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**Message from the President of the United States, transmitting a communication from the Secretary of the Interior, with accompanying papers, in reference to the bill of Choctaw Council, approved November 10, 1881, granting a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, &c.**

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### Recommended Citation

S. Exec. Doc. No. 44, 47th Cong., 1st Sess. (1882)

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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, with accompanying papers, in reference to the bill of Choctaw council, approved November 10, 1881, granting a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, &c.*

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JANUARY 9, 1882.—Read, and ordered to lie on the table and be printed.

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*To the Senate of the United States :*

I transmit herewith a communication from the Secretary of the Interior, with accompanying papers, in reference to the bill of the Choctaw council, approved November 10, 1881, granting a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, a bill (S. 60) for the ratification of which is now understood to be pending before your honorable body.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,  
January 9, 1882.

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DEPARTMENT OF THE INTERIOR,  
Washington, January 9, 1882.

SIR: I have the honor to forward for transmission to Congress copies of the act of the legislature of the Chickasaw Nation, approved December 20, 1881, "creating delegates to visit Washington City, D. C.," and of a resolution of said legislature, approved December 17, 1881, "protesting against the ratifying of a bill to grant a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, as passed by the Choctaw general council November 9, 1881."

Also a communication of this date from B. F. Overton, delegate, covering said resolution, and an argument on the subject; also one of this date from B. F. Smallwood, Isham Walker, and Joseph P. Folsom, connected with the Choctaw legislature at its late session, in the nature of a protest against the passage of a bill (S. 60) now pending in the Senate of the United States to ratify the bill passed by the Choctaw council on the subject, as set forth in my communication to you of the 13th of December last.

The parties request that the papers herewith be speedily laid before the Senate, and I accordingly recommend that they be transmitted to that body, where the bill is understood to be now pending.

Very respectfully, your obedient servant,

S. J. KIRKWOOD,  
*Secretary.*

The PRESIDENT.

AN ACT CREATING DELEGATES TO VISIT WASHINGTON CITY, D. C.

SEC. 1st. *Be it enacted by the legislature of the Chickasaw Nation,* That there shall be two delegates elected by the joint vote of both branches of the legislature forthwith to visit Washington City, D. C., during the present session of Congress, with full and efficient power to represent the Chickasaw people in all things herein specified touching their interest and welfare.

SEC. 2d. *Be it further enacted,* That they are hereby directed to protest against the action of the general council of the Choctaw Nation in granting the right of way to the Saint Louis and San Francisco Railway Company for the construction and operation of a railroad and telegraph line through the Choctaw Nation.

SEC. 3d. *Be it further enacted,* That the delegates are hereby authorized and required to urge upon the government of the United States the speedy and immediate removal of the cattle-men and their cattle, non-citizens of the Chickasaw and Choctaw Nations, that are herding and raising cattle within the limits of the Chickasaw Nation.

SEC. 4th. *Be it further enacted,* That the delegates shall be required to urge upon Congress to pass laws more stringent and with greater penalties, prohibiting United States citizens from invading and settling upon lands belonging to any of the Indian tribes embracing the so-called lease district lying adjacent to the Chickasaw Nation on the west.

SEC. 5th. *Be it further enacted,* That the delegates are hereby required to protest against any and all Territorial bills that may be introduced into the United States Congress for the purpose of extending the same over the Indian Territory.

SEC. 6th. *Be it further enacted,* That the delegates aforesaid shall report the proceedings of the same to the next session of the legislature, and for such services they shall each receive the sum of one thousand dollars out of the money now in the hands of the national treasurer not otherwise appropriated or that may hereafter come into his hands, and the auditor of public accounts is hereby authorized to issue his warrant for the same.

Approved December 20, 1881.

HICKEYOUBBEE,  
*Governor Chickasaw Nation.*

OFFICE NATIONAL SECRETARY, CHICKASAW NATION,  
*Tishomingo City.*

I, Thos. W. Johnson, national secretary, Chickasaw Nation, hereby certify that the foregoing is a true and a correct copy of the original now on file in this office.

Given under my hand and seal of office the 21st day of December, 1881.

[SEAL.]

THOS. W. JOHNSON,  
*National Secretary, Chickasaw Nation.*

RESOLUTION protesting against the ratifying of a bill to grant a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, as passed by the Choctaw general council November 9, 1881.

Whereas the Choctaw general council did grant a right of way and certain other privileges to the Saint Louis and San Francisco Railway Company, which said bill recites that it must be ratified by the Congress of the United States before any rights shall accrue thereby; and whereas the Chickasaw Nation, which is a part owner of the land through which said right of way purports to have been granted, has not only not given its consent to said grant, but has never been consulted in regard thereto, and is to derive no benefit or advantage under the terms of said bill; and whereas the Chickasaw Nation believe that the amount of compensation fixed in said bill is entirely inadequate for the privileges surrendered: Now, therefore,

*Be it resolved by the legislature of the Chickasaw Nation,* That under the treaty of March 24, 1837, the Chickasaw Nation became joint owners and possessed of equal rights with the Choctaws in all the territory occupied by the Choctaw and Chickasaw tribes.

Article first of that treaty reads as follows :

"It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw district, to have an equal representation in their general council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except a voice in the management of the consideration which is given for these rights and privileges. And the Chickasaw people to be entitled to all the rights and privileges of the Choctaws, and to be subject to the same laws to which the Choctaws are."

Article third of the same treaty recites that for these privileges the Chickasaw Nation paid the sum of five hundred and thirty thousand dollars.

Under the treaty of March 4, 1856, these rights and privileges were again reiterated and confirmed.

Article first of said treaty reads as follows :

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common ; so that each and every member of either tribe shall have an equal undivided interest in the whole ; provided, however, no part thereof shall ever be sold without the consent of both tribes." \* \* \*

And again, in the treaty of July 10, 1866, the last treaty ever made between the United States and these two tribes, the same rights are guaranteed.

Article tenth of said treaty is as follows :

"The United States reaffirm 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."

The same treaty, after providing a manner in which the land belonging to the two tribes may be allotted among the members of said tribes, recites as follows :

"Art. 33. All lands selected as herein provided shall thereafter be held in severalty by the respective parties, and the unselected lands shall be the common property of the Choctaw and Chickasaw Nation in their corporate capacities, subject to the joint control of their legislative authorities."

This joint ownership has never before been denied by the United States Government or the Choctaw Nation. The Chickasaws always regularly received their due proportion of all government funds, and of all revenues from the common domain, irrespective of locality. The Chickasaw legislature look upon this bill, enacted by the Choctaw general council, as an infringement upon their sacred rights, and therefore earnestly and solemnly protest against said bill being ratified, either by the honorable Secretary of the Interior, by Congress assembled, or by his excellency the President of the United States.

*Be it further resolved*, That the governor of the Chickasaw Nation is hereby directed to send a certified copy to the President of the United States, one to the Secretary of the Interior, one to the Commissioner of Indian Affairs.

Approved December 17, 1881.

HICKEYOUBBEE,  
*Governor Chickasaw Nation.*

CHICKASAW NATION, OFFICE NATIONAL SECRETARY,  
*Tishomingo City.*

I, Thomas W. Johnson, national secretary, Chickasaw Nation, hereby certify that the within is a true and correct copy of the original resolution now on file in this office.

Given under my hand and seal of office this 21st day of December, A. D. 1881.

THOMAS W. JOHNSON,  
*National Secretary, Chickasaw Nation.*

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

WASHINGTON, D. C., *January 9, 1882.*

SIR: The Chickasaw Nation respectfully shows that Senate bill No. 60, First session, Forty-seventh Congress, entitled "a bill ratifying the act of the general council of the Choctaw Nation of Indians, granting to the Saint Louis and San Francisco Railway Company, the right of way for a railroad and telegraph line through that nation" should not become a law, nor receive the sanction and recommendation of the Department of the Interior, because, even if the Choctaw Nation did in fact pass a bill granting said right of way, still under the treaties with the Choctaws and Chickasaws, it is expressly stipulated that the Chickasaw Nation has the right to an equal voice with the Choctaw Nation in any and all questions affecting their common domain.

On December 17, 1881, the Chickasaw council passed the following resolution :

A RESOLUTION protesting against the ratifying of "A bill to grant a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company" as passed by the Choctaw general council, November 9, 1881.

Whereas, the Choctaw general council on November the 9th, 1881, granted a right of way and certain privileges to the Saint Louis and San Francisco Railway Company, which said bill recites that it must be ratified by the Congress of the United States before any rights shall accrue thereby.

And whereas the Chickasaw Nation, which is joint owner of the land through which said right of way purports to have been granted, has not only not given its consent to said grant, but has never been consulted in regard thereto, and is to derive no benefit or advantage under the terms of said bill.

And whereas the Chickasaw Nation believes that the amount of compensation fixed in said bill is entirely inadequate for the privileges surrendered: Now therefore,

*Be it resolved by the legislature of the Chickasaw Nation,* That under the treaty of March 24, 1837, the Chickasaw Nation became joint owners, and possessed of equal rights with the Choctaws in all the territory occupied by the Choctaw and Chickasaw tribes. Article I of that treaty reads as follows:

"Article I. It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw district of the Choctaw Nation, to have an equal representation in their general council, and to be placed on an equal footing in ever other respect with any other district of said nation, except a voice in the management of the consideration which is given for these rights and privileges, and the Chickasaw people to be entitled to all the rights and privileges of the Choctaws and to be subject to the same laws to which the Choctaws are." \* \* \*

Article 3 of the same treaty recites that for these privileges the Chickasaw Nation paid the sum of five hundred and thirty thousand dollars.

Under the treaty of March 4, 1856, these rights and privileges are again reiterated and confirmed. Article I of said treaty reads as follows:

Article I. \* \* \* "And pursuant to an act of Congress, approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however,* no part thereof shall ever be sold without the consent of both tribes."

And again in the treaty of July 10, 1866, the last treaty ever made between the United States and these two tribes, the same rights are guaranteed. Article 10 of said treaty is as follows:

"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, not inconsistent herewith."

The same treaty, after providing a manner in which the lands belonging to the two tribes may be allotted among the members of said tribes, recites as follows:

"Article 33. All lands selected as herein provided shall thereafter be held in severalty by the respective parties, and the unselected lands shall be the common property of the Choctaw and Chickasaw nations in their corporate capacities, subject to the joint control of their legislative authorities."

This joint ownership has never before been denied, either by the United States Government or the Choctaw Nation, the Chickasaws having always regularly received their due proportion of all government funds, and of all revenues from the common domain, irrespective of locality.

The Chickasaw Nation look upon this bill enacted by the Choctaw general council as an infringement upon their sacred rights, and therefore earnestly and solemnly protest against the said bill being ratified, either by the honorable Secretary of the Interior, by Congress assembled, or by his excellency the President of the United States.

Passed the committee December 16, 1881.

FLETCHER FRAZIER, *Chairman.*

Passed the senate December 16, 1881.

JONAS WOLF, *President.*  
M. V. CHEADLE, *Clerk.*

Passed the house of representatives December 17, 1881.

CHILLY ALEXANDER, *Speaker.*  
ALBERT MCKINNEY, *Clerk.*

Approved December 17, 1881.

HICKE-UBBY,  
*Governor Chickasaw Nation.*

[Reference is also requested to the provisions of art. 3, treaty of March 4, 1856, as follows: "The remainder of the country held in common by the Choctaws and Chickasaws shall constitute the *Choctaw district*."] ]

The rights of the Chickasaw Nation have always been recognized by the Choctaw Nation.

For instance, on March 7, 1876 the Choctaw Nation passed an act in reference to the duties of the national agent and the 5th section of said act provides that "the royalty accruing on coal under an act approved November 12, 1875, is hereby declared to be due and payable in the proportion of  $\frac{2}{3}$  to the Choctaw Nation, and  $\frac{1}{3}$  to the Chickasaw Nation, and the national agent is hereby instructed to collect from the mining company or companies, only that part which is due to the Choctaw Nation, leaving that which is due to the Chickasaw Nation to be collected direct from said mining company or companies by the Chickasaw national agent."

Said coal mines were located in Tobucksy County, Choctaw Nation, and the Chickasaw Nation sent its national agent to collect said royalty as specified, and so continues to this time. Another similar recognition is found in act March 8, 1876, of the Choctaw council, authorizing the appointment of three commissioners to meet a like committee of the Chickasaw Nation "to adopt such plan of action as in their wisdom and judgment may seem best for the government of the *mutual* mining, stone, and timber interests, and a tax on the Missouri, Kansas and Texas Railway, as well as the subject of the switch railroad leaving the main track of the Missouri, Kansas and Texas Railway at or near McAlister's and running east three miles, more or less, to the Joshua Pusley coal mines."

All of these localities lie in what is called the Choctaw Nation.

Reference is respectfully called to a decision by the Department of the Interior during the incumbency of Hon. C. Delano, holding that all contracts made by the Choctaw Nation with any persons regarding coal, timber, &c., situated in the Choctaw limits, must be sanctioned and agreed to by the Chickasaw Nation before the same were valid and binding under the treaty stipulations regulating the rights of said nations.

The written application of the Chicago, Texas, and Mexican Central Railway Company, filed in the Department of the Interior on September 30, 1881, fully recognizes and admits the rights of the Chickasaw Nation in the premises.

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 southeastern 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.

Reference to the map filed by said corporation with their application, September 30, 1881, will show that their language was intended to apply to the present route for the right of way, in substance.

On October 20, 1881, the Saint Louis and San Francisco Railway Company made a similar application, and clearly admitted that the Chickasaw Nation had rights on the subject-matter in contemplation equal to the rights of the Choctaw Nation.

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 southeasterly 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 mountainous, 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.)

It is thus seen—

1. That the Chickasaw Nation asserts its right to an equal voice with the Choctaw Nation in granting said right of way or in disposing of any property rights in the Choctaw Nation.

2. That the Choctaw Nation recognizes such claims by the Chickasaw Nation.

3. That the Department of the Interior has heretofore so held and decided in contracts regarding coal, timber, &c., lying in the Choctaw Nation.

4. That both the railway corporations who applied for negotiations to obtain a right of way through the Choctaw Nation admitted that such right of way, as designated on a map, was in the domain of the Chickasaw Nation.

It is most respectfully asked that these facts may be communicated to the Senate of the United States, with the views of the department thereon, if deemed proper, in order that the treaty rights of the Chickasaw Nation may be considered before said Senate bill No. 60 shall be disposed of by said honorable body.

As the applications of said corporations were made through the Department of the Interior, and all subsequent proceedings were conducted through that office, it is deemed best that this effort to redress the wrongs threatened to the Chickasaw Nation should likewise be made through the same department, in order that this information and protest may be transmitted to the President and by him communicated to the Senate of the United States for such action as may be regarded appropriate by that honorable body.

B. F. OVERTON,  
*Chickasaw Delegate.*

WASHINGTON, D. C., *January 9, 1882.*

SIR: The undersigned respectfully show that Senate bill No. 60, entitled, "A bill ratifying the act of the general council of the Choctaw Nation of Indians, granting to the Saint Louis and San Francisco Railway Company right of way for a railroad and telegraph line through that nation" is based on the erroneous assertion that the Choctaw council passed an act in accordance with the constitution and laws of said nation, granting said right of way, because it is not true that such an act was passed as is alleged in the preamble of said Senate bill No. 60, first session, Forty-seventh Congress.

The question of granting a right of way was before the Choctaw council in 1880, and was defeated in both houses.

During the year 1881 various efforts were made by representatives of railway corporations to influence the sentiment of the Choctaws.

When the Choctaw council assembled in October, 1881, the representatives of certain railways were at Armstrong Academy, 12 miles from Caddo, which latter place there is a depot on the Missouri, Kansas and Texas Railroad.

On Monday, the 17th October, Mr. U. J. Baxter, an officer of the Department of the Interior, reached Armstrong Academy, and addressed the Indians that evening in the house of representatives urging the desire of the department to secure an outlet through their nation, for the pressing necessities of commercial traffic and industrial supply. Mr. S. J. Wright, of Paris, Tex., addressed the Indians and advocated the grant of a right of way to the Saint Louis and San Francisco Railway Company.

Mr. Baxter, in his report, dated October 20, 1881, says:

"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 a majority; I have considerable doubt whether such is the case. Whether undue influences have been used I am unable to say."

On the 21st October Mr. Baxter wrote that "the inclosed draft of a bill had, months ago, been universally distributed throughout the nation. Had I known their purport I should have pointed out to the Indians the inadequacy of its provisions for their



proper security and protection. \* \* \* Without harmonious action on their part (the two railway companies) the alarm of the Choctaw people will be likely to be aroused and both companies will probably fail."

On the 26th October Mr. Baxter returned to the Armstrong Academy (having left on the 18th inst.), and L. H. Fitzhugh accompanied him as the representative of the Chicago, Texas and Mexican Central Company; Mr. W. P. Paxson was there as the representative of the Saint Louis and San Francisco Company. The two companies agreed to make common cause, and hence the Chicago, Texas, and Mexican Central Company withdrew their bill, and the agent was instructed to "give all possible aid to pass the bill" of the other company.

On the evening of the 26th October Mr. Baxter, on invitation of the chief, addressed the members of the council and principal men of the nation.

On the 27th October J. F. McCurtain, principal chief, sent in a message advocating the grant of right of way to the Saint Louis and San Francisco Railway Company, and recommended a committee, "who by conference with Mr. Baxter (agent of the United States) will formulate a bill on a plan which will be mutually satisfactory to the Choctaw people, to the United States, and the said railway company." The following language occurs in his message:

"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."

On the evening of the 27th October Mr. Baxter, on invitation of the chief, addressed a meeting of the Choctaws, laying fully before them the provisions of the bill. Mr. Baxter says in his report, dated November 30, 1881, and referring to the transactions about the 27th October:

"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 18 members in the house and 12 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. \* \* \* Some of these were friends of the pending bill from the city of Paris, Tex., 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."

On October 28 the senate appointed Sampson Holson, Ellis Choate, and T. H. Byington a special committee on the message of the chief.

On the 31st October the house appointed Alfred Wright, J. P. Folsom, and J. W. Everidge to confer with United States Agent Baxter, who, in his report dated November 30, 1881, says:

"The chief submitted a special message to the council, with a copy of the papers presented by me, strongly recommending favorable action, and requested a special committee to confer with me and formulate a bill granting the right of way as applied for. The request was acceded to. \* \* \* Several days were spent by this committee in considering the question, and on Wednesday, November 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."

This report recommended that "said bill do pass" and was signed; "Uri. J. Baxter, on the part of the United States, Ellis Choate, T. H. Byington, Saunson Holson, and J. W. Everidge, on the part of the Choctaw Nation."

Alfred Wright and J. P. Folsom, two of the three members from the house, did not sign said report.

There was indorsed on the railway bill inclosed with the report these words:

"The within bill approved and adopted in special committee this 2nd Nov., 1881.

"URI J. BAXTER,

"For the United States.

"ELLIS CHOATE,

"Chairman on part of Choctaw Council."

Mr. Baxter says in his report to the Secretary of the Interior, dated Nov. 30, 1881:

"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. 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. \* \* \* On the evening of Nov. 4, 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."

The vote in the senate on the 5th November, Saturday, was six for the bill and five against it. Those who voted in the affirmative, were Ellis Choate, T. H. Byington, Sam. Holson, McKee King, Benjamin J. Pickens, and Nelson McCoy.

Those who voted against the bill were, John Williams, Jacob B. Jackson, Benj. Wesley, Peter Noel, and Martin Charleston.

The bill came to the house on Monday, the 7th of November, and was under consideration for three days, 7th, 8th, and 9th November, when it came to a vote.

The journal of the House shows the action of the house on said bill, as follows:

WEDNESDAY MORNING, November 9, 1881.

The house met pursuant to adjournment; roll called, and quorum present. Prayer was offered by Mr. Brewer; after which, the minutes of the previous day was read and interpreted.

On motion of Mr. Harris, and seconded, the minutes of the previous day was adopted.

On motion of Mr. Dukes, and seconded, a bill to grant a right of way through the Choctaw Nation to Saint Louis and San Francisco Railway Company, was read and interpreted for third reading.

On motion of Mr. Folsom, and seconded, the same was taken up for discussion. After considerable discussion on the said right of way granting to Saint Louis and San Francisco Railway Company, motion was made by Mr. Benton to pass the bill, and seconded.

On motion of Mr. Garvin, and seconded, the yeas and nays were ordered, upon the call of the several members, to be entered on the journal of the house. Carried.

On motion of Mr. Garvin, and seconded, the said bill was put to a vote, namely:

FOR YEAS.

1. H. C. Harris.
2. S. P. Nelson.
3. Kampalobbe.
4. J. W. Everidge.
5. Rob't Benton.
6. C. C. Dukes.
7. T. D. Ainsworth.
8. S. W. Garvin.
9. Jesse Yota.

FOR NAYS.

1. Aaron Homma.
2. Elijah Brewer.
3. Jos. Wilson.
4. Alfred Wright.
5. J. P. Folsom.
6. Reuben Jackson.
7. Alpheus Crossby.
8. Maurice Cass.
9. B. F. Smallwood.

The said bill having a tie vote, the speaker declares the bill defeated.

On motion of Mr. Folsom, and seconded, the house adjourned, to meet at the ringing of the bell. Carried.

THURSDAY MORNING, November 10, 1881.

The house met pursuant to adjournment; roll called, and quorum present. Prayer was offered by Mr. Yota; after which, the minutes of the previous day was read and interpreted.

On the motion of Mr. Ainsworth, and seconded, the minutes of the previous day was adopted.

B. F. SMALLWOOD,  
*Speaker.*

ISHAM WALKER,  
*Journalist of the House.*

We hereby certify that this is a true and correct transcript of the original journal of the house.

ISHAM WALKER,  
*Journalist of the House.*  
B. F. SMALLWOOD,  
*Speaker.*

"On the morning of the final vote," says Mr. Baxter in his report dated, November 30, 1881, to the Secretary of the Interior, "the speaker of the house desired certain written answers to certain questions propounded by him, in order, as he said, to satisfy certain members who feared a menace was intended in case of refusal to grant the right of way."

These, with the answers, were 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."

The preamble of the bill contains this language:

"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."

Before the vote was taken in the house, on November 9, the speaker, B. F. Smallwood, member from Atoka County, made a speech, in which he stated that he was opposed to the bill, and that he should vote against it by virtue of his constitutional right as the member from Atoka County; that his constituents had sent a large petition, signed by 160 citizens, protesting against the passage of the bill.

Mr. Garvin, the member from Towson County, asked if Mr. Smallwood had a right to vote; to which Mr. Smallwood replied that he had the right as the representative from Atoka County.

After calling the roll the clerk handed the list to the speaker, who, after reading it, declared the vote stood 9 to 9, and the bill was defeated.

After adjournment Mr. Ainsworth, who voted for the bill, said to Mr. Smallwood that the "bill was defeated," and also stated that Judge Everidge told him that the bill "did not pass."

The bill being declared lost was deposited among such papers in the house.

Rule 5th of the house is as follows:

"All bills having passed the house shall be carried by the sergeant-at-arms or doorkeeper to the senate or the principal chief."

This was not done; neither the sergeant-at-arms nor the doorkeeper carried this bill to the chief, as it remained in the house as a lost bill. There is no other way known to the constitution and laws of the Choctaw Nation by which a bill can be legally carried to the chief for his approval or dissent.

On the 10th of November the following letter was addressed by the chief to C. S. Vinson, national attorney:

EXECUTIVE OFFICE, CHOCTAW NATION,  
November 10, 1881.

SIR: In accordance with section 2 of "An act defining the duties of the national attorney," &c., approved October 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 derived 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 indorsement 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 obedient servant,

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

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

On the same day, Mr. Vinson was at Atoka, and went on the cars of the Missouri, Kansas and Texas Railway Company to Caddo, and from there he proceeded in a buggy to Armstrong Academy, the capitol, distant 12 miles. It had been raining and the roads were not in the best condition. He arrived at the council about 2 o'clock p. m.

on the 10th of November. The following communication signed by C. S. Vinson was directed to the chief in response to his letter of the same date:

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 indorsement on a bill that is "passed the house" is not 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 obedient servant,

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

On the same day, and subsequent to the communication from C. S. Vinson, the following letter was sent to Mr. Baxter by the chief:

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.*

On the same day, and still later than the foregoing letter, the following letter was addressed to Mr. Baxter by the chief:

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.*

The certified copies of all the papers referred to were also dated on November 10, 1881, and included copies of the letter to C. S. Vinson, his reply *thereto*, copies of the

journal of the house, and copy of the bill granting the right of way to the Saint Louis and San Francisco Railway Company.

Exactly how much deliberation was used can be judged from the fact that Mr. C. S. Vinson arrived at the capitol about 2 o'clock p. m. November 10, 1881, and these various papers were interchanged and the railway representatives and Mr. Baxter were in Caddo, 12 miles distant, at 8 o'clock p. m. of the same day, having in their possession these documents.

The constitution of the Choctaw Nation was framed by a convention which met 11th January, 1860, and is similar in most respects to the constitutions of the States.

The house of representatives is composed of members chosen every year by the qualified electors in the several counties of each district, at the ratio of one representative to every 1,000 citizens. There are 16 counties in the Choctaw Nation, with an aggregate population of 18,000 to 20,000. Atoka County has one representative and contains a population of about 1,500. B. F. Smallwood was the member from Atoka County, and on the organization of the house he was chosen to preside as speaker.

The constitution of the Choctaw Nation, art. 3, sec. 7, provides:

"The house of representatives when assembled shall choose a speaker and its other officers."

Rule 21 of the house is as follows:

"The speaker shall have a casting vote in case of a tie."

The rules are as follows:

#### RULES AND REGULATIONS OF THE HOUSE OF REPRESENTATIVES.

*October session, A. D. 1881.*

**RULE 1.** The house of representatives shall convene at 8 o'clock a. m., on each day except Sundays.

**RULE 2.** The speaker shall call the house to order by directing the clerk to call the roll. If a quorum is present, he shall call upon some pious member to offer prayer, after which the journal of the previous day shall be read and interpreted, and corrected if necessary, and adopted and then signed by the journalist and attested by the speaker.

**RULE 3.** All bills introduced in the house or received from the senate shall be entered on the journal by their title.

**RULE 4.** No member shall speak more than twice on any one subject pending before the house, unless by consent of two-third votes of the members present.

**RULE 5.** All bills having passed the house shall be carried by the sergeant-at-arms or doorkeeper to the senate or the principal chief.

**RULE 6.** No member shall leave the house during business hours without notifying the speaker.

**RULE 7.** Any member absenting himself without sufficient cause shall be fined three (\$3) dollars per day for each and every day he may so absent himself, to be deducted from his certificate as a member by the speaker.

**RULE 8.** No bill shall pass the house until it has been read and interpreted, and free discussion had thereon on three different days, unless dispensed with by two-thirds of the members present.

**RULE 9.** The speaker shall preserve order during business hours and determine all points of order, and who is entitled to the floor in case of two or more members rise to speak at once.

**RULE 10.** If the speaker shall be detained for any cause from presiding over the house, or if he wishes to speak on any subject under discussion, he shall have the right to call some member to the chair.

**RULE 11.** No new bill shall be introduced while a previous bill or motion is under consideration.

**RULE 12.** No bill shall be entertained by this house unless signed by the proposer thereof.

**RULE 13.** All amendments to bills or resolutions must be in writing.

**RULE 14.** All petitions or memorials received shall be read and interpreted and referred to senate or committee.

**RULE 15.** No motion shall be entertained without a second.

**RULE 16.** At the call of any of the members the yeas and nays on any question shall be entered on the journal.

**RULE 17.** All standing committees shall consist of three members each, to be appointed by the speaker.

**RULE 18.** Any member aggrieved by the decision of the speaker may appeal to the house for redress.

**RULE 19.** Members shall use respectful language towards each other in all their debates.

RULE 20. The house shall elect a clerk, journalist, and doorkeeper by ballot.

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

RULE 22. By two-third votes of the members these rules may be altered or amended.

B. F. Smallwood, as the representative of Atoka County, had the constitutional right to vote on all measures presented before the Choctaw Council, or otherwise the 15 counties, instead of 16 counties, constituting the nation, would compose the council, and Atoka County would be disfranchised because one of her citizens was chosen by his peers to preside over their deliberations.

Rule 21 did not take away any right of Atoka County to an equal voice in framing laws to govern her citizens, but simply made it the duty of the speaker, as such, to cast a deciding vote when there was a tie. He *shall* vote when there is a tie, as speaker, for the convenience of the house, as its officer, in order that business may proceed and not be obstructed by a tie vote. We are informed that such is the custom in the States whose constitutions of government are similar to that of the Choctaw Nation, and that in the early history of the House of Representatives of the Congress of the United States Speaker Macon claimed and exercised a right to vote by virtue of his constitutional prerogative as a member of the House, notwithstanding the fact that the House had a prohibitory rule on the subject, and that such right has since been exercised without question.

But were it otherwise, and the vote of B. F. Smallwood not counted, how can the fact be remedied that the bill was declared lost, and the journal of the house so establishes the action of the house on said bill on November 9th, and such action was ratified and confirmed on the following day, November 10th, when the minutes, or journal, was read and adopted? Nothing was ever done afterwards in a legislative way with said measure, and in point of fact the bill remains as a lost bill among the records of the house, in accordance with the constitution and laws of the Choctaw Nation.

The Secretary of the Interior issued the following instructions on November 5, 1881:

[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.

The letter of the chief to Mr. Baxter on November 10, 1881, says: "I herewith hand you a certified copy of a bill, &c., as the result of your mission and consequent negotiations with the Choctaw Nation in behalf of said railway company."

If the Choctaw Nation rendered any decision in accordance with the constitution and laws thereof, it was certainly influenced by outside pressure in our judgment, and under a misapprehension of the real relation of the Government of the United States in the premises.

It may be proper to say that so far as we are informed the Choctaw Nation does not desire to disappoint the wishes of their friends in making steady progress in civilization and enlightenment, nor does the conduct of the Choctaw Nation in the past, even on the subject of granting rights of way to railway corporations, justify such an apprehension.

The eighteenth article of the treaty of March 4, 1856, provides that the United States, or any incorporated company, shall have the right of way for railroads and telegraph lines through the Choctaw and Chickasaw country, and Article 6 of the treaty, July 10, 1866, with the Choctaws and Chickasaws, says:

"The Choctaws and Chickasaws hereby grant a right of way through their lands to any company or companies which shall be duly authorized by Congress or by the legislatures of said nations, respectively," &c.

The legislature or council of the Choctaw Nation is the proper source of authority for such grants of right of way, and should be left free to make their own decision, uninfluenced by outside pressure on such grave questions of public policy. Hasty and injudicious action not only injures the Choctaw Nation but retards real progress, and tends to defer the day when the Choctaw Nation can gladly welcome increased facilities in transportation. Indians are slower to act than the whites. This is the first instance where such a measure has ever been alleged to have passed an Indian council. Corporations obstruct their own progress by undue haste, instead of patiently explaining to the Indians their intentions and purposes, and then waiting till the Indians are fully persuaded in their own minds that their best interests will be promoted by granting corporate powers, under adequate restrictions and limitations. Precipi-



tate action can but excite grave apprehensions of danger in the Indian mind, in view of the history of railway corporations.

Such are some of the facts and circumstances under which it is alleged that the Choctaw Nation passed said bill, recited at length as a part of Senate bill No. 60, first session, Forty-seventh Congress.

We most respectfully submit the same, with the request that this information be transmitted to the President of the United States, if deemed proper, in order that he may communicate the same to the Senate of the United States, where said bill is pending, for such disposition as may appear just and appropriate by that honorable body.

B. F. SMALLWOOD,

*Speaker.*

ISHAM WALKER,

*Journalist.*

JOSEPH P. FOLSOM,

*Member.*