to and filed with the Secretary of the Interior, as hereinbefore provided, then this act shall apply to any other incorporated company that shall have first obtained the approval of the President of the United States.

The within bill approved and adopted in special committee this second day of November, 1881.

URI J. BAXTER,  
*For the United States.*  
ELLIS CHOATE,  
*Chairman, on the part of the Choctaw Council.*

[Telegram]

DEPARTMENT OF THE INTERIOR.  
*Washington, D. C., November 5, 1881.*

U. J. BAXTER,  
*Caddo, Indian Territory:*

Make no effort to influence decision of Choctaws as to right of way. Confine yourself to advice as to their legal and treaty rights, and to preparing documents that will fully protect both. Show this to governor, and give him copy.

S. J. KIRKWOOD.

EXECUTIVE OFFICE, CHOCTAW NATION,  
*November 10, 1881.*

DEAR SIR: Herewith inclosed find certified copies of all papers necessary to explain the attitude of the right of way bill to the Saint Louis and San Francisco Railroad Company upon the records of the Choctaw Nation.

Very respectfully, your obedient servant,

J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation.*

Mr. U. J. BAXTER.  
*Special Agent United States, Washington City, D. C.*

EXECUTIVE OFFICE, CHOCTAW NATION,  
*November 10, 1881.*

SIR: In accordance with Sec. 2 of "An act defining the duties of the National Attorney," &c., approved Oct. 24, 1860, I have the honor to submit the following questions for your official opinion thereon:

1. Under Article, 3, section 9, of the Constitution, the House of Representatives de-

rived the power to make its rules, and accordingly made Rule 21st in reference to the vote of the speaker, which is as follows: "The speaker shall have a casting vote in case of a tie." Now does not this rule preclude the right of the speaker to vote, except in case of a tie?

2. If the speaker had been intended to have two votes should it not have been so specifically stated in said 21st rule or some other rule?

3. Is the speaker's endorsement on a bill that it "passed the House," and signed officially, necessary to its validity, or as notice to the principal chief of its passage?

4. Does the declaration of the speaker that a bill is defeated affect its validity?

Very respectfully, your obt. servt.,

J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation.*

Hon. C. S. VINSON,  
*National Attorney, Choctaw Nation.*

I hereby certify that the foregoing transcript is a true and correct copy from the original.

In witness whereof I have have hereto set my hand and affix the seal of the Choctaw Nation. Done at Chahta Tomaha, this 10th November. A. D., 1881.

[SEAL.]

THOMPSON MCKINNEY,  
*National Secretary, Choctaw Nation.*

*For St. Louis and San Francisco Railroad bill.*

YEAS.

1. H. C. Harris.
2. S. P. Nelson.
3. Kampelabe.
4. J. W. Everidge.
5. Robert Benton.
6. C. C. Dukes.
7. T. D. Ainsworth.
8. S. W. Garvin.
9. Jesse Zota.

NAYS.

1. Aaron Homma.
2. Eljjer Brewer.
3. Joe. Wilson.
4. Alfred Wright.
5. J. P. Folsom.
6. Reuben Jackson.
7. Alpheus Crosby.
8. Maurice Cass.
9. B. F. Smallwood, speaker of the house.

The said bill having a tie vote, the speaker declares the bill defeated. On motion of Mr. Folsom & sec., the house adjourned, to meet at the signing of the bill. Carried.

I hereby certify that the above transcript is a true and correct copy from the original.

In witness whereof I have hereto set my hand and affixed the seal of the nation this 10th of November, A. D. 1881.

[SEAL.]

THOMPSON MCKINNEY,  
*National Secretary, C. N.*

*Rule from by-laws of the house of representatives.*

RULE 21ST. The speaker shall have a casting vote in case of a tie.

I hereby certify that the above transcript is a true and correct copy from the original.

In witness whereof I have hereto set my hand and affixed the seal of the Choctaw Nation this 10th November, A. D. 1881.

[SEAL.]

THOMPSON MCKINNEY,  
*National Secretary, C. N.*

OFFICE OF NATIONAL ATTORNEY, CHOCTAW NATION,  
November 10, 1881.

Hon. J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation:*

SIR: Your communication of this date, propounding certain questions to me for my official opinion thereon, is at hand, and in answer to question first, I have to state that the constitution gives the two legislative bodies, the senate and house of representatives, the right to make such rules as they may see proper for the government of their own proceedings, and by virtue of Art. 3, sec. 9, of the constitution, *they*, after making and adopting such rules, under the oaths of their members to support the constitution; therefore, since Rule 21st of the by-laws of the house of representatives provides that "the speaker shall have a casting vote in case of a tie," it is clear that is all the vote



he is entitled to, or it would have been mentioned in that rule or in that connection; and since the said rule only gives the speaker a vote "in case of a tie," his vote, without it is in case of a tie, of course cannot be counted, and if he does assume to vote, except in case of a tie, his vote is clearly illegal. Further, the speaker being the presiding officer of the house, it is his duty to see that the rules are faithfully observed. It is a custom here in the Choctaw Nation in all bodies where they have a presiding officer that he votes only in case of a tie; the intention of this custom clearly being to save such bodies from a deadlock. It is contrary to the principles of popular government to place two votes in the hands of any one, and, besides, it is corrupting and dangerous power.

The second question is answered by the answer to the first.

In answer to the third question, I will state that the speaker's endorsement on a bill that is "passed the house" is not made necessary by law in any event.

In answer to the fourth question, I have to state that the validity of a bill is only affected by its failure to receive a majority of both houses of the general council, or the veto of the principal chief, and in the latter case by its failure to repass both houses of the general council by a two-thirds vote.

Very respectfully, your ob't servant,

C. S. VINSON,  
*National Attorney, Choctaw Nation.*

I hereby certify that the foregoing transcript is a true and correct copy from the original.

In testimony whereof I have hereto set my hand and affixed the seal of the Choctaw Nation. Done at Chahta Tomaha this 10th day of November, 1881.

[SEAL.]

THOMPSON MCKINNEY,  
*National Secretary, Choctaw Nation.*

EXECUTIVE OFFICE, CHOCTAW NATION,  
November 10, 1881.

SIR: I hand you herewith a certified copy of "A bill to grant a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company," which has passed both houses of the general assembly of the Choctaw Nation, and received my approval and become a law, as the result of your mission and consequent negotiations with the Choctaw Nation in behalf of said railway company.

I have the honor to thank you, and through you the President of the United States and the Secretary of the Interior, for the fairness and impartiality which you have been instructed to maintain, and have maintained throughout.

Very respectfully,

J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation.*

Mr. U. J. BAXTER,  
*Special Agent United States.*

A BILL to grant a right of way through the Choctaw Nation to the St. Louis and San Francisco Railway Company.

Whereas the St. Louis and San Francisco Railway Company has applied for permission to construct a line of railway and telegraph through the southeasterly part of the Choctaw Nation;

And whereas the United States desire to obtain for the use and benefit of said company a right of way through said lands, with appurtenances thereto;

And whereas the Secretary of the Interior, with the sanction of the President of the United States, has designated Uri J. Baxter as an agent to present such application to the Choctaw Council, and he has duly presented the same;

And whereas the said council, upon the recommendation of the principal chief of said nation, has appointed Ellis Choate, Sampson Holson, Thomas H. Byington, J. P. Folsom, Alfred Wright, and J. W. Everidge, on the part of said council to confer with said agent of the United States;

And whereas said parties have agreed to and duly submitted the following:

Now, therefore, be it enacted by the general council of the Choctaw Nation assembled, That a right of way is hereby granted to the St. Louis and San Francisco Railway Company, a corporation duly organized under the laws of the State of Missouri, for the construction of a railroad and telegraph line, said right of way to be two hundred feet in width through the Choctaw Nation, and four hundred feet in width at each station for a distance of four thousand feet in length; said right of way to commence at any point selected by said company on the line of said nation immediately contiguous to Sebastian or Scott counties, in the State of Arkansas, and run

thence in a southwesterly direction on the most direct and practicable route through the said Choctaw Nation in the general direction of Paris, in the State of Texas; said road to continue to or to connect with a proposed road from the city of Paris aforesaid.

SEC. 2. The said St. Louis and San Francisco Railway Company shall accept this right of way upon express condition, binding upon itself, its successors and assigns, that they will neither, aid, advise, nor assist in any effort looking toward the changing or extinguishing the present tenure of the Choctaws in their lands, and will not attempt to secure from the Choctaw Nation any further grant of land or its occupancy than is hereinbefore provided.

SEC. 3. The said railway company shall pay for all property injured or destroyed by said company, and for all material taken and used in the construction, operation, or repairs of said road and telegraph line, and shall take no such material except under contract with the proper authorities of the Choctaw Nation, and according to the laws thereof: *Provided*, That before the construction of said road through any lands held by individual occupants according to the laws, customs, and usages of said nation, full compensation shall be made to such occupants for all property to be taken or damages to them by reason of the construction of the said road and telegraph line. In case of failure to make amicable settlements in any case, either national or individual, such compensation shall be determined by appraisement of three disinterested referees, one to be named by the Commissioner of Indian Affairs, one by the principal chief of said nation, and one by said company. This provision shall also apply to all cases of injury to persons or property occasioned by the construction or operation of said road and telegraph line, after the construction thereof shall have been commenced. Said arbitrators shall receive not exceeding four dollars per day for each, with mileage not exceeding six cents per mile, and witnesses shall receive the usual fees allowed by the courts of said nation. Costs shall be made a part of the award, and be paid by the losing party.

In case of failure to pay such award, the Secretary of the Interior shall be, and is hereby, authorized to forbid the further passage of trains or the use of said right of way, and to remove the agents and employes of said company from the limits of said nation as intruders, under the intercourse laws of the United States, until such time as payment shall be made by said company.

And, in addition to the foregoing, the injured parties shall have the right of recourse to all legal remedies that may be applicable in like cases in the judicial tribunals; and consent is hereby given that the civil jurisdiction of the district court of the United States for the western district of Arkansas, and such other courts as may be established by authority of the United States, shall be extended within the territory and limits of the Choctaw Nation, without distinction as to citizenship of the parties, so far as may be necessary for the enforcement of the provisions of this act.

SEC. 4. For and in consideration of the uses and grants aforesaid, the said railway company shall pay quarter-annually to the national treasurer of said nation, to be used for the benefit of schools therein, the sum of five hundred dollars; and until the first of such payments be made, no right or power to enter upon said lands, except for the purpose of surveying and locating its line of road and telegraph; shall be acquired under the provisions of this act.

SEC. 5. Before any right shall accrue by virtue of this act the same shall be ratified by the Congress of the United States; and within one year thereafter, the said company shall file with the Secretary of the Interior a map showing the definite location of its line of road and telegraph, and shall complete the said road and telegraph through the lands of said nation within the further period of one year: *Provided*, That after the fixing of the general route by the filing of a map of preliminary survey in the office of the principal chief of said nation, who shall furnish a copy thereof to the Secretary of the Interior, no claim for a subsequent settlement and improvement shall be valid as against the said right of way.

SEC. 6. The said right of way shall not be settled upon by authority of said railway company, by non-citizens of said nation, except such employes of said company as are necessary to the successful operation of said railway and telegraph line, and their families, and such persons as may be authorized by law to reside in said nation: *Provided*, That only agents, operators, depot employes, and section men shall be exempt by reason of such employment from payment of permits, as required of other non-citizens of said nation.

SEC. 7. No greater rates of fare or freight shall be charged in the Choctaw Nation, by said railway company, than the lowest rate authorized by law in the States of Arkansas and Texas, or either of them, for services or business of the same kind; and said railway company agree to convey all passengers and to accept and transport all freight that may be offered, and to bill any freight that may be offered for shipment from points on said line in the Choctaw Nation to Chicago with the privilege of stopping said freight at St. Louis, by the shipper, on the same terms as if the bills had been made for St. Louis in the first instance.

SEC. 8. The said railroad company shall execute a bond to the United States, to be filed with and approved by the Secretary of the Interior, in the penal sum of five hundred thousand dollars, for the use and benefit of the Choctaw Nation, to cover any and all damages which may accrue by reason of the failure of said railway company to comply with any or all of the provisions and conditions of this act; said bond shall be good and valid against said company, its successors and assigns, and shall be renewed at the expiration of every five years, and whenever in the judgment of the Secretary of the Interior a renewal of the same shall be deemed necessary for the protection of the interests of the Indians or of the United States.

SEC. 9. If within ninety days after the passage of this act by the Choctaw council the company aforesaid shall fail to accept the conditions herein specified, by a resolution of its board of directors, certified to and filed with the Secretary of the Interior, or shall fail within one year to file its map of location with the Secretary of the Interior as hereinbefore provided, then this act shall apply to any other incorporated company that shall have first obtained the approval of the President of the United States.

Approved Nov. 10, 1881.

J. F. McCURTAIN,  
*Principal Chief Choctaw Nation.*

I hereby certify that the foregoing transcript is a true and correct copy from the original bill now on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the Choctaw Nation. This done at Chahta Tomaha, November 10, 1881.

[GREAT SEAL OF THE  
CHOCTAW NATION.]

THOMPSON MCKINNEY,  
*National Secretary Choctaw Nation.*

DEPARTMENT OF THE INTERIOR,  
*Washington, November 30, 1881.*

SIR: Referring to my reports of October 20, 21, and 24, I have the honor to submit the following as the result of my negotiations with the authorities of the Choctaw Nation respecting the grant of a right of way for railroad purposes through the lands of said tribe in the Indian Territory.

Having received your instructions of October 21, 1881, directing me to lay before the said authorities the application of the Saint Louis and San Francisco Railway Company, to be considered by them in connection with the application of the Chicago, Texas and Mexican Central Railway Company, already presented under your instructions of the 10th October, as detailed in former report, I left Saint Louis on the evening of the 24th and reached the Choctaw seat of government on the morning of the 26th of October.

Mr. L. H. Fitzhugh accompanied me as a representative of the Chicago, Texas and Mexican Central Company. I had while in Saint Louis conferred with C. W. Rogers, general manager of the Saint Louis and San Francisco Company, and received advice to the effect that Mr. W. P. Paxson would meet me at the council as the representative of the latter company.

At Caddo Station we received a telegram from the officers of the former company at Chicago, bearing date the 25th of October, advising us that the latter had agreed with them in relation to their rights, and instructing Mr. Fitzhugh to withdraw their bill and give all possible aid to pass that of the Saint Louis and San Francisco Company. This left no further duty for me except to present the application of the Saint Louis and San Francisco Railway Company, which I laid before the principal chief, with my new instructions, on the morning of my arrival.

Upon his invitation I met the members of the council and the principal men of the nation in the evening, and again presented my instructions, which were fully interpreted to the Indians. The conference lasted until a late hour. Many questions were asked touching the existing laws and treaty obligations, the general status of their tribe with respect to the government and the condition of particular matters now pending in the Interior Department; to all of which I gave such answer as my means of information would allow.

On the following morning, October 27, the principal chief submitted a special message to the council, with a copy of the papers presented by me, strongly recommending favorable action upon the application, and requested a special committee of three from each house be appointed to confer with me and formulate a bill granting the right of way as applied for. The request was acceded to, and there were appointed on the part of the Senate, Samson Holson, Ellis Choate, and T. M. Byington; and on the part of the House, Alfred Wright, J. P. Folsom, and J. W. Everidge. Several days were spent by this committee in considering the question; and, on Wednesday,

Nov. 2, after full discussion and deliberation, a vote was taken upon the form of a bill and report to be submitted to the council, which resulted in its favor, by the vote of four members of the committee, one being absent and one declining to vote.

The report was signed by myself on the part of the United States, and Messrs. Choate, Byington, Holson, and Everidge on the part of the Choctaw Nation; and was on the following day duly presented to the Senate, in accordance with the rules of the council, by Mr. Choate, chairman of the committee. Having been read and discussed for three successive days, according to the rule in force, it passed the Senate on Saturday, November 5, with a single amendment providing for quarter-annual payments of five hundred dollars each, instead of annual payments of fifteen hundred dollars, recommended by the committee as compensation for the use of the granted right of way.

In the House the bill came to a final vote on Wednesday and received nine votes in its favor to eight against it. The Speaker added his vote in the negative, producing a tie, and declared it defeated. On the following day the national secretary laid the bill before the principal chief, with the record of the vote, and there being a question whether, under the national constitution and the by-laws of the council, the same had not actually received a legal majority so as to authorize his approval of the bill, Principal Chief McCurtain submitted the same to the national attorney for an authoritative opinion upon the subject.

The rules of the House provide as follows: "The Speaker shall have a casting vote in case of a tie."

The national attorney gave his opinion that this provided for the only case in which the Speaker could vote upon a pending measure, and stated that the custom of all bodies having a presiding officer in the Choctaw Nation excludes his vote except in case of a tie. He therefore advised that the measure be considered as passed by the House and in a condition for Executive approval, whereupon it was regularly approved by the principal chief and placed on the files of the national secretary on the 10th of November, 1881.

The principal chief on the same day inclosed to me a certified copy of the approved bill to be presented to you with this report as the result of my mission and negotiations with his people, and I immediately took leave and started on my return.

I have to add for your information, and by way of recital, that on the evening of the 27th of October, upon invitation of the principal chief, I laid fully before a public meeting of the Choctaws the provisions of the bill, and answered, to the best of my ability, the many questions propounded.

Great and growing interest was manifested from the beginning; and the proper sentiment among the Indians was generally and earnestly in favor of the grant. A few in the council (which consists of eighteen members in the House and twelve Senators) opposed it. Among them was the Speaker, who stated that he was not altogether antagonistic to such a measure, but desired to see the jurisdiction of the Choctaw courts extended to cover possible litigation before admitting any more railroads into the country. I found various parties on the ground, coming and going between the council and the railroad station at Caddo, some of whom were whites and some citizens of other Indian nations, and who seemed to have no special business with the principal chief or the council. Some of these were friends of the pending bill, from the city of Paris in Texas, and others seemed to be using their influence to persuade the Indians to antagonize the measure. Once or twice there seemed to be danger of excitement in consequence of indulgence in intoxicating liquors, secretly procured. Rumors were also started to the effect that undue influence was being used by white men to control the votes of members of the council, and I deemed it proper to ask the presence of Colonel Tufts, the Indian agent, and accordingly telegraphed him. He reported on Thursday, November 3, and remained till Saturday; again returning on Monday and remaining till my final departure.

Upon his arrival a number of these visitors left; and upon request of the principal chief the agent quietly advised all who were not properly recognized by the government or the Indians to withdraw from the immediate vicinity of the council, leaving them to decide for themselves without embarrassment the question before them. The suggestion was heeded, and Mr. Paxson alone remained as the representative of the railroad company, pending the consideration of the bill by the House.

Acting within the spirit of your telegraphic instructions of the 5th of November, I took no active part in urging its passage. When questions were presented bearing upon the matter I gave reply as fully and fairly as I was able; stating the general fact that the desire of the department to procure a right of way was sufficiently manifested in sending me to confer with the Choctaw people on the subject; that having presented those instructions I was expected to leave the whole matter to their free choice and judgment, and that I had asked and should ask no member of the council to vote for the bill.

On the morning of the final vote the speaker of the house desired written answers to certain questions propounded by him, in order, as he said, to satisfy certain mem-

bers who feared that a menace was intended in case of refusal to grant the right of way. These, with the answers, are as follows:

"Question. Is it the United States or a railroad company that wants this right of way?"

"Answer. A railroad company. The instructions of the President and honorable Secretary of the Interior are to negotiate an agreement for a right of way for the use and benefit of the railroad company. Having presented it, it is the instruction that no effort be made on the part of the agent of the United States to influence the action of the Choctaw council.

"Question. In case the council fail to grant the right of way, will it be violating any treaty or law that we have with the Government of the United States?"

"Answer. It will not.

"Question. Will we still have the same protection from the United States that we have enjoyed heretofore?"

"Answer. So far as the laws and treaties are concerned you will."

On the evening of the 4th of November Senator Maxey, of Texas, by invitation of the principal chief, addressed the Indians in advocacy of the bill, urging with much force the desire of their friends in the United States to see them take advanced ground respecting public interests, and thus show to the country their intelligent progress in civilization.

These are the principal details of my negotiations and observations. I inclose as exhibits copies of my instructions and such papers as are necessary to set forth all the matters covered by this report, together with a copy of the bill as finally approved, and the letter of the principal chief transmitting the same.

The result seems to give general satisfaction among the Choctaws, both principal men and citizens, so far as my means of observation enabled me to judge.

The right of way granted is 200 feet in width across the lands of the nation in the direction furnished for its route, with an additional 200 feet at all stations for a distance of 4,000 feet in length.

It is estimated that the entire length will be about 125 miles, for which the company will pay \$500 quarter-annually, amounting to \$2,000 per year, perpetually, to be applied for school purposes by said nation.

The interests of the Indians are sought to be protected by stringent and clear provisions, and their rights are specifically defined in the act.

I have to add, incidentally, that while I was not specifically advised as to the terms of agreement between the two railway companies, my understanding, derived from general remark, was that they were to connect at Red River, on the Choctaw boundary, each bearing half the expense of bridging the stream, with rental for uses of the bridge, to be hereafter fixed by further agreement.

The agents of the respective railway companies, who accompanied me, and appeared before the Choctaw authorities in behalf of the grant, were, I have every reason to believe, perfectly fair and honorable in all their intercourse with the Indians, and seemed to be especially solicitous that every reasonable guarantee for their protection should be provided in the bill. The same solicitude was also expressed by the officers of the companies in the preliminary conferences had with myself at Chicago and Saint Louis; and I am satisfied that they have throughout acted in the most perfect good faith toward the Choctaw people and the Government of the United States.

In conclusion I have to thank you for the confidence reposed in me, and beg to be permitted to express the hope that you may approve of the manner in which my duties under your instructions have been discharged.

I have the honor to be, very respectfully, your obedient servant,

U. J. BAXTER,  
*Special Agent.*

Hqn. S. J. KIRKWOOD,  
*Secretary of the Interior.*

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*Schedule of papers accompanying report of U. J. Baxter, special agent, dated November 30, 1881, respecting the negotiation of an agreement for a right of way for railroad purposes across the lands of the Choctaw Nation.*

1. Copy of application, dated September 30, 1881, of the Chicago, Texas and Mexican Central Railway Company.
2. Copy of letter of Secretary of the Interior to the President, dated October 6, 1881, recommending appointment of an agent, with Executive indorsement of October 8, 1881, concurring in the same.
3. Instructions from the Secretary, dated October 10, 1881.

4. Copy of application, dated October 18, 1881, by the president of the Saint Louis and San Francisco Railway Company, with further application by treasurer of said company, dated October 20, 1881.
5. Copy of recommendation to the President, dated October 20, 1881, with Executive indorsement of October 21, 1881.
6. Instructions from Secretary, dated October 21, 1881.
7. Telegraphic instructions of October 24, 1881.
8. Telegraphic authority from D. K. Tripp and others, dated October 25, 1881, to withdraw application of the Chicago, Texas and Mexican Central Railway Company.
9. Telegraphic instructions of November 5, 1881.
10. Certified copy of message of principal chief, dated October 27, 1881.
11. Certificates from house and senate journals, showing the appointment of committee.
12. Duplicate of report and bill as agreed upon by committee, November 2, 1881.
13. Certified copy of bill as approved November 10, 1881, with letter of principal chief transmitting the same.
14. Letter of principal chief, of November 10, 1881, inclosing certified copies of papers relating to approval of bill.

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DEPARTMENT OF THE INTERIOR,  
*Washington, December 1, 1881.*

SIR: I learn that you were present a portion of the time during which negotiations were pending before the Choctaw council for right of way to Saint Louis and San Francisco Railway Company through the Choctaw Reservation.

Please send me at your earliest convenience the result of your observations bearing upon the questions—

1. Whether the negotiations between the Indian council and the railroad people were fairly and properly conducted;
2. Whether the action taken by the council meets the approbation of the Choctaws generally.

I desire an immediate reply.

Very respectfully,

S. J. KIRKWOOD,  
*Secretary.*

Indian Agent TUFTS,  
*Union Agency, Indian Territory.*

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UNITED STATES INDIAN SERVICE, UNION AGENCY,  
*Muscogee, Ind. Ter., December 6, 1881.*

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant, directing me to report—

- 1st. Whether the negotiations between the railroad people and the Indian council were fairly and properly conducted; and
- 2d. Whether the action by the council meets the approbation of the Choctaws generally.

In reply I have to state that, at the request of Mr. Baxter, of the Interior Department, I was with him at the Choctaw council while the act granting right of way to the Saint Louis and San Francisco Railroad Company was under consideration.

The question of granting this right of way was before the council last year, and entered into the election of members of the council and national officers, at the election in August last—so that the Choctaw people were well posted as to what was wanted.

As so much had been said about the methods used to obtain the consent of Indian councils, I arranged things so that no improper means could be used either for or against the act without my knowledge.

Mr. Baxter exhibited his instructions from the department, so that all should know just what his business was; and I saw nothing in his conduct, or heard nothing in his informations and opinions given to the Indians, in which he exceeded his instructions in any manner. The council fully understood the position of the department.

I am certainly of the opinion that the negotiations were fairly and properly conducted.

Referring to the second question, I believe that a majority of the Choctaw people were in favor of granting the right of way before the council met, and that now those who opposed, so far as I can learn, knowing the act has become a law of the nation,

22 RIGHT OF WAY ACROSS LANDS OF CHOCTAW NATION.

expect the road to be built. I believe the action of the council meets the approbation of Choctaws generally.

Very respectfully,

JOHN Q. TUFTS,  
*United States Indian Agent.*

Hon. S. J. KIRKWOOD,  
*Secretary of the Interior, Washington, D. C.*

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SAINT LOUIS AND SAN FRANCISCO RAILWAY COMPANY,  
*New York, December 6, 1881.*

DEAR SIR: At a meeting of the board of directors of this company, held this day, the bill of the legislature of the Choctaw Nation, granting right of way for the road of this company through the lands of that nation, was duly accepted, with the conditions therein specified and a certified copy of the action taken in the premises is herewith sent you to be filed in your office, all being in accordance with the terms of section 9 of said bill.

Very respectfully, your obedient servant,

E. F. WINSLOW,  
*President.*

Hon. SAMUEL J. KIRKWOOD,  
*Secretary of the Interior, Washington, D. C.*

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SAINT LOUIS AND SAN FRANCISCO RAILWAY COMPANY,  
*New York, December 6, 1881.*

This is to certify that at a meeting of the board of directors of this company, held this 6th day of December, 1881, a quorum being present, the following resolution was unanimously adopted as appears by the records:

"Resolved That this company for itself, its successors and assigns hereby accepts the bill passed by the legislature or council of the Choctaw Nation in the Indian Territory, approved Nov. 10, 1881, granting the right of way, to this company, through the lands of that nation, together with all the terms and conditions of the same, and that the president and secretary execute a copy of this resolution, with the seal of the company affixed thereto and transmit the same to the Secretary of the Interior at Washington, to be filed in his office."

A true copy from the records.

[SEAL.]

C. LITTLEFIELD,  
*Secretary.*