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Executive Document No. 82.

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EXECUTIVE DOCUMENT NO. 82.

MAY 25, 1886.—Referred to the House Calendar and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 9109.]

The Committee on Indian Affairs, to whom was referred Senate Ex. Doc. 82, relative to the claim of the freedmen, adopted Shawnees and Delaware Indians, in the Cherokee Nation of Indians, to their pro rata share of \$300,000 appropriated to said Cherokee Nation on 3d of March, 1883, having had the same under consideration, submit the following report :

Your committee find that on the 3d of March, 1883, Congress appropriated the sum of \$300,000 out of funds due under appraisement of land west of the Arkansas River, to be paid into the Cherokee treasury, to be expended as the acts of the Cherokee legislature directs.

Your committee further find that in May thereafter, over the veto of the chief of the Cherokee Nation, the Cherokee legislature directed that said appropriation be distributed per capita to citizens of the Cherokee Nation by Cherokee blood; that, in pursuance of said legislative enactment, said appropriation was so distributed, thereby excluding the adopted colored Shawnee and Delaware citizens from any part therein.

Your committee further find that under treaty between the Cherokee Nation and the United States (14 Stat. L., 801), that all freedmen residing in said Cherokee Nation *should have all the rights of native Cherokees.*

From the fifteenth article of the treaty of 1866 it appears that friendly Indians were permitted to settle on the unoccupied lands of the Cherokee Nation east of 96 degrees. The Indians thus settled, upon full compliance with certain conditions therein named, were to be incorporated into and become a part of the Cherokee Nation, on equal terms with native citizens of said nation; that in pursuance of said treaty certain Shawnees and Delaware Indians, by agreement with said Cherokee Nation, settled in and became citizens of the Cherokee Nation.

Your committee find that said Shawnee and Delaware Indians, prior to their said settlement, fully complied with all the conditions precedent mentioned in said treaty. From these various treaties and agreements, your committee are clearly of the opinion that claimants, at the time of said appropriation and disbursement, were a part and parcel of the Cherokee people, and entitled to all the rights, privileges, benefits, and immunities of native Cherokees by Cherokee blood, and as such, were entitled to their full per capita pro rata of said money.

Your committee believe that the act of the Cherokee legislature confirming the distribution of said appropriation to citizens of the Cherokee Nation by blood is in conflict with the treaties existing between said nation and the United States, and a violation of the spirit of the act of

Congress of March 3, 1833, making the appropriation, and at war with all principles of equity and common justice between man and man.

The language of the appropriating act is very broad wherein it says that the money shall be expended as the acts of the Cherokee legislature direct. It may be contended that, inasmuch as the Cherokee legislature directed that the distribution be confined to citizens of the Cherokee Nation by blood, such distribution and discrimination is or was legal and binding upon claimants.

Your committee insist and submit that Congress could not confer power upon the Cherokee legislature to do an act in violation of existing law; that the power conferred by said act of appropriation was a legal power, and under such act the Cherokee legislature could not discriminate against any of its citizens legally entitled to their part of said appropriation. If so, they could have, by legislative enactment, directed it divided between and amongst the individual members of the legislature directing its disbursement, or to any one individual of their tribe, or, in fact, to any other person or persons, whether citizens of their country or not.

Your committee agree that if the Cherokee legislature had directed said appropriation to be expended for school purposes for their whole people, or to defray the current expenses of their government, or for any other purpose lawful in its nature and not in violation of existing law, such expenditure would have been binding and beyond Congressional supervision.

Your committee find that, under article 6 of the treaty of 1866, all laws of the Cherokee Nation shall be uniform throughout the nation; and further, that should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously, he is authorized to correct such evil and adopt the means necessary to secure the impartial administration of justice, as well as fair and equitable application and expenditure of the national funds as between the people of said nation from that provision of the treaty and the relation that claimants bear to the Federal Government.

Your committee are of the opinion that Congress has the power to grant the relief sought by claimants as set forth in their petition presented to the President by their attorney, J. Milton Turner, appended to said Executive Document No. 82, which document your committee ask to be made a part of this report as an appendix thereto.

Your committee therefore report the accompanying bill as a substitute for the bill contained and set out in said Executive Document No. 82, and recommend that it do pass.

[Senate Ex. Doc. No. 82, Forty-ninth Congress, first session.]

Message from the President of the United States, transmitting a communication from the Secretary of the Interior relative to legislation in behalf of certain Cherokee Indians.

To the Senate and House of Representatives :

I transmit herewith a communication of the 27th ultimo from the Secretary of the Interior, submitting, with accompanying papers, a draft of a bill, prepared in the Office of Indian Affairs, for the purpose of securing to the Cherokee freedmen and others, citizens of the Cherokee Nation by adoption and incorporation, a sum equal to their proportion of the \$300,000, proceeds of lands west of 96 degrees, in the Indian Territory, appropriated by the act of March 3, 1833.

The matter is presented for the consideration of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *March 2, 1886.*

DEPARTMENT OF THE INTERIOR,
Washington, February 27, 1886.

The PRESIDENT :

I have the honor to submit herewith a copy of a report of 13th instant from the Commissioner of Indian Affairs, presenting, with accompanying papers, a draft of proposed legislation for securing to the Cherokee freedmen and others, citizens of the Cherokee Nation by adoption and incorporation, a sum equal to their proportion of the \$300,000 appropriated by the act of March 3, 1883 (22 Stat., 624), which provides as follows :

“ That the sum of \$300,000 is hereby appropriated, to be paid into the treasury of the Cherokee Nation, out of the funds due under appraisalment for Cherokee lands west of the Arkansas River, which sum shall be expended as the acts of the Cherokee legislature direct, this amount to be immediately available.”

For the distribution of this sum the Cherokee legislature passed an act May 19, 1883, restricting its payment “ the citizens of the Cherokee Nation by Cherokee blood.”

There appears to be no conflict between the act of the Cherokee legislature made and provided for the distribution of this fund and the act above cited making the appropriation. But when it is examined in the light of the provisions of the treaties and agreements relating thereto—full mention of which will be found in the report of the Commissioner—the claim of the complainants is, in my opinion, well founded in right and justice.

I therefore submit the matter for your consideration, and respectfully recommend that it be presented to Congress for such action as that body may find to be right and necessary to remedy the wrong complained of.

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

L. Q. C. LAMAR,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 13, 1886.

The honorable the SECRETARY OF THE INTERIOR :

SIR: This office is in receipt of a petition, addressed to the President, on February 8, 1886, by J. Milton Turner, as attorney for the Cherokee freedmen, praying that the necessary steps be taken to secure to the said freedmen a sum equal to their proportion of the sum of \$300,000 appropriated by an item in the act of Congress approved March 3, 1883 (22 Stats., 624), which reads as follows, viz :

“ That the sum of \$300,000 is hereby appropriated, to be paid into the treasury of the Cherokee Nation, out of the funds due under appraisalment for Cherokee lands west of the Arkansas River, which sum shall be expended as the acts of the Cherokee legislature direct, this amount to be immediately available: *Provided*, That the Cherokee Nation, through its proper authorities, shall execute conveyances, satisfactory to the Secretary of the Interior, to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Percés, Otoes and Missourias, and Osages, now occupying said tract, as they respectively occupy the same before the payment of said sum of money.”

The several required conveyances were executed on the 14th day of June, 1883, followed by the issuance of the necessary requisition for the money appropriated by the act aforesaid.

The act of the Cherokee national council, which was passed over the veto of the principal chief, by the constitutional two-thirds of said council, May 19, 1883 (Laws Cherokee Nation, 1881-'83, p. 139), provides—

“ That when said additional amount, appropriated by act of Congress March 3, 1883, shall have been received by the treasurer of the Cherokee Nation, the principal chief shall cause the same to be paid out per capita to the citizens of the Cherokee Nation by Cherokee blood.”

The next two paragraphs of this act relate to the taking of the necessary census, &c., and the fourth paragraph thereof provides—

“ That as soon as advised by the proper authorities that the funds are ready, it shall be the duty of the treasurer to make requisition for the same, and on receiving said funds it shall be his duty to pay the same out per capita to citizens, by Cherokee blood, according to the census rolls.”

The remainder of the act has no bearing upon the question now at issue, and its quotation here is unnecessary.

It is alleged that the provisions of this act were scrupulously carried out, and that none but persons of Cherokee blood received any benefit from the funds in question.

I have carefully examined the act of the Cherokee legislature, and in my opinion it is in violation of—

(1) The rights of the freedmen under the ninth article of the Cherokee treaty of 1866 (14 Stats., 801), which provides—

“The Cherokee Nation having voluntarily, in February, 1863, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation, otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike.

“They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees.”

There are three classes of persons mentioned in said articles, viz:

Those liberated by the voluntary act of their former owners or by law;

All free colored persons who were in the Cherokee country at the commencement of the rebellion or who returned within six months after the proclamation of the treaty;

The descendants of the two classes named.

As has been seen by the ninth article of that treaty, these persons *acquired all the rights of native Cherokees*, and if they are possessed of those rights, it is a violation of the treaty to deny them such rights. There is not the slightest doubt in my mind upon the subject. These people, having the vested rights of native Cherokees, they were entitled to their pro rata share of this fund.

(2) The said act is in violation of the agreement entered into between the Cherokees and Delawares (Compiled Laws Cherokee Nation, p. 430), and the agreement between said nation and the Shawnees (*Id.*, 345).

By the fifteenth article of the Cherokee treaty of 1866 certain terms were provided under which friendly Indians might be settled upon unoccupied lands in the Cherokee country, east of the ninety-sixth degree of west longitude. The Indians thus settled were, upon full compliance with the terms and provisions of said article, to be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens of said nation. Under the provisions of that article, an agreement was entered into between the Cherokee Nation and the Delaware tribe of Indians on the 8th day of April, 1867, which was approved by the Secretary of the Interior and the President of the United States, respectively, on the 11th day of April, 1867, and by which the Delaware tribe of Indians “become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and none other) in the national funds as native Cherokees.”

Under the provisions of the same article, an agreement was entered into between the Cherokee Nation and the Shawnee tribe of Indians on the 7th day of April, 1869, and approved, respectively, by the Secretary of the Interior and the President on the 9th day of June, 1869, whereby it is provided—

“That the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect, and with all the privileges and immunities of native citizens of the Cherokee Nation.”

These agreements were carried out in every particular. The necessary registration was made and the requisite amount of funds were transferred to the credit of the Cherokee Nation, and thereafter these two tribes became a part of that nation, with all the rights, privileges, and immunities of native Cherokees, and it necessarily follows that the members of each were entitled to their distributive share of the fund in question; and when, by the act of Cherokee council, they were denied the right to participate in that fund, they were denied a right guaranteed them by an agreement entered into under a solemn treaty stipulation.

(3) The act of the Cherokee legislature is in violation of the Constitution of the United States. The Cherokee Nation have the right of self-government, and to make laws for the government of persons and property within its limits, so long as such laws do not conflict with the Constitution of the United States and laws made in pursuance thereof, &c. But the Constitution of the United States says, “Nor shall any person be deprived of life, liberty, or property without due process of law.”

The three classes of persons named—the freedmen, the Delawares, and the Shawnees—have legally-vested property rights in the Cherokee Nation, and when that nation deprives them of that right “without due process of law,” as was done in this case, it is a violation of the Constitution of the United States.

(4) The said act is in violation of the sixth article of the treaty of 1866, which provides that “all laws of the Cherokee Nation shall be uniform throughout said nation.”

(5) The said act is in violation, in my opinion, of the spirit and intent of the act of

Congress making the appropriation, which says that the fund appropriated "shall be expended as the acts of the Cherokee legislature direct."

This act simply gives the Cherokee legislature the power to say how, or rather for *what object*, the fund shall be expended, not for the benefit of a favored class or a favored few, but for the benefit of the whole Cherokee people, no matter how the right to participate was acquired, whether under the ninth article of the treaty or the fifteenth article thereof.

The act does not vest in the Cherokee legislature the right to say *who*, or that *any portion* of the nation shall receive the fund to the exclusion of another portion or part equally entitled to participate therein.

Under the construction placed upon the act by the Cherokee legislature that body had the power to appropriate this fund to the exclusive use and benefit of its own individual members, or to the exclusive use and benefit of the principal chief or to any other individual member of the nation. In my opinion, Congress never intended to vest in the Cherokee legislature this unqualified and unbounded right and power.

(6) The act of the Cherokee council in this matter is in violation of every principle of equity and justice, and some steps should be taken by the United States Government to right this manifest wrong. As before seen, the 6th article of the treaty of 1866 provides that all laws of the Cherokee Nation shall be uniform throughout the nation, and said article further provides that "should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district," being the district defined in article 4, in which certain freedmen and others were permitted to settle, "he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice as well as a fair and equitable application and expenditure of the national funds, as between the people of this and every other district in said nation."

In my opinion, this section of the treaty clothes the President with ample power to take such steps and adopt such measures as may be necessary to secure to these several classes of people that which is due them, as well under the treaties and laws cited as in equity and justice.

The question then arises as to the best means to be adopted to bring about the desired end. This can be done only by one of two ways:

(1) Congress can appropriate, out of any money in the Treasury not otherwise appropriated, a sum sufficient to make such a per capita payment to the people of the several-named classes as will equalize the per capita payment made to Cherokees by blood, out of the \$300,000 appropriated by the act of March 3, 1883, under the act of their legislature aforesaid, making distribution thereof, the amount appropriated to be a charge against and a lien on the unassigned lands of the Cherokees lying west of the ninety-sixth degree, upon which, under the sixteenth article of the treaty of 1866, the United States Government has the right to settle friendly Indians, and to be deducted from any payments that may be hereafter made on account of said lands; and

(2) Congress can provide for the diversion, for the purpose indicated, of a sufficient amount of the funds now in the Treasury of the United States to the credit of the Cherokee Nation.

Under existing law all funds, as they become due, are deposited with the assistant treasurer of the United States at Saint Louis, Mo., to the credit of the treasurer of the Cherokee Nation, to be disposed of as the legislature thereof may direct, and the Government thereafter has no further control thereover.

Therefore, whichever of the two suggested methods is adopted, Congressional action will be necessary to bring about the desired end. In my judgment, the former proposition is the more tenable one. The appropriation of the \$300,000 referred to, and of which these several classes of Cherokee citizens received no benefit, was made out of the funds due under appraisement for Cherokee lands west of the Arkansas River, and it seems to me but proper that the required funds should be appropriated by Congress and made a lien on the lands referred to. This would leave intact the funds of the Cherokees now in the Treasury, the revenue from which, it is presumed, is devoted to the interests of the whole Cherokee people, no matter how the beneficial interest arose.

I am not advised as to the amount of the per capita distribution made of this fund, but the census taken by the Cherokees in 1880, and the latest of which I have any knowledge, places the number of persons of Cherokee blood at 15,307, and taking this as a basis, the distribution would be a little less than \$20 per head. The same census places the colored population at 1,976, the Delawares at 672, and the Shawnees at 503, the three classes aggregating 3,151; and taking the same basis for calculation, it would require an appropriation of a little over \$63,000 to equalize the per capita payment, but upon the presumption that there has been some increase among this people, I have inserted in the proposed legislation the sum of \$75,000, or so much thereof as may be necessary. This amount is, it is believed, large enough to cover the interests involved,

and if it should be, in excess of that required, the balance will go back into the Treasury.

I inclose copies of the agreements with the Delawares and Shawnees, respectively, and of the petition filed by Mr. Turner, with draft of proposed legislation, and have the honor to recommend, if you concur in the views herein expressed, that the matter be presented to Congress, through the proper channel, with request for favorable action.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

To the President of the United States :

Your petitioner respectfully submits that by the provisions of the act of Congress of March 3, 1883, appropriating \$300,000 in part payment of lands theretofore ceded to the United States by the Cherokee Nation of Indians, said \$300,000 were to be distributed among and for the benefit of the whole Cherokee Nation.

That subsequent thereto, viz, on the 19th day of May, 1883, the Cherokee council enacted a law providing for the distribution of said \$300,000, by the terms of which it excluded from any benefits thereof, and any claim or right thereto, *per capita* or otherwise, the freedmen and all other citizens or members of said Cherokee Nation except "Cherokees by blood."

Your petitioner therefore respectfully represents that said act of said Cherokee council, *in assuming* to exclude from the benefit of or participation in said fund, *per capita* or otherwise, of the \$300,000 above referred to, and to which they were and are by the terms of said act of Congress of March 3, 1883, entitled, freedmen and all members of said Cherokee Nation, except "Cherokees by blood," is illegal and void, as in direct contravention of the provisions of article 9 of the treaty entered into between the United States and said Cherokee Nation on the 19th day of July, 1866; ratification advised, with amendments, July 27, 1866; amendments accepted July 31, 1866; and by proclamation of the President of the United States accepted, ratified, and confirmed August 11, 1866—

In this, to wit:

That by said article 9 of said treaty, "The Cherokee Nation having voluntarily in February, 1863, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in punishment of crime whereof the party shall have been duly convicted in accordance with the laws applicable 'to all the members of said tribe alike.'

"They further agree that all freedmen who have been liberated by voluntary act of their former owners, or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees;" and said \$300,000 having been thus distributed to the "Cherokees by blood only," in pursuance of the provisions of said act of said council, and the lands ceded by said Cherokee Nation to the United States, and for which said \$300,000 is a part consideration, belonging as well to said freedmen and other members of said Cherokee Nation as to the Cherokees by blood, as provided by said ninth article of said treaty, it must be apparent that unless the President of the United States exercise the authority and power vested in him by the sixth article of said treaty ordering that restitution be made said freedmen and other members of said nation thus excluded, they will be forever barred and cut off from all benefits thereof to which they are entitled by the terms of said treaty.

Therefore your petitioner respectfully asks that an executive order issue on the proper authority to make or compel restitution to be made, as is provided in terms by the sixth article of said treaty of July 19, 1866. Said sixth article provides, to wit:

"And should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil and to adopt the means necessary to secure the impartial administration of justice, as well as fair and equitable application and expenditure of the national funds as between the people of this and of every other district in said nation." And as well as by the 26th article thereof, by which last-named article "The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds."

And your petitioner doth further pray the President of the United States to act under the authority of said sixth article of said treaty of 1866, by issuing his executive notice to the Government of said Cherokee Nation, pointing out the various and persistent violations by said Cherokee Nation of the terms and provisions applying in

said treaty of 1866 to the protection and rights of said freedmen, formerly the slaves of said Cherokee Nation, and of other classes of citizens of said Cherokee Nation by adoption and incorporation.

And your petitioner will ever pray.

And may God always have the President of the United States in His safe and holy keeping.

J. MILTON TURNER,
Attorney for the Cherokee Freedmen.

WASHINGTON, D. C., February 8, 1866.

Articles of agreement made this 8th day of April, A. D. 1867, between the Cherokee Nation, represented by William P. Ross, principal chief, Riley Keyes, and Jesse Bushyhead, delegates duly authorized, parties of the first part, and the Delaware tribe of Indians, represented by John Connor, principal chief; Charles Journeycake, assistant chief; Isaac Journeycake, and John Sarcozie, delegates for and on behalf of said Delaware tribe, duly authorized, witnesses:

Whereas by the fifteenth article of a certain treaty between the United States and the Cherokee Nation, ratified August 11, 1866, certain terms were provided, under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the line of the ninety-sixth degree of west longitude, the price to be paid for such lands to be agreed on by the Indians to be thus located and the Cherokee Nation, subject to the approval of the President of the United States; and whereas by a treaty between the United States and the Delaware tribe of Indians, ratified August 10, 1866, the removal of the said Delawares to the Indian country south of Kansas was provided for; and in the fourth article whereof an agreement was made by the United States to sell to the Delawares a tract of land, being part of a tract the cession of which by the Cherokees to the United States was then contemplated; and whereas no such cession of land was made by the Cherokees to the United States, but, in lieu thereof, terms were provided, as hereinbefore mentioned, under which friendly Indians might be settled upon their lands; and whereas a full and free conference has been had between the representatives of the Cherokees and the Delawares, in view of the treaties herein referred to, looking to a location of the Delawares upon the Cherokee lands, and their consolidation with said Cherokee Nation:

Now, therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokees, parties of the first part, for and in consideration of certain payments, and the fulfillment of certain conditions hereinafter mentioned, agree to sell to the Delawares, for their occupancy, a quantity of land east of the line of the ninety-sixth degree of west longitude, in the aggregate equal to 160 acres for each individual of the Delaware tribe who has been enrolled upon a certain register made February 18, 1867, by the Delaware agent, and on file in the office of Indian Affairs, being the list of Delawares who elect to remove to the "Indian country," to which list may be added, only with the consent of the Delaware council, the names of such other Delawares as may, within one month after the signing of this agreement, desire to be added thereto, and the selections of the lands to be purchased by the Delawares may be made by said Delawares in any part of the Cherokee reservation east of said line of ninety-sixth degree, not already selected and in possession of other parties; and in case the Cherokee lands shall hereafter be allotted among the members of said nation, it is agreed that the aggregate amount of land herein provided for the Delawares, to include their improvements according to the legal subdivisions when surveys are made—that is to say, 160 acres for each individual—shall be guaranteed to each Delaware incorporated by these articles into the Cherokee Nation, nor shall the continued ownership and occupancy of said land by any Delaware so registered be interfered with in any manner whatever, without his consent, but shall be subject to the same, conditions and restrictions as are by the laws of the Cherokee Nation imposed upon native citizens thereof.

Provided that nothing herein shall confer the right to alienate, convey, or dispose of any such lands, except in accordance with the constitution and laws of said Cherokee Nation.

And the said Delawares, parties of the second part, agree that there shall be paid to the said Cherokees, from the Delaware funds now held or hereafter received by the United States, a sum of money equal to \$1 per acre for the whole amount of 160 acres of land for every individual Delaware who has already been registered upon the aforesaid list, made February 18, 1867, with the additions thereto heretofore provided for.

And the Secretary of the Interior is authorized and requested to sell any United States stocks belonging to the Delawares to procure funds necessary to pay for said lands; but in case he shall not feel authorized, under existing treaties, to sell such

bonds belonging to the Delawares, it is agreed that he may transfer such United States bonds to the Cherokee Nation at their market value, at the date of such transfer.

And the said Delawares further agree that there shall be paid from their funds now or hereafter to come into possession of the United States, a sum of money which shall sustain the same proportion to the existing Cherokee national fund that the number of Delawares registered as above mentioned and removing to the Indian country sustains to the whole number of Cherokees residing in the Cherokee Nation. And for the purpose of ascertaining such relative numbers, the registers of the Delawares herein referred to, with such additions as may be made within one month from the signing of this agreement, shall be the basis of calculation as to the Delawares, and an accurate census of the Cherokees residing in the Cherokee Nation shall be taken under the laws of that nation within four months, and properly certified copies thereof filed in the office of Indian Affairs, which shall be the basis of calculation as to the Cherokees.

And that there may be no doubt hereafter as to the amount to be contributed to the Cherokee national fund by the Delawares, it is hereby agreed by the parties hereto that the whole amount of the invested funds of the Cherokees, after deducting all just claims thereon, is \$678,000.

And the Delawares further agree, that in calculating the total amount of said national fund there shall be added to the said sum of \$678,000 the sum of \$1,000,000, being the estimated value of the Cherokee neutral lands in Kansas, thus making the whole Cherokee national fund \$1,678,000; and this last-mentioned sum shall be taken as the basis for calculating the amount which the Delawares are to pay into the common fund.

Provided, that as the \$678,000 of funds now on hand belonging to the Cherokees is chiefly composed of stocks of different values, the Secretary of the Interior may transfer from the Delawares to the Cherokees a proper proportion of the stocks now owned by the Delawares of like grade and value, which transfer shall be in part of the pro rata contribution herein provided for by the Delawares to the funds of the Cherokee Nation; but the balance of the pro rata contribution by the Delawares to said fund shall be in cash or United States bonds, at their market value.

All cash and all proceeds of stocks, whenever the same may fall due or be sold, received by the Cherokees from the Delawares under the agreement, shall be invested and applied in accordance with the twenty-third article of the treaty with the Cherokees of August 11, 1866.

On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe registered, as above provided, shall become members of the Cherokee Nation with the same rights and immunities, and the same participation (and no other) in the national funds, as native Cherokees, save as hereinbefore provided.

And the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall in all respects be regarded as native Cherokees.

WILL P. ROSS,
Principal Chief.

RILEY KEYES,
Cherokee Delegation.

his
JOHN + CONNOR,
mark.
Principal Chief.

CHARLES JOURNEYCAKE,
ISAAC JOURNEYCAKE,
his
JOHN + SARCOXIE,
mark.
Delaware Delegation.

Executed and delivered in our possession by the above-named delegates of the Cherokee and Delaware Nations, at the city of Washington, in the District of Columbia, the day and year first above written.

JOHN G. PRATT.
W. A. PHILLIPS.
EDWARD S. MENAGETH.

DEPARTMENT OF THE INTERIOR, April 11, 1867.

The within agreement between the Cherokee and Delaware tribes of Indians, concluded on the 8th instant, and providing for uniting the two tribes as contemplated by the Cherokee treaty of July 19, 1866, is respectfully submitted to the President, with the recommendation that it be approved.

O. H. BROWNING,
Secretary.

Approved April 11, 1867.

ANDREW JOHNSON.

Agreement between Shawnees and Cherokees, concluded June 7, 1869, approved by the President June 9, 1869.

Articles of agreement, made and entered into at Washington, D. C., this seventh day of June, A. D. 1869, by and between H. D. Reese and William P. Adair, duly authorized delegates representing the Cherokee Nation of Indians, having been duly appointed by the National Council of said Cherokees, parties of the first part, and Graham Rogers and Charles Tucker, duly authorized delegates representing the Shawnee tribe of Indians, parties of the second part;

Witnesseth: Whereas it is provided by the fifteenth article of the treaty between the United States and the Cherokee Indians, concluded July 19, 1866, that the United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied land east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with certain provisions specified in said article; and

Whereas the Shawnee tribe of Indians are civilized and friendly with the Cherokees and adjacent tribes, and desire to settle within the Cherokee country on unoccupied lands east of 96°:

It is therefore agreed, by the parties hereto, that such settlement may be made upon the following terms and conditions, viz:

That the sum of \$5,000 belonging to the Shawnee tribe of Indians, and arising under the provisions of treaties between the United States and said Shawnee Indians, as follows, viz:

For permanent annuity for educational purposes, per fourth article treaty 3d August, 1795, and third article treaty 10th of May, 1854, \$1,000;

For interest, at 5 per centum, on \$40,000 for educational purposes, per third article treaty 10th May, 1854, \$2,000;

For permanent annuity, in specie, for educational purposes, per fourth article treaty 29th September, 1817, and third article, 10th May, 1854, \$2,000;

Shall be paid annually to Cherokee Nation of said Indians, and that the annuities and interest, as recited, and the investment or investments upon which the same are based, shall hereafter become and remain the annuities and interest and investment or investments of the Cherokee Nation of Indians, the same as they have been the annuities and interest and investment or investments of the Shawnee tribe of Indians. And that the sum of \$50,000 shall be paid to the said Cherokees, as soon as the same shall be received by the United States, for the said Shawnees, from the sale of the lands in the State of Kansas known as the Absentee Shawnee lands, in accordance with the resolution of Congress, approved April 7, 1869, entitled "A resolution for the relief of settlers upon the Absentee Shawnee lands in Kansas," and the provisions of the treaty between the United States and the Shawnee Indians, concluded May 10, 1854; and also that the said Shawnees shall abandon their tribal organization.

And it is further agreed, by the parties hereto, that in consideration of the said payments and acts agreed upon, as hereinbefore stated, that the said Cherokees will receive the said Shawnees—referring to those now in Kansas, and also to such as properly belong to said tribe who may be at present elsewhere, and including those known as the Absentee Shawnees now residing in Indian Territory—into the country of the said Cherokees upon unoccupied lands east of 96°; and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect, and with all the privileges and immunities of native citizens of said Cherokee Nation: *Provided*, That all of said Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names, and permanently locate in the Cherokee country as herein provided within two years from the date hereof, otherwise they shall forfeit all rights under this agreement.

In testimony whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and year first above written.

H. D. REESE, [SEAL.]

WM. P. ADAIR, [SEAL.]

Delegates representing the Cherokee Nation of Indians.

GRAHAM ROGERS, [SEAL.]

CHARLES TUCKER, [SEAL.]

Delegates representing the Shawnee tribe of Indians.

Attest:

W. R. IRWIN.

H. E. MCKEE.

A. N. BLACKLIDGE.

JAS. B. ABBOTT.

DEPARTMENT OF INTERIOR, June 9, 1869.

The within agreement between the Cherokee and Shawnee tribes of Indians, concluded on the 7th instant, and providing for uniting the two tribes as contemplated by the Cherokee treaty of July 19, 1866, is respectfully submitted to the President with the recommendation that it be approved.

J. D. COX,
Secretary.

Approved June 9, 1869.

U. S. GRANT.

Whereas it is provided in the ninth article of the treaty of July 19, 1866, between the United States and the Cherokee Nation of Indians, that freedmen who have been liberated by voluntary act of their former owners, or by law, as well as all free colored persons who were in the (Cherokee) country at the commencement of the rebellion, and were then residents therein, or who might return within six months, and their descendants, shall have all the rights of native Cherokees; and

Whereas, by the fifteenth article of the aforesaid treaty, certain terms were provided under which friendly Indians might be settled upon unoccupied lands in the Cherokee country east of the ninety-sixth degree of west longitude; and the Indians thus settled were, upon full compliance with the provisions of said article, to be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens; and

Whereas, under the provisions of the aforesaid fifteenth article, an agreement was entered into between the Cherokee Nation and the Delaware tribe of Indians, on the 8th day of April, 1867, which agreement was approved respectively by the Secretary of the Interior and the President of the United States on the 11th day of April, 1867, and by the terms of which the Delaware Indians "became members of the Cherokee Nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees;" and

Whereas, under the provisions of the aforesaid fifteenth article, an agreement was entered into between the Cherokee Nation and the Shawnee tribe of Indians, on the 7th day of June, 1869, and approved by the Secretary of the Interior and the President of the United States, respectively, on the 9th day of June, 1869, by the terms of which the Shawnee Indians were incorporated into and became a part of the Cherokee Nation on equal terms in every respect, and with all the privileges and immunities of native citizens of the Cherokee Nation; and

Whereas it is provided by the sixth article of the aforesaid treaty that all laws of the Cherokee Nation shall be uniform throughout said nation; and

Whereas, by an item in the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 13, 1884, and for other purposes, approved March 3, 1883, the sum of \$300,000 was "appropriated, to be paid into the treasury of the Cherokee Nation, out of the funds due under appraisalment for Cherokee lands west of the Arkansas River, which sum shall be expended as the acts of the Cherokee legislature direct;" and

Whereas by an act of the Cherokee legislature, which was passed over the veto of the principal chief, and became a law on the 19th day of May, 1883; the principal chief was directed to cause the said sum of \$300,000 to be paid out *per capita* to the citizens of the Cherokee Nation by blood, and which sum has been paid out only to Cherokee citizens by blood as directed by said act; and

Whereas by the said act of the Cherokee legislature the aforesaid freedmen, Delaware and Shawnee Indians, have been deprived of their legal and just dues guaranteed them by treaty stipulations: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$75,000, or so much thereof as may be necessary, to carry out the provisions of this act; and the amount actually expended shall be charged against the Cherokee Nation on account of its lands west of the Arkansas River, and shall be a lien on said land, and which shall be deducted from any payment hereafter made on account of said lands.

The said sum, or so much thereof as may be necessary, shall be by the Secretary of the Interior distributed *per capita* (1) among such freedmen and their descendants as are mentioned in the ninth article of the treaty of July 19, 1866, between the United States and the Cherokee Nation of Indians; (2) among the Delaware tribe of Indians incorporated into the Cherokee Nation, by the terms of a certain agreement entered into between said Cherokee Nation and Delaware Indians under the provisions of the fifteenth article of the aforesaid treaty, on the 8th day of April, 1867, and approved, respectively, by the President of the United States and the Secretary of the Interior on the 11th day of April, 1867; and (3) among the Shawnee tribe of Indians incorporated into the Cherokee Nation by the terms of a certain agreement entered into between the said Cherokee Nation and Shawnee Indians, under the provisions of the

aforesaid article and treaty on the 7th day of June, 1869, and approved, respectively, by the President of the United States and the Secretary of the Interior, on the 9th day of June, 1869, in such manner and in such amount or amounts as will equalize the *per capita* payment made to Cherokees by blood, in accordance with the act of the Cherokee legislature aforesaid, out of the sum of \$300,000 appropriated by the act of March 3, 1853, aforesaid.

[Supplementary to a petition.]

To the President of the United States :

The undersigned, referring to his petition of date 8th day of February, 1886, has the honor to point to the quotation therein contained from the sixth article of the treaty of 1866, and in that quotation to point to the phrases "said district;" and "this and every other district in said nation," for the purpose of explaining that in the fourth article of said treaty of 1866 it was provided and left to the election of certain "freed persons" and "free negroes" whether or not they should avail themselves of "the right to settle in and occupy the Canadian district southwest of the Arkansas River, and all that tract of country lying northwest of Grand River and bounded on the southeast by Grand River," &c.

Said freed persons and free negroes were fixed in this right, qualified by a legal limitation to expire with the expiration of the first two years subsequent to the promulgation of said treaty of 1866. These classes allowed that limitation to operate to debar them from their right thus to have settled.

Referring to the terms of the ninth article of said treaty of 1866, in which the high contracting parties have agreed that the said classes of negroes shall and have created for them a beneficiary right granting and guaranteeing to the said negroes or freedmen in terms, "all the rights of native Cherokees," it will be observed that the said ninth article and the terms thereof, as stipulated and agreed upon by the two high contracting parties, is to all intent and purpose in its independence perfected in the distinctness of the terms and provisions of said ninth article from the terms and rights to settle hereinbefore mentioned and described as provided by the aforesaid fourth article, and limitation thereof, of said treaty of 1866. And, in this therefore, the above-described terms of said fourth article of said treaty of 1866, fixing at the election of said beneficiaries a limitation of two years, and said beneficiaries having allowed themselves to be debarred of said right to settle, the ninth article of said treaty of 1866, operates to grant to said beneficiaries "all the rights of native Cherokees" in any part whatsoever of the Cherokee landed possessions, moneys, rights, civil or political, and of "all the rights of native Cherokees" of whatsoever kind or nature. It will, therefore, be observed that in the very independence of the terms of the fourth and fifth articles, and so much of the sixth article of the treaty of 1866 as begins with the phrase "the inhabitants of said district hereinbefore described shall be entitled to representation according to numbers in the national council," and ending with the last mention of the word council, and as well as all the terms of the ninth article of the treaty of 1866, respectively, the legal harmony itself is found on comparison to be thoroughly preserved and established.

It may not be amiss from the undersigned to avail himself of this occasion to express his sentiments of highest consideration and of esteem for the President of the United States.

J. MILTON TURNER,
Attorney for Cherokee Freedmen.

WASHINGTON, D. C., February 15, 1886.