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Message from the President of the United States, transmitting letter of the Secretary of the Interior and reports relative to the proposed purchase of certain land by the Seminole Indians.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Letter of the Secretary of the Interior and reports relative to the proposed purchase of certain land by the Seminole Indians.

MAY 22, 1890.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith a communication of the 20th instant, from the Secretary of the Interior, and accompanying correspondence in the matter of the request of the Seminole Nation of Indians for negotiations with the Creek Nation of Indians for the purchase of an additional quantity of land, being about 25,000 acres, for the use of the Seminoles.

The request is based upon the fact that former purchases do not embrace all of the lands upon which the Seminole Indians have made improvements, and which by the corrected survey were given to the Creeks. The money to be paid for these lands is to be re-imbursed to the Government by the Seminoles.

BENJ. HARRISON.

EXECUTIVE MANSION,
May 21, 1890.

DEPARTMENT OF THE INTERIOR,
Washington, May 20, 1890.

The PRESIDENT :

I have the honor to submit herewith copy of a communication from the Seminole delegation, requesting that negotiations be instituted for the purpose of acquiring from the Creek Indians an additional quantity of land (25,000 acres) upon which the improvements of their people are located, and a copy of a reply thereto, of 29th ultimo, from the Commissioner of Indian Affairs.

The facts connected with the settlement of the Seminoles on these lands are fully set out in the Commissioner's report, and are briefly as follows: By the treaty of March 21, 1866 (14 Stat., 756), the Seminoles were granted 200,000 acres of land of the west half of the Creek domain acquired by treaty of June 14, 1836 (14 Stat., 736). In 1867 a survey of

the Creek dividing line was made by John C. Rankin, and settlement was made, it is claimed, by the Seminoles up to this line. This survey was not approved, the Creeks claiming it was too far east, and a survey was made in 1871 by one Bardwell, which was approved by the Department. The Bardwell line is some 7 miles west of the Rankin line. The 200,000 acres granted to the Seminoles were located west from the Bardwell line, and as the Seminoles had valuable improvements to the east of said line, Congress by act of March 3, 1873 (17 Stat., 626), authorized negotiations with the Creeks for cession of that portion of their reserve on which the Seminoles had been erroneously located, and by act of August 5, 1882 (22 Stat., 265), paid the Creek Nation \$175,000 for the 175,000 acres ceded for the Seminoles.

It now appears that the lands purchased in 1882 do not embrace all the improvements made by the Seminoles, and that some 25,000 acres more are needed.

The Commissioner recommends the purchase and has prepared a draught of an item for insertion in some appropriation bill providing for negotiations with the Creeks for the cession of said lands, and for the payment thereof at \$1. per acre; the amount paid to be re-imbursed the United States by the Seminole Nation in two annual installments out of moneys due or becoming due said Seminole Nation.

Concurring in the recommendation of the Commissioner, I have the honor to request that the matter be presented for the early and favorable action of Congress.

I have the honor to be, very respectfully, your obedient servant,
 JOHN W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR,
 OFFICE OF INDIAN AFFAIRS,
 Washington, April 29, 1890.

SIR: I have the honor to acknowledge receipt of your communication dated April 11, 1890, transmitting a letter from the Seminole delegation of date February 12, 1890, requesting negotiations to be instituted by you for the purpose of acquiring an additional quantity of land (25,000 acres) upon which the improvements of many of their people are located, with the opinion of the Assistant Attorney General to the effect that you have no authority to negotiate with the Creek Nation for the cession of the land in question, and which you request me to take into consideration, and, if I deem that the best interests of the Indians would be thereby subserved, to prepare a proper bill for Congress, with appropriate report "authorizing a new survey and such action as may be necessary to negotiate with the Creek Nation for the cession of the land occupied by the Seminole Indians."

A full history of this matter is contained in the opinion of the Assistant Attorney General of April 5, 1890, and also in report from this office, dated February 18, 1881 (up to said date), but for the greater convenience of the committees of Congress a statement of the facts is embodied herein.

By the third article of the Creek treaty of June 14, 1866 (14 Stats., 786), the Creeks ceded to the United States the west half of their entire domain, "to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon."

The eighth article of the treaty made it the duty of the Secretary of the Interior to cause the line dividing the Creek country to be accurately surveyed.

By the third article of the Seminole treaty of March 21, 1866 (14 Stats., 756), the Seminoles ceded their entire domain to the United States, to locate other Indians and freedmen thereon, the United States agreeing to pay therefor 15 cents per acre.

By the same article the United States granted to the Seminoles 200,000 acres of land of the west half of the Creek domain, acquired by the third article of the Creek treaty above referred to. (It will be noticed that the Seminole treaty was executed some three months before the Creek treaty, but the negotiations were being conducted at the same time. It appears to have been assumed that the Creek treaty would be concluded, or that it *had* been, on February 6, 1866, that date being given in the third article of the Seminole treaty.)

This tract was described as follows :

Beginning on the Canadian River where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, (June 14) 1866, following said line due north to where said line crosses the north fork of the Canadian River ; thence up said north fork of the Canadian River a distance sufficient to make 200,000 acres by running due south to the Canadian River ; thence down said Canadian River to the place of beginning.

The line separating the west half of the Creek domain ceded to the United States from the east half retained by the Creeks was therefore to be the east line of the tract ceded to the Seminoles, the Canadian River was to be the south boundary, the North Fork to be the north boundary, and the west boundary was to be a line parallel with the east boundary and distant therefrom far enough to include the requisite amount of 200,000 acres.

Before the actual location of the Seminole domain could be ascertained it was necessary that the line dividing the two halves of the Creek domain should be surveyed and established, and an appropriation of \$4,000 for this purpose was made by Congress July 28, 1866 (14 Stats., 320).

At this time a large part of the Seminoles were homeless. A portion removed themselves during the summer of 1866, and the remainder were removed by the Government to what was supposed to be the country granted them by the treaty before the boundaries of the land thus ceded had been determined and marked.

On December 28, 1867, under the direction of the Commissioner of Indian Affairs, a contract was made with John C. Rankin to make the survey required by the treaty.

This survey was reported to be incorrect and was never approved. In 1871 a new survey was made by one Bardwell, which was approved by the Secretary of the Interior July 15, 1872.

This last survey located the dividing line some 7 miles west of the line as surveyed by Rankin. The country between these two lines, embracing an area then estimated at about 175,000 acres, had been settled upon and occupied by the Seminoles since the fall of 1866, the Indians believing themselves and the Department believing them to be upon the domain granted by the treaty, and having made for themselves homes and valuable improvements, while in fact they were within the limits of the Creek domain.

The Creeks claimed jurisdiction of that portion of their lands thus occupied by the Seminoles, and the latter made frequent applications to the Government for protection.

This office having failed to secure the assent of said nations to any proposition looking to a final settlement of the boundary question, Congress, on March 3, 1873, passed an act (17 Stat., 626) authorizing the Secretary of the Interior to negotiate with the Creek Nation for the cession of that portion of their reservation on which the Seminoles had been erroneously located.

The preamble recites the the provisions of the treaties with the several tribes therein mentioned; also that the Indians had settled upon said lands east of the dividing line in good faith, and in order to secure to them their improvements the Secretary of the Interior is authorized--

To negotiate with the aforesaid Creek Indians for the relinquishment to the United States of such portions of their country as may have been set apart in accordance with treaty stipulations for the use of the Seminoles * * * found to be east of the line separating the Creek ceded lands from the Creek reservation, and also to negotiate and arrange with said tribes for final and permanent adjustment of their reservations; and the Secretary shall report the result to Congress.

On July 24, 1882, the president transmitted to Congress a communication from the Secretary of the Interior, inclosing an agreement submitted by Creek Indians for the cession of the lands occupied by the Seminoles, together with the draft of a bill to ratify said agreement, and for other purposes (see Sen. Ex. Doc. No. 75, Forty-seventh Congress, first session).

In his letter of transmittal the Secretary stated that the attention of Congress had been called to the matter at its last session, but that no action had been taken thereon; that three several attempts had been made to settle the question with the Indians without avail, and that the draught of the bill submitted was intended to settle the points in dispute.

The bill was not passed by Congress, but the general appropriation act of August 5, 1882 (22 Stats., 265), contains the following item:

To pay the Creek Nation of Indians for 175,000 acres of land now occupied by the Seminole Nation, the sum of \$175,000, as per agreement made in pursuance of the act of March 3, 1873, which agreement bears date February 14, 1881, and is now on file in the Department of the Interior, said sum to be immediately available.

In the annual reports of this office for 1882 and 1883 the commissioner recommended that an appropriation be made to pay for a survey, clearly defining the divisional line between the Seminoles and the Creeks.

Special recommendation for such appropriation was also made January 9, 1884, and April 16, 1884, respectively. No action was taken by Congress, but a contract was made November 17, 1884, for this survey, payable out of the general appropriation for Indian surveys.

The survey was executed by Simon Motz, but was rejected by the Commissioner of the General Land Office. The line was again surveyed in 1888, and the survey duly approved.

In a memorial dated February 12, 1890, the Seminole delegates state that at the time the 175,000 acres of land was purchased it was believed that quantity would cover all the lands occupied by the Seminoles, but that it was subsequently discovered that a large number of them were located and had improved farms on about 25,000 acres of Creek lands, not included in the said purchase, which lands they had continuously occupied since the ratification of the treaty of 1866, or soon thereafter. In view of this fact they request the Secretary to open negotiations with the Creek Nation for the cession and relinquishment to the United States of the said 25,000 acres. They state that the homes and improvements of the Seminoles are worth vastly more than the lands upon

which they are situated will cost; and that it is not the fault of the Seminoles that they were located upon Creek lands, nor that the negotiations under the act 1873 did not embrace all their improvements, they not having been consulted when said negotiations were concluded. They also request that upon completion of this negotiation and the cession of the said 25,000 acres, the Secretary cause to be established the outside boundaries of the lands purchased by the Seminoles under the treaty of 1866, the lands secured to them under the act of 1873, and the said 25,000 acres, by actual survey; and that a patent from the United States for all of said lands be issued to the Seminole Nation.

For the 200,000 acres ceded by the treaty, the Seminoles were required to pay 50 cents per acre, or \$100,000, while the 175,000 acres were paid for by the United States at \$1 per acre. The lands within the Creek Nation, upon which the Seminoles are now located, should unquestionably be purchased, but I do not think that the United States is under any obligation to pay for the same.

It does not appear that any new survey is needed in advance of the purchase of the lands, after which the new eastern line can be surveyed and the expenses paid out of the regular appropriation for surveys of Indian reservations. The matter of an issuance of a patent can also be then considered.

It is suggested that the desired legislation is more likely to be reached by the insertion of an item in some appropriation bill than by the introduction of a bill.

I have accordingly prepared the draught of such item and herewith submit the same.

I also inclose duplicate copies of the accompanying papers.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

ITEM.

To enable the Secretary of the Interior to negotiate with the Creek Nation of Indians for the relinquishment to the United States of the lands within the Creek Nation now occupied by the Seminole Indians, the sum of \$500, the said land, when relinquished by the said Creek Nation and accepted by the Seminole Nation, to become a part of the permanent reservation of the said Seminole Nation or tribe of Indians, and the further sum of \$25,000 for the payment of said lands, to be reimbursed to the United States in two annual installments out of moneys due or becoming due the said Seminole Nation; in all, \$25,500.

DEPARTMENT OF THE INTERIOR,
Washington, April 11, 1890.

SIR: I herewith send you a communication from the Seminole delegation to me dated February 12, 1890, my reference thereof to the chief of the Indian division for the facts in the case, his report and map thereon, my reference thereof to the Assistant Attorney-General, and a copy of the opinion of General Shields, all of which I have to request you to take into consideration, and if you deem that the best interests of the Indians would be thereby subserved please prepare a

proper bill for Congress, with appropriate report to me authorizing a new survey and such action as may be necessary to negotiate with the Creek Nation for the cession of the land occupied by the Seminole Indians.

Yours, respectfully,

JOHN W. NOBLE,
Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

WASHINGTON, D. C., *February 12, 1890.*

SIR: By treaty proclaimed August 16, 1866, the Seminole Nation of Indians ceded their entire domain (2,169,080 acres) to the United States, and by the same treaty purchased from the United States 200,000 acres, ceded by the Creek Nation under the treaty of 1866. By a mistake on the part of the United States, in setting apart and establishing the boundaries of the said 200,000 acres so sold, the Seminoles were located in part on lands owned by the Creek Nation, and they made valuable improvements thereon before the mistake was discovered.

By an act of Congress, approved March 3, 1873 (17 Stat., 626), the Secretary of the Interior was authorized to negotiate with the Creek Nation for the relinquishment to the United States of such portion of their country as may have been settled upon by the Seminoles "found to be east of the line separating the Creek ceded lands from the Creek reservation, and also to negotiate and arrange with said tribes for a final and permanent adjustment of their reservations," and report the result to Congress.

In pursuance of this act the Secretary of the Interior, on February 14, 1881, entered into negotiations with the proper authorities of the Creek Nation whereby the said nation agreed to sell and relinquish 175,000 acres of their lands so occupied by the Seminoles for and in consideration of \$175,000. A copy of said negotiation is herewith attached and marked Exhibit A. By an act approved August 5, 1882 (22 Stat., 265), Congress appropriated the amount agreed upon, which was in due time placed to the credit of the Creek Nation.

It was believed at that time that this amount, 175,000 acres, would embrace and cover all the Creek lands occupied by the Seminoles, but subsequently it was discovered that a large number of Seminoles were located upon and had improved their farms on about 25,000 acres of Creek lands not included in the said negotiation of February 14, 1881, although they were occupying said lands at the time of said negotiation, and had occupied them continuously since the ratification of the treaty of 1866, or soon thereafter.

In view of these facts and the act of Congress above quoted, we, the undersigned delegates representing the Seminole Nation, would respectfully request that the honorable Secretary, at as early a date as practicable, open negotiations with the Creek Nation for the cession and relinquishment to the United States of the said 25,000 acres so occupied by the Seminoles.

The homes and improvements of the Seminoles are worth vastly more than the lands upon which they are situated will cost.

As already stated it is not the fault of the Seminoles that they located upon Creek lands. Nor is it their fault that the said negotiation of February 14, 1881, did not embrace their improvements. They were not consulted when said negotiation was concluded. Besides, the

said lands had not been surveyed, and it was difficult for any person not familiar with the country to tell where an imaginary line would run.

We would further respectfully request, upon the completion of this negotiation with the Creek Nation and the cession of said 25,000 acres to the United States, that the Secretary establish or cause to be established the outside boundaries of the lands purchased by the Seminoles under the treaty of 1866, and the lands secured to them by the said negotiation of February 14, 1881, and the said 25,000 acres, by actual survey, and that a patent from the United States for all of said lands be made and issued to the Seminole Nation.

Respectfully submitted.

THOMAS FACTOR,
O. R. JOHN HARJO,
JOHN F. BROWN,
Seminole Delegation.

Hon. JOHN W. NOBLE,
Secretary of the Interior.

EXHIBIT A.

Under the provisions of the act of March 3, 1873 (17 Stat., 626), the Secretary of the Interior was authorized to negotiate with the Creek Indians "for the relinquishment to the United States of such portions of their country as may have been set apart in accordance with treaty stipulations, for the use of the Seminoles and the Sacs and Foxes of the Mississippi tribes of Indians, respectively, found to be east of the line separating the Creek ceded lands from the Creek Reservation, and also to negotiate and arrange with said tribes for a final and permanent adjustment of their reservations."

So much of the said act as relates to the Sacs and Foxes has been carried into effect by their removal to their proper location on lands west of said "dividing line." The Seminoles are, however, still occupying the lands belonging to the Creeks, for which occupancy the Creeks have as yet received no compensation, from the fact that no agreement could be arrived at between them and the United States as to the price per acre to be paid to the said Creeks by the United States for said lands.

The undersigned, members of the Creek delegation resident in Washington, duly authorized to act in the premises, both by appointment for general purposes under the certificate of the governor, under the national seal, and also by special action of the national council in this instance, copies of which general and special authority are hereto attached, do promise and agree for themselves and for their nation that they will sell, cede, and dispose of the lands now occupied by the Seminoles, belonging to the Creek Nation, to the United States for the sum of \$175,000.

And the said Creek delegation do hereby agree for and on behalf of said nation that they will cede to the United States, and do hereby cede, a strip of land in the Indian Territory, now occupied by the Seminole Nation of Indians, lying east of the said line dividing the Creek lands from the lands ceded to the United States in the treaty of June 14, 1866, bounded on the north by the north fork of the Canadian River, on the south by the Canadian River, on the west by the dividing line between the Creek reservation and the land ceded under the treaty of 1866, above noted, and on the east by a line running north and south between the rivers named so far east of said division line as will comprise within said described boundaries 175,000 acres at the price of \$1 per acre; said cession to be in full force and effect when the sum of \$175,000 shall have been deposited in the Treasury of the United States to the credit of the Creek Nation, to draw interest at the rate allowed in the treaty of June 14, 1866, wherein certain of their lands in the Indian Territory were ceded to the United States; and one-third of said fund shall be forever set aside for educational purposes and the remaining two-thirds shall be subject to such use as the Creek council shall determine.

WARD COACHMAN,
PLEASANT PORTER,
DAVID M. HODGE,
Creek Delegation.

WASHINGTON, D. C., February 14, 1881.

DEPARTMENT OF THE INTERIOR,

Washington, February 14, 1890.

DEAR SIR: I herewith inclose you an application by Seminole delegation requesting negotiations to be instituted by me for the purpose of acquiring 25,000 acres of additional land for their habitation under the provisions stated in the said communication dated the 12th instant.

You will please give me a succinct narrative of the history of this territory from the beginning with a view to having the Assistant Attorney-General's opinion upon my authority to enter upon such negotiations, and if there is a want of such authority as to the best means to comply with this request by application to Congress or otherwise.

Yours truly,

JOHN W. NOBLE,
Secretary.

The CHIEF OF THE INDIAN DIVISION.

MEMORANDUM.

Mr. SECRETARY:

Under the treaty of 1866 (14 Stat., 756) the Seminoles ceded their entire domain to the United States and purchased 200,000 acres from the United States of the lands ceded by the Creeks, said 200,000 acres to be bounded on the east by the line dividing the Creek lands from those of the United States.

In 1867, as shown by the accompanying report of the Commissioner of Indian Affairs, a Mr. Rankin made a survey of the Creek line between their lands and that of the United States. This survey was objected to by the Creeks and was never approved and a new survey was made of said dividing line in 1871 by F. W. Bardwell. This latter survey placed the line considerably west of that run by Rankin. In the mean time the Seminoles commenced their settlements on the west side of the Rankin line, supposing that line to be the eastern boundary of their 200,000 acres.

The Bardwell line being approved, the improvements made by the Seminoles were found to be in the Creek country, and in 1873 Congress authorized negotiations for the purchase of 175,000 acres east of said line from the Creeks, supposing that said purchase would include all their improvements, but this was not the case, as shown by the survey made by Mr. Hackbush of the east boundary of said 175,000 acres. The Seminoles now ask that such additional lands be obtained from the Creeks as will cover 11 their improvements, which Mr. Brown, one of the Seminole delegates, says extend to the old line first run by Rankin under his contract of 1867.

The following rough sketch will show the lands asked for by the Seminoles.

(Here is given the sketch above referred to.)

Respectfully submitted.

N. E. CARPENTER,
Chief Indian Division.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,*Washington, April 5, 1890.*

SIR: I have the honor to acknowledge the receipt, by your reference, of the papers relative to the application of a delegation of the Seminole Indians in the Indian Territory, dated February 12, 1890, requesting you to open negotiations with the Creek Nation for the cession and relinquishment to the United States of a portion of their lands occupied by members of the Seminole Nation of Indians.

You request my opinion whether you are authorized to act as requested without further legislation.

The record shows that, under the treaty proclaimed August 11, 1866 (14 Stats., p. 785), the Creek Nation ceded to the United States the west

half of their entire domain, to be divided by a line running north and south, to be sold and used as homes for such other civilized Indians as the United States might choose to settle thereon. By articles 7 and 8 (Seminole treaty of March 21, 1866) it was stipulated that the Seminoles might sell and convey to the United States any and all of their lands, and that the Secretary of the Interior shall forthwith cause the line dividing the Creek country to be surveyed, under the direction of the Commissioner of Indian Affairs, at the expense of the United States.

Under the provisions of article 3 of the treaty proclaimed August 16, 1866 (*idem.*, 755), the Seminole Nation of Indians ceded to the United States their entire domain, estimated at 2,169,080 acres for the sum of \$325,362, and purchased from the United States 200,000 acres of land which the United States had obtained from the Creek Nation, bounded as follows:

Beginning on the Canadian River where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6 [should be June 14], 1866, following said line due north to where said line crosses the North Fork of the Canadian River; thence up said North Fork of the Canadian River a distance sufficient to make 200,000 acres by running due south to the Canadian River; thence down said Canadian River to the place of beginning.

On December 28, 1867, under the direction of the Commissioner of Indian Affairs, a contract was made with one Rankin to make a survey as required by the provisions of the treaty with the Creek Nation. The survey made by Rankin extended $2\frac{1}{2}$ miles east of the agency buildings, and being objected to by the Creeks, it was never approved. In 1871 a new survey was made by one Bardwell, which was approved by the Department on February 5, 1872, when it appeared that nearly all of the extensive improvements made by the Seminoles since their settlement on the land, which they supposed they had purchased from the United States, and also the agency buildings, were east of the true divisional line, and therefore upon lands of the Creek Nation.

The Creeks claimed jurisdiction over that portion of their lands occupied by the Seminoles, and the latter made frequent application to the Government for protection. The Indian Office having failed to secure the assent of said nations to any proposition looking to a final settlement of the boundary question on March 3, 1873 (17 Stats., 626), Congress passed the act authorizing the Secretary of the Interior to negotiate with the Creek Indians for the cession of a portion of their reservation occupied by the Seminoles and the Sacs and Foxes of the Mississippi tribes of Indians. The preamble recites the provisions of the treaties with the several tribes of Indians mentioned therein; also that the Indians having settled upon said lands east of the dividing line in good faith, in order to secure to them their improvements, the Secretary of the Interior is authorized

To negotiate with the aforesaid Creek Indians for the relinquishment to the United States of such portions of their country as may have been set apart in accordance with treaty stipulations, for the use of the Seminoles, * * * found to be east of the line separating the Creek ceded lands from the Creek reservation, and also to negotiate and arrange with said tribes for a final and permanent adjustment of their reservations; and the Secretary shall report the result to Congress.

Under the provisions of said act, three commissioners were appointed by Secretary Delano, who went to the Creek country in October, 1873, but failed to accomplish the object for which they were appointed, (See Report Commissioner of Indian Affairs, 1873, p. 143 *et seq.*).

On March 17, 1875, a special commissioner was appointed by the Secretary of the Interior to negotiate with said Creek Indians, but he

did not succeed, as was also the case with the commissioner appointed for the same purpose in November, 1876.

In his report for 1881 (page 54), the Commissioner of Indian Affairs refers quite fully to the legislation and departmental action theretofore had in the premises, and states that the Creek delegation in February of the same year had offered

to sell to the United States, for the use of the Seminoles, 175,000 acres of their land lying east of the divisional line and embracing the land occupied by the Seminoles at the rate of \$1 per acre, in full settlement of all differences and demands on the United States growing out of the question of Seminole occupation of their lands.

The Commissioner, therefore, recommended that Congress adopt the necessary legislation and provide the necessary means to purchase said land.

On July 24, 1882, President Arthur transmitted to Congress a communication from Secretary Kirkwood, inclosing an agreement submitted by the Creek Indians for the cession of their lands occupied by the Seminole Indians, together with the draught of a bill to ratify said agreement, and for other purposes: (In S. Ex. Doc. No. 75, Forty-seventh Congress, first session.) In his letter of transmittal the Secretary states that the attention of Congress was called to the subject at its last session, but no action was taken thereon; that three several attempts have been made by the United States to settle the matter with said Indians without avail; that the draught of the bill submitted was intended to settle the points at issue, and he urged that the measure, if approved by the President, be recommended to the favorable consideration of Congress. The first section of said draught ratified and confirmed the agreement made and submitted to the Secretary of the Interior by the Creek delegation, dated February 14, 1881, by which said Creek Nation ceded to the United States—

a strip of land in the Indian Territory now occupied by the Seminole Nation of Indians, lying east of the said line dividing the Creek lands from the lands ceded to the United States in the treaty of June 14, 1866, * * * so far east of said division line as will comprise within said described boundaries 175,000 acres, at the price of \$1 per acre.

Section 2 provides for the appropriation of \$175,000 to pay for said land as required by the terms of said agreement. Section 3 sets apart for the use of the Seminoles all the land ceded under said agreement whenever they shall relinquish to the United States in lieu thereof a like quantity of land from the west side of their present reserve, and the relinquishment shall be duly approved by the Secretary of the Interior, and be recorded in the Office of Indian Affairs. Section 4 provides for the appropriation of \$3,000 for the survey of the areas of "said two tracts of country, and establishing the out-boundaries thereof." Section 5 provides "that this act shall be in force from and after its passage."

This bill was not passed by Congress, but the general appropriation act of August 5, 1882 (22 Stats., 265), contains the following item:

To pay the Creek Nation of Indians for 175,000 acres of land now occupied by the Seminole Nation, the sum of \$175,000 as per agreement made in pursuance of the act of March 3, 1873, which agreement bears date February 14, 1881, and is now on file in the Department of the Interior, said sum to be immediately available.

In his report for 1882 the Commissioner of Indian Affairs again called attention to said agreement, and said appropriation of \$175,000 "to pay the Creek Nation for the land now occupied by the Seminole Nation," and recommended that an appropriation be made to pay for a survey, "clearly defining the divisional line between the Seminoles and

the Creeks." This recommendation was renewed by the Commissioner in his annual report for 1883 (page 52). It further appears that the survey of the divisional line between said Creek and Seminole Nations, made by one Simon Motz under contract dated November 17, 1884, was rejected by the Commissioner of the General Land Office, and that the Commissioner of Indian Affairs, on June 11, 1888, requested that the Commissioner of the General Land Office be directed to contract during the present fiscal year for the survey of said line. Such direction was given by the Secretary of the Interior on June 12, same year. The survey made under said directions shows that the last tract of 175,000 acres does not embrace all of the improvements of the Seminoles, and hence they now desire that further negotiation be had to the end that they may acquire title to that portion of the Creek lands estimated at 25,000 acres east of said subdivisional line, upon which they have located and made valuable improvements in good faith.

The foregoing recital is given that you may have the action of the Department and Congress in the premises clearly before you.

In my judgment, the authority given by said act of 1873 having been exercised, and Congress having ratified the agreement made with the Creeks for the cession of the 175,000 acres by making said appropriation in payment for the same, the power of the Secretary over the subject-matter under said act is *functus officio*. (Attorney-General Wirt, 2 Op., 110; Attorney-General Cushing, 6 Op., 603.)

Prior to March 3, 1871, the relations of the Indian tribes or nations with the United States depended upon the provisions of the respective treaties made with them. Since then, however, the Indians have been governed by acts of Congress. (See sec. 2079 R. S. U. S., United States *v. Kagama*, 118 U. S., 375.)

This being so, it follows *ex necessitate rei* that until some further legislative action is taken the Secretary of the Interior has no authority to negotiate with the Creek Nation for the cession of said land occupied by the Seminole Indians. Hence your inquiry must be answered in the negative.

The papers submitted are herewith returned.

Very respectfully,

GEO. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

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