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Agreement with the Cherokees

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

REPORT:

[To accompany S. 2870.]

The Committee on Indian Affairs, to whom was referred the bill (S. 2870) "to ratify and confirm an agreement with the Cherokee Nation of Indians of the Indian Territory, to make appropriation for carrying out the same, and for other purposes," having considered the same, make the following report:

The "Cherokee Outlet," so called, a body of lands adjoining the State of Kansas on the south, of about 60 miles in width, west of the ninety-sixth meridian of longtitude, containing 6,022,754.11 acres, has long been a subject of contention, the Cherokee Indians, on the one hand, claiming an unextinguished title thereto under treaties and a patent in fee simple executed in 1838, while, on the other hand, parties desiring to settle on these lands claimed that the Cherokee Nation had only an easement in the "Outlet" for the purpose of reaching hunting grounds farther west. Under this claim settlers have, from time to time, gone upon these lands, but have been ejected therefrom by the Government, as have been cattle men to whom the Cherokee Nation leased the lands, so that at the present time they are practically unoccupied.

A commission was appointed by the President, under and by authority of an act of Congress approved March 2, 1889, to negotiate with all Indians who claimed or owned lands in the Indian Territory for the cession thereof to the United States.

After concluding negotiations with other tribes of Indians this commission entered upon negotiations with the Cherokee Indians, which resulted in an agreement for the relinquishment of any interest they might have in and to the "Outlet" lands to the United States, including, also, the surrender of any title that they had in and to the lands east of the ninety-sixth meridian not embraced within their home country, amounting in all to 8,144,632.91 acres, for the net sum to be paid to the said Indians of $8,595,736.12.

If all this purchase money should be applied to the "Outlet" lands alone the price per acre would be $1.427. But as lands occupied by friendly Indians east of the ninety-sixth meridian are also included the price per acre for the "Outlet" lands alone would be, according to the estimate of the Commission, $1.294.

Your committee believes that it is desirable that this money should be paid and that the relinquishment of title should be obtained. But the agreement made with the Cherokee Indians contains certain condi-

tions to be fulfilled by the United States which, in the opinion of the committee, need modification.

The agreement made with the Indians provides that for and in consideration of such cession the United States agree, in article 2—

First. That all persons now resident, or who may hereafter become residents, in the Cherokee Nation, and who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, and who are not in the employment of the Cherokee Nation, or in the employment of citizens of the Cherokee Nation in conformity with the laws thereof, or in the employment of the United States Government, and all citizens of the United States who are not resident in the Cherokee Nation under the provisions of treaty or acts of Congress, shall be deemed and held to be intruders and unauthorized persons, within the intent and meaning of section six of the treaty of 1835, and sections twenty-six and twenty-seven of the treaty of July 19, 1866, and shall, together with their personal effects, be removed without delay from the limits of said nation by the United States as trespassers, upon the demand of the principal chief of the Cherokee Nation. In such removal, no houses, barns, outbuildings, fences, orchards, growing crops, or other chattels real, being attached to the soil and belonging to the Cherokee Nation, the owner of the land, shall be removed, damaged, or destroyed, unless it shall become necessary in order to effect the removal of such trespassers: *Provided, always,* That nothing in this section shall be so construed as to affect in any manner the rights of any persons in the Cherokee Nation under the ninth article of the treaty of July 19, 1866.

The question of the removal of intruders from the lands belonging to the Cherokee Nation within their home country has long been a serious one, and for a correct understanding needs a somewhat careful explanation.

By article 6 of the treaty of 1835 it was provided that they (the Cherokees)—

shall be protected against interruptions and intrusions from citizens of the United States who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers, mechanics, and teachers for the instruction of Indians according to treaty stipulations.

In article 26 of the treaty of 1866 it is provided that they (the Cherokees)—

shall also be protected against interruptions or intrusions from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory.

And in article 27 of the same treaty it is stipulated—

* * * and all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons not lawfully residing or sojourning therein removed from the nation, as they now are or hereafter may be required by the Indian intercourse laws of the United States. (14 Stat. L., p. 806.)

Under these treaty provisions the Cherokee Nation has claimed an exclusive right to determine who should be and who should not be regarded as citizens of the Cherokee Nation.

The Supreme Court of the United States, deciding the case of the "Eastern Band of Cherokee Indians against the United States and the Cherokee Nation," held that—

If Indians in that State (North Carolina) or any other State east of the Mississippi River wished to enjoy the benefits of the common property of the Cherokee Nation in whatever form it may exist, they must, as held by the Court of Claims, comply with the constitution and laws of the Cherokee Nation, and be admitted to citizenship as there provided. (117 U. S., p. 288.)

Since that decision there seems to have been no question raised in the Department of the Interior as to the right of the Cherokee Nation to determine for itself the question of citizenship.

A large number of persons claiming to be of Cherokee descent, and a smaller number claiming rights as descendants of former slaves, have come, from time to time, into the Cherokee Nation, occupied lands, made improvements, and are now settled upon such lands. A few are engaged in trade. Such persons not having been recognized or admitted to citizenship by the nation are called "intruders." Their number at the present time is variously estimated at from 5,000 to 7,000, the number of families being somewhere in the neighborhood of 1,500. They have not been admitted to citizenship; some of them have been rejected; others have made application, which has not been acted upon; some, probably, have made no application at all. Technically and legally they have no right to the lands which they have occupied and improved. They claim to be of Cherokee descent or of former slave descent, and those who have been rejected claim to have been improperly rejceted.

Those claiming Cherokee descent who first came claim to have come upon an invitation extended by the Cherokee Nation in 1869 and 1870 to the North Carolina Cherokee Indians to remove to the Cherokee country in the Indian Territory. On the 10th of December, 1869, the national council of the Cherokee Nation adopted a resolution authorizing the principal chief to advise the North Carolina Cherokee Indians of the willingness of the nation to receive such of them as would remove to the Indian Territory without expense to the Cherokee treasury and become identified as citizens of the Cherokee Nation. On November 20, 1870, a law was passed by the Cherokee council declaring "that all such Cherokees as may hereafter remove to the Cherokee Nation, and permanently locate therein as citizens thereof, shall be deemed as Cherokee citizens," upon condition that they should enroll themselves before the chief justice of the supreme court of that nation within two months after they arrived therein, making satisfactory showing to said chief justice of their Cherokee blood. In the preamble of that act was the following language:

> Whereas by treaty stipulation that class of Cherokees known as North Carolina Cherokees are, on their removal and permanent location within the limits of the Cherokee Nation, entitled to all the rights and privileges of citizens of the same, etc.

By a subsequent act passed December 7, 1871, the law was so amended as to limit the authority of the chief justice in citizenship cases to the taking of testimony, the right of final action being reserved for the national council.

The determination of the right of citizenship has been based upon certain rolls made by the Cherokee Nation, and to entitle persons to citizenship the national council has insisted that they must trace their descent to some ancestor whose name is on the rolls recognized by the council.

The controversy about citizenship seems to have hinged largely upon a case in which one Watts claimed the right of citizenship and was rejected by the council. The Watts family has become the head of that class of people who are called "intruders." Recently an association has been formed called the "Watts Citizenship Association," which has issued circulars inviting claimants to come to the Cherokee country and settle. This association is officered by "Governor" Marion J. Watts and Hon. John D. Kelly as presidents, and by secretaries and treasurers in different counties. It has appointed delegates to Washington, has an attorney in Washington, and in December, 1889, the membership was stated as 2,950. It has very much increased since that time, and is said to be rapidly increasing in numbers.

The relations between the actual citizens of the Cherokee Nation and the intruders are very much strained and might at any time result in violence. The question of the removal of these intruders has been a source of much controversy between the Department of the Interior and the authorities of the Cherokee Nation since 1874, when J. B. Jones, the Indian agent, reported the presence of a large number of intruders whose removal was desired by the authorities. Upon investigation the Department found that a large number of those whose removal was requested as intruders presented prima facie evidence of their right to citizenship.

The committee will not undertake to recite a history of the proceedings in the Department upon applications made for the removal of these intruders. That history is well set forth by Mr. Oberly, Commissioner of Indian Affairs, in a communication to the Secretary of the Interior dated June 7, 1889.

In April, 1879, the opinion of the Attorney-General was asked upon the question—

> Whether, in carrying out in good faith the provisions of the executory treaties named, the United States are bound to regard simply the Cherokee law and its construction by the counsel of the nation, and answer the call of the officers of that nation for the removal of all persons whom they may pronounce intruders; or, on the contrary, whether, being called on to effect the forcible removal of such alleged intruders, the facts upon which the allegation rests may not with propriety, both by virtue of superior and paramount jurisdiction and in obedience to national obligation, be inquired into and determined by our own national tribunals.

In reply to this question the Attorney-General expressed the opinion—

> That it is quite plain that in executing such treaties the United States are not bound to regard simply the Cherokee law and its construction by the counsel of the nation, but that any department required to remove alleged intruders must determine for itself, under the general law of the land, the existence and extent of the exigency upon which such requisition is founded.

The matter being subsequently brought to the attention of Secretary Vilas in the Kesterson case, so called, in a letter written by him to the Commissioner of Indian Affairs, August 21, 1888, the Secretary said:

> Having gone there in apparent good faith upon invitation of the nation, made valuable improvements while suffered or permitted to remain there, the Department will not cause nor suffer his removal to be made in such summary and sudden manner as to work great harm and loss to his property and unnecessary inconvenience and hardship personally to himself and family. He is entitled to the protection of the Government of the United States in a proper way as a citizen, as he is not admitted to the Cherokees nor under their jurisdiction; and this protection is peculiarly necessary in such a case. He is entitled to a reasonable time and opportunity, in view of all the circumstances of his long residence and labor there, to dispose of his property or remove it, as may be most suitable to its character, and to gather his crops now growing. The proceeding of the Cherokee officers, besides being without jurisdiction, appears to have been unreasonably summary and severe.
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> The right and duty of removing any citizen of the United States intruding on the Cherokees belongs to this Government, and, as has often been determined, the United States authorities must decide whether the exigency be such as to require that action. The Cherokee officials have no authority or jurisdiction to remove the intruder or confiscate his property. They should apply to the agent for his removal.
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> In this case Kesterson, being no longer under Cherokee license, must be removed as an intruder. But his property must be restored to him and reasonable opportunity given him to dispose of or remove it. * * *
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> The agent should be instructed that as this right of Kesterson's to the disposition of his property is necessarily short lived, limited, and tenuous, so it should be the more perfectly considered and protected, and every circumstance turned rather to make it efficacious and valuable than to weaken or impair it. Kesterson ought to have approximately the full, fair value of his property, and the cessation of his status in the Territory ought not to be made a means of depriving him of any of his property or of its value, except in so far as is unavoidable with fair consideration. The time necessary to this may vary with circumstances. If attempt be made to take

unfair advantage the time should be extended. It appears to the Department that it should not be limited to less than six months in any case.

So that the decision of the Department seems to have been, that while the Cherokee Nation has no power to remove intruders, and that the power to remove must be exercised by the United States Government, the Government has the right to determine under what conditions the removal shall be effected, and is bound to protect, as far as possible, the intruder, a citizen of the United States, from the loss of his property which he has acquired in the Cherokee country.

In carrying out this desire to protect the intruder from the loss of his property, the Government would undoubtedly discriminate somewhat between those who seem to have a prima facie right, unacknowledged by the Cherokee nation, and those who could set up no claim of right whatever, many such doubtless being now on and occupying lands of the Cherokee Nation.

The agreement made between the Cherokee commission, so called, and the Cherokee Nation contains, as has already been stated, a stipulation on the part of the United States to remove all intruders and unauthorized persons "upon the demand of the principal chief of the Cherokee Nation."

If this part of the agreement should be ratified, the United States, in the opinion of the committee, would be properly held by the Cherokee Nation to have relinquished any claim that it had a discretion to determine upon what terms and conditions such intruders should be removed, and would be obligated to remove them from their homes and their improvements upon the mere demand of the principal chief, with an entire loss to them of the value of their improvements.

Such was undoubtedly the intention of the Cherokee Nation in procuring this clause to be inserted in the agreement, and if in case of adoption it should not be literally and promptly complied with by the United States Government would afford ground for the Cherokee Nation to claim that the Government had deliberately failed to keep its agreement.

In the opinion of the committee, the Government ought not to enter into such an agreement. Admit that the intruders have no legal right upon these lands. It is nevertheless true in many instances that they came there supposing themselves to have been invited by the Cherokee Nation, and supposing that they could maintain their right to be admitted as citizens. They have made valuable improvements. They have built houses and established homes, and are as much settled upon these lands and in those homes as any persons who have been deemed and called "squatters" upon the public lands. To remove forcibly, by the use of the Army if it became necessary, a body of 5,000 to 7,000 people forfeiting their homes and improvements, is too harsh a proceeding to be contemplated with equanimity. Such action would be justly criticised not only in this country, but in foreign countries.

If these intruders should be removed from their homes, forfeiting the value of their improvements, the question arises as to who would become entitled to the property and the benefit of the improvements. They would doubtless be claimed by the Cherokee Nation, and would either be sold by the nation to persons who might occupy such improvements; or Cherokees, who might first file upon them and have their claims acknowledged by the nation, would become the proprietors and reap the benefit of the improvements created by the intruders.

It seems to the committee but just and fair that if the intruders are to be removed with the loss of their improvements there should be

some way provided by which the Cherokee Nation should pay for the value of such improvements and be in a position to reimburse itself by the sale of them to such of its citizens as it might permit to occupy the same.

In the opinion of the committee, however, intruder claimants who have come to the Cherokee Nation and made improvements since the 11th day of August, 1886, can not claim to have acquired any equitable rights in which they ought to be protected.

Commissioner Oberly, in his statement of the intruder question in a letter to the Secretary of the Interior, under date of June 7, 1889, says:

> Since August 11, 1886, when the agent was directed to discontinue the issuance of prima facie certificates, persons claiming citizenship in the Cherokee Nation have been warned, whenever the opportunity was presented, that if they went into the nation and made improvements before their claims were investigated and allowed by the authorities thereof they would do so at their own risk; but where a party had entered the said nation in good faith, believing that he had rights there by blood prior to that date, and was provided with a prima facie certificate, this office took a firm stand against his removal until some plan was adopted by which the Department should determine for itself whether he was an intruder or not and until he had been paid a fair valuation for his improvements.

The committee would, therefore, limit any provision looking to the compensation of intruders for their improvements to those who came prior to the date mentioned.

With a view to preventing harsh action and any possible injustice in the removal of intruders, the committee recommend an amendment of the agreement relating to the removal of intruders, so that before the removal of any intruder who came prior to the 11th day of August, 1886, the value of his improvements shall be ascertained by appraisers appointed by the President of the United States, and paid to him by the Cherokee Nation, such improvements upon payment therefor to become the property of the Cherokee Nation.

In testimony taken before the committee, parties representing the nation and the intruders alike stated that approximately the sum of $250,000 would be a full cash value of all the improvements made by such intruders; and it seems to the committee that the Cherokee Nation can well afford to pay the just value of such improvements and become the owners thereof, and that the same can be done without ultimate loss to the nation.

The committee can not recommend the ratification by the United States of the third paragraph of article 2 of the agreement to be performed on the part of the United States. That paragraph is as follows:

> Third. The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation, by nativity or adoption, shall be the only parties.

The treaty obligations of the Government to guaranty to the judicial tribunals of the Cherokee Nation exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country between members of the Cherokee Nation, by birth or adoption, are defined by the following citations from treaties made with the Cherokees:

Article 5 of the treaty of 1835 provides:

> But they (the United States) shall secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and, also, that they shall not be considered as extending to such citizens and Army of the United States as may travel

or reside in the Indian country by permission according to the laws and regulations established by the government of the same.

No direct guaranty appears in any subsequent treaty until the treaty of 1866, as far as the committee have been able to discover. In the treaty of 1866 (14 Stats., p. 790) article 13 provides:

The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty.

Section 30 of the act "To provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States district court in the Indian Territory, and for other purposes," approved May 2, 1890, contains this proviso:

Provided, however, That the judicial tribunals of the Indian nation shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the nation by nativity or by adoption shall be the only parties.

It will be observed that in the treaty of 1835 it was provided that the laws which might be made by the Cherokee Nation affecting the rights and property of Indians and persons who had connected themselves with them should not be inconsistent with the Constitution of the United States and such acts of Congress as might be passed regulating trade and commerce with the Indians. It is further to be observed that in article 13 of the treaty of July 19, 1866, the word "retain" was used, which gave no added jurisdiction; and that in the act organizing the Territory of Oklahoma the word "retain" was used.

Paragraph 3 of the agreement to be performed by the United States is a declaration that the Cherokee Nation shall "have" exclusive jurisdiction, etc.

The paragraph omits the exception contained in the treaty of 1835, that the laws which might be passed by the Cherokee Nation shall not be "inconsistent with the Constitution of the United States, and such acts of Congress as have been and may be passed regulating trade and commerce with the Indians." Such exceptions were incorporated in article 12 of the treaty of 1866, so that the whole of paragraph 3 of article 2 of said agreement, as it stands, may give rise to the claim on the part of the Cherokee Nation that it is a new and substantial guaranty by the United States of an enlarged jurisdiction in the courts of the Cherokee Nation.

The committee do not believe that the United States ought to place itself where it can be claimed that it has guarantied any new or enlarged jurisdiction to the courts of the Cherokee Nation, or, indeed, that it is now reaffirming any guaranty of jurisdiction whatever, and are therefore of the opinion that paragraph 3 ought to be eliminated from said agreement. For this opinion it gives the following reasons:

The anomalous condition of five separate, independent Indian governments within the Government of the United States must soon, in the nature of things, cease. Each of the five civilized tribes, viz, the Cherokees, the Creeks, the Chickasaws, the Choctaws, and Seminoles, has an independent government, claimed by the Indians to be as sovereign and secure in all respects, where exceptions have not been made by treaty, as the government of any foreign power.

The guaranty which the United States gave to these Indian nations or tribes, under which these governments were established, grew out of

the policy, adopted by the British Government and maintained by the United States until 1871, of treating with the Indians as independent and foreign nations. That policy has been abandoned since 1871, but the governments created in the case of the five civilized tribes, as they are called, remain.

When these governments were established and guaranteed, to the extent that they were guaranteed by the United States, they were in a remote section of the country, far removed from other settlements, with modern means of travel and communication unknown, and without the slightest anticipation of the condition of things which now exists. To-day they are surrounded by settled States and Territories; white citizens, by the permission of the Indians themselves, have been admitted into their territory, until now the white people domiciled within the borders of the five civilized tribes outnumber the members of the tribes, and are rapidly increasing.

Our whole policy of dealing with the Indians has changed. It is now the purpose of the Government to make them citizens as rapidly as possible, and to wipe out the line of political distinction between an Indian citizen and other citizens of the Republic. And it must be evident to all who observe the changed condition of our country, and appreciate the change in our policy with regard to the Indians, that the day is rapidly approaching when the Indians now constituting these independent governments must be absorbed and become a part of the United States.

As to the means by which this desired end is to be reached, the committee has at the present time no definite suggestions to make. It simply points to the admitted fact, acknowledged by Indians and non-Indians alike, that the change must soon come. It would be, therefore, in the opinion of the committee, extremely impolitic to enter at this time into any new obligation looking to the continuance of the independent jurisdiction, either political or judicial, of these "nations."

Without the new guaranty proposed by paragraph 3, the Indian tribunals will retain all the rights which they now possess; with it the claim would probably be made that that jurisdiction had been enlarged.

It is believed that a considerable number of Cherokee citizens would be glad at the present time to take land in severalty, and thus become fully clothed with United States citizenship. The committee, therefore, recommends a section consenting thereto as an amendment to the bill.

With reference to the present relations between the United States Government and the five civilized tribes, and the advantages to be derived by the Indians as well as the United States by the surrender of such governments and their incorporation into our system, the committee submits the following summary:

(1.) *Cherokees.*—In the preamble to the treaty of May 6, 1828, the United States guarantees the Cherokee Nation, in their lands west of the Mississippi, a *permanent* home "that shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State" (7 Stats., p. 311). By the fifth article of the treaty of December 29, 1835, the United States agreed that the lands ceded to the Cherokees by that treaty should, in no future time, *without their consent*, be included within the territorial limits or jurisdiction of any State or Ter-

ritory. But they should secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they might deem necessary for the government and protection of the persons and property within their own country belonging to their people, or such persons as had connected themselves with them, if not inconsistent with the Constitution of the United States and such acts of Congress as had been or might be passed, regulating trade and intercourse with the Indians (7 Stats., p. 481). By the seventh article of said treaty it is stipulated that the Cherokee Nation "shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the same" (p. 482).

By the second article of the treaty of August 6, 1846, it is provided that "laws shall be passed for equal protection, and for the security of life, liberty, and property; and full authority shall be given by law to all or any portion of the Cherokee people, peaceably to assemble and petition their own government, or the Government of the United States, for the redress of grievances, and to *discuss their rights*" (9 Stats., p. 872). The laws provided in this article, it is presumed, are such as were thereafter to be enacted by the Cherokee council.

The fourth and fifth articles of the treaty of 1866 contain stipulations concerning Cherokees, freed persons, and free negroes who may elect to reside in a specified district within the Cherokee domain, and the sixth article provides as follows:

> The inhabitants of the said district hereinbefore described shall be entitled to representation according to the number in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation; 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 a fair and equitable application and expenditure of the national funds as between the people of this and every other district in said nation. (14 Stats., 800.)

In article 12 the Cherokees give their consent to a general council consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, to be annually convened in said Territory, with powers as therein prescribed. The sixth subdivision of this article reads as follows:

> The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council. (*Ibid.*, 803.)

The twenty-second article provides for the survey and allotment of their lands *whenever the national council shall request it.* (*Ibid.*, 803.)

By the twenty-sixth article the Cherokees are guaranteed peaceable possession of their country and protection against domestic feuds, insurrections, hostile tribes, and intrusion from all unauthorized citizens of the United States; and by the thirty-first article thereof it is expressly stipulated that nothing therein contained shall be construed as a relinquishment by the Cherokee Nation of any claims or demands under the guaranties of former treaties, except as therein expressly provided. (p. 805.)

(2) *Chickasaws.*—By the second article of the treaty of May 24, 1834, the United States consented to protect and defend them in their home west of the Mississippi, when selected, against the inroads of any other tribe of Indians, and from whites, and agreed to keep them without the limits of any State or Territory. (7 Stats., p. 450.)

By the seventh article of the joint treaty of April 28, 1866, with the Choctaws, the Chickasaws and Choctaws agreed to such legislation as Congress and the President of the United States might deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, That such legislation should not in anywise interfere with or annul their present respective legislatures or judiciaries or the rights, laws, privileges, or customs of said nations, respectively. (14 Stats., p. 771.)

This eighth article provided for a national council of the various tribes of Indian Territory, and the ninth clause thereof stipulates that "whenever Congress shall authorize the appointment of a delegate from said Territory it shall be the province of said council to select one from among the nations represented in said council" (p. 773).

The eleventh article provides for the survey and allotment of their lands, whenever their national councils should request it (p. 774). The Chickasaws did by their legislative council give said assent, but the Choctaw council has never agreed thereto, the tenure of the lands being such as to require joint and concurrent action of the two bodies.

(3) *Choctaws.*—The fourth article of the treaty of September 27, 1830, granted the Choctaw Nation of Indians exclusive jurisdiction and self-government over the persons and property of the nation, so that no Territory or State should ever have a right to pass laws for the government of that nation and their descendants; and that no part of the land granted them should ever be embraced in any Territory or State, and further would secure forever said nation from and against all laws except such as from time to time might be enacted in their own national council, not inconsistent with the Constitution, treaties, and laws of the United States and except such as might be enacted by Congress in exercising legislation over Indian affairs as required by the Constitution. (7 Stats., p. 333.)

By the fifth article the United States guarantees protection to said Indians from domestic strife and foreign enemies, on the same principles that the citizens of the United States are protected (p. 334), and by the twenty-second article the Choctaws express "a solicitude that they might have the privilege of a delegate on the floor of the House of Representatives extended to them (p. 338).

By the seventh article of the joint treaty of April 28, 1866, they agree with the Chickasaws to the legislation hereinbefore recited under the head "Chickasaw." Provision for a Delegate to Congress is set forth in the eighth article, and for survey and allotment of lands in the eleventh article of said joint treaty. (See Chickasaw.)

(4) *Creeks.*—By the fourteenth article of the treaty of March 24, 1832, the Creek Nation of Indians are guaranteed a patent for their lands west of the Mississippi, agreeably to the third section of the act of Congress of May 2 (28), 1830; also that no State or Territory should ever have a right to pass laws for the government of said Indians, but that they should be allowed to govern themselves, so far as might be compatible with *the general jurisdiction which Congress might think proper to exercise over them.* (7 Stats., p. 368.)

The fourth article of the joint treaty of August 7, 1856, with the Creek and Seminole Indians provides that no State or Territory shall pass laws for said tribes, and no portion of their lands defined in said treaty shall ever be embraced or included within or annexed to any Territory or State, nor shall either or any part of either ever be *erected into a Territory without the full and free consent of the legislative authority* of the tribe owning the same. (1 Stats., p. 700.)

The fifteenth article of said treaty secures the unrestricted right of

self-government and full jurisdiction over person and property within their respective limits, excepting all white persons with their property who are not, by adoption or otherwise, members of either the Creek or Seminole tribe, so far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes (p. 703).

The eighteenth article provides for the protection of said tribes of Indians from domestic strife, hostile invasion, and aggression by other Indians or white persons not subject to their jurisdiction and law (p. 704).

By the tenth article of the treaty of June 14, 1866, the Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 788.)

(5) *Seminoles.*—By the seventh article of the treaty of March 21, 1866, the Seminoles agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 758.)

Neither the Creeks nor Seminoles in any joint treaty, nor by this treaty of 1866, express any desire or wish upon the subject of a Delegate to Congress.

The Creeks having, on the 10th of July, 1861; the Choctaws and Chickasaws on the 12th of July, 1861; the Seminoles on the 1st of August, 1861, and the Cherokees on the 7th of October, 1861, made treaties, respectively, with the Confederate States, the President, by the Indian appropriation act of July 5, 1862 (12 Stats., p. 528), was authorized by proclamation to declare all treaties existing between the United States and said tribes to be abrogated if, in his opinion, it could be done consistently with good faith and legal and national obligations. (See R. S., 2080).

Not desiring to take advantage of or to enforce the penalties therein authorized, the President, in September, 1865, appointed a commission empowered to make new treaties with the tribes residing in the Indian Territory, upon a basis containing seven propositions, the sixth of which was that—

> It is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory.

The representatives of the various tribes were assembled at Fort Smith and signed what is known as the Fort Smith treaty—made preliminary to the subsequent treaties of 1866.

The Cherokees held that—

> The consolidation of all the nations and tribes in the Indian Territory into one government is open to serious objection. There are so many, and in some instances antagonistic, grades of tastes, customs, and enlightenment that to throw the whole into one heterogeneous government would be productive of inextricable confusion; the plan proposed by the United States Senate may obviate the difficulties which now appear so patent to us. (See Annual Report of Commissioner of Indian Affairs for 1865, p. 306.)

The Chickasaws reported—

We thought the Government would first make a treaty of peace with us all. Indians are different from whites. They are vindictive; hatred lasts long with them. Not so with whites. The Government must settle the difficulty; the Indians can not. That done let us be centralized, and a government established in the Indian Territory (p. 317).

The Creeks reported that:

As to a Territorial form of government, we have to say that we know but little, but prefer our tribal condition (p. 341).

The loyal Creeks signified to the Commissioner their entire assent to most of the propositions, including Territorial government (p. 341).

The Seminoles consented to the sixth proposition, then afterwards rescinded their action, and asked that the question stand open for future consideration (p. 351).

In the subsequent treaties made in 1866 the Choctaws and Chickasaws by the seventh article, the Creeks by the tenth article, and the Seminoles by the seventh article, agreed—

To such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs.

Under the provision of these treaties the Indians have agreed that Congress may legislate for the better administration of justice and the protection of the rights of property and person within the limits of the present Indian Territory, so far as it relates to the Choctaw, Chickasaw, Creek, and Seminole Indians.

Census Bulletin No. 25 gives the population of the five civilized tribes, including colored Indian citizens and claimants, as 66,289, as follows:

Cherokee Indians	25,357	Colored	4,242	Total	29,599		
Chickasaw Indians	3,464	do	3,718	do	7,182		
Choctaw Indians	9,996	do	4,401	do	14,397		
Creek Indians	9,291	do	5,341	do	14,632		
Seminole Indians	2,539	do	22	do	2,561		
					68,371		
Deduct number of colored persons probably not members of tribes (estimated)					3,500		
						64,871	
Indians other than Chickasaws in that nation						1,161	
Indians other than Choctaws in that nation						257	
Population of the five civilized tribes:							
Indians					52,065		
Colored Indian citizens and claimants					14,224		
Total					66,289		

The same bulletin discloses the fact that there are white and colored persons not Indians, or recognized as members of the Indian nations within the limits of the five civilized tribes, as follows:

White persons in—			
Cherokee Nation		27,176	
Chickasaw Nation		49,444	
Choctaw Nation		27,991	
Creek Nation		3,280	
Seminole Nation		96	
			107,989
Colored persons in the five civilized tribes, probably not members of the tribes (estimated)			3,500
Chinese in the Chickasaw Nation			6
Total			111,493

The following table shows the amount of land to which each man, woman, and child would be entitled if the lands were divided in severalty:

Statement showing per capita distribution of the whole reservation among the people of the respective tribes.

Tribe.	Area of the reservation.	If to persons of Indian blood only.		If to persons of Indian blood and to the colored persons claiming rights in the respective tribes, as set out in Census Bulletin No. 25.	
		Population.	Acres to each.	Population.	Acres to each.
Cherokees	5,031,351	25,357	198.4	29,559	170
Chickasaws	*4,650,935	3,464	1,342.6	7,182	647.5
Choctaws	*6,688,000	9,996	669	14,397	464.4
Creeks	3,040,495	9,291	327.3	14,632	207.7
Seminoles	375,000	2,539	147,7	2,561	146.4

*The lands held by the Choctaw and Chickasaw Indians are held by them in common with rights and interests as recognized in their treaties as follows: The Choctaws, three-fourths; the Chickasaws, one-fourth.

At the breaking out of the rebellion the five civilized tribes entered into treaties with the Confederate States, so called, and it was claimed had forfeited treaty rights.

But by the new treaties, however, former treaty rights, not inconsistent with the treaties of 1866, were restored and guaranteed by the United States.

At this time it seemed to be the policy of the Government to make an exclusive Indian Territory, to which should be removed other Indians, so that the whole Territory should become filled with Indian tribes alone. This policy of the Government seems to have included the idea of a Territorial government, in which all of the tribes which might occupy the Indian Territory, as well as the five civilized nations, should have representation after the manner of other Territorial organizations.

The territory which was to be thus organized into what might be called a distinctly Indian government was, until the organization of the Territory of Oklahoma, marked upon our maps and known as the Indian Territory, deriving that name from the plan of the Territorial organization already alluded to.

An article was inserted in each of the treaties made with the five civilized tribes in 1866, by which they consented to become members of such Indian Territorial government. This article in the Cherokee treaty is article 12, and is identical with similar articles found in the other treaties. The president of the legislative council was to be designated by the Secretary of the Interior.

The plan thus proposed was never carried into execution; and a large part of the lands (probably more than one-half) which, under the policy then mapped out, were to have been occupied by Indian tribes and consolidated into one Territorial government, has been opened for settlement, and now comprises the Territory of Oklahoma. It is essential to bear in mind this policy of the Government, and the consent of the five civilized tribes, as expressed in said treaties, for a thorough and correct understanding of many of the provisions found in those treaties.

That the present anomalous condition can not continue forever must be apparent to everyone. The day is passed when these Indians can be kept to and by themselves, free from the intermingling of whites. They have themselves allowed and invited white persons to come among them, until now the white people outnumber them.

The reason of the guaranty, which was undoubtedly that it was believed best that they should be permitted to live and dwell by themselves, has long since ceased to exist. It is believed that the Indians themselves feel that the time is rapidly approaching when they must become citizens of a State. Doubtless many of them would prefer to have that time delayed. But the logic of events is rapidly hastening the time when this question must be solved. Better qualified to become citizens than any other Indians in the United States, the sooner these Indians take their lands in severalty and assume all the responsibilities and enjoy all the privileges of citizens, both of the nation and of a State, the better it will be for them, in the judgment of the committee.

It is to be hoped that such a result may be obtained without violation of treaties, and with the full consent of the Indians.

The question for providing a different government for the territory occupied by these Indians is not a new one.

Senator McDonald, in his report from the Committee on Territories on this subject on the 27th of April, 1870, says:

> It is in consonance with the new policy of the Government born of the war and matured by the fifteenth amendment, that no alien race shall exist upon our soil; all shall be citizens, irrespective of race, color, or previous condition of servitude.
>
> It is a part of the inexorable logic of the times that the Indian must adapt himself to the rights and duties of citizenship. He must wield the franchise and fulfill the obligations imposed thereby; otherwise he will gradually disappear as the waste soil becomes more and more absorbed by the increasing necessities of agriculture. * * * Then, as a matter of economy to the Government and the Indian nation, as a simple act of justice and fair play to the Indians, and to carry out in good faith the stipulations of the treaties of 1866, it is urgently recommended. * * * The legislation contemplated * * * will afford ample remedy for serious evils complained of by the Indians, will be a measure of protection fully adequate to their necessities, and will be a large advance toward their complete civilization. (See Senate Report 131, Forty-first Congress, second session.)

Senator Nye, in a report made on a bill for the organization of Indian Territory, on the 1st of February, 1871, declared:

> That the present government of this Territory is no longer a suitable one is universally admitted; that it is inadequate to the proper protection of life and of property among the Indians in their present advanced condition is not denied. Not only is its continuance earnestly protested against by the people of the bordering States, but the Indians themselves admit its unfitness and demand a change and the change which they propose is in the direction of the establishment of a stronger central authority with fuller and more direct control. * * * In order that this Territory may be prosperous it must not only be well governed but the development of its resources must be encouraged, or at least made possible. No proposition is better established in the American mind than that the welfare of a State and the happiness of its citizens require that the lands be held in private proprietorship and in tracts sufficiently small that each may be cultivated and managed in person by its individual owner. Any system which does not encourage this is bad, and any which actually prohibits it will not long be tolerated. * * * Where there is no individual property there will be no considerable individual industry. If the Indian is to be civilized he must learn to work, and no man will work cheerfully without the spur of competition and incentive of acquiring wealth. The common good of a large community, the public welfare, are ideas too vague to inspire personal effort except with very few, even in the highest stages of civilization. To the masses they furnish no incentive to toil. And of all species of property whose acquisition stimulates exertion, the soil is first in rank. This alone gives a home. The opportunity to acquire in absolute unconditional proprietorship a tract of land, by the cultivation of which the individual can be supported in independence and the family reared in comfort, is the highest motive to effort which can be proposed. (See Senate Report No. 336, Forty-first Congress, third session.)

One objection heretofore made by the Indians of the five civilized tribes to taking lands in severalty has been that all the patents which have conveyed to them their lands have contained a clause that the lands should revert to the United States if the tribe should become extinct or abandon the same. And the fear has been expressed that if the tribal government should be abandoned upon the allotment of land in severalty it might be construed into an extinction of the tribe and work a reversion of the land; or if when allotted in severalty particular parcels should be abandoned by the allottees they might be claimed by the Government of the United States.

While the committee think that this fear is groundless it would be entirely proper for the Government to enact that in case of the allotment of lands in severalty to the individual members of these nations, the Government would relinquish all of its reserved rights to the lands.

The committee recommends that the bill be amended as follows, and recommend its passage as amended.

After the word "States," in line 7 of section 1 of the bill, insert the following:

And the acts of Congress that have been or may be passed regulating trade and intercourse with the Indians, subject however to amendments of said agreement, as follows:

Add to the first paragraph of article 2 of said agreement the following proviso:

"*And provided further*, That before any intruder or unauthorized person occupying houses, lands, or improvements, commenced before the eleventh day of August, eighteen hundred and eighty-six; shall be removed therefrom upon the demand of the principal chief, or otherwise, the value of his improvements, as the same shall be appraised by a board of three appraisers to be appointed by the President of the United States, one of the same upon the recommendation of the principal chief of the Cherokee Nation for that purpose, shall be paid by him to the Cherokee Nation; and upon such payment such improvements shall become the property of the Cherokee Nation."

Strike out paragraph 3 of article 2 of said agreement, and change the numbers of the subsequent paragraphs to correspond.

After the word "that," in line 1 of section 2, insert:

To pay for the services of the appraisers, to be appointed as provided in the first paragraph of article two of the amended agreement, at a rate not exceeding ten dollars per day for the time actually employed by each appraiser, and their reasonable expenses, and."

Strike out in line 4 of section 2 the word "subdivision" and insert in lieu thereof the word "paragraph."

Strike out in line 5 of section 2 the word "two" and insert "one."

In the same line and section strike out "three" and insert "five."

Add section 6, as follows:

The consent of the United States is hereby given to the allotment of land in severalty within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; and upon such allotments the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States. And the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated to pay for the survey of any such lands as may be allotted by any of said tribes of Indians to individual members of said tribes. And upon the allotment of the lands held by said tribes, respectively, the reversionary interest of the United States therein shall be relinquished and shall cease.

O