4-6-1897

Appeal of the delegates of the Cherokee Nation

55TH CONGRESS, 1ST SESSION. SENATE. DOCUMENT No. 24.

APPEAL OF THE DELEGATES OF THE CHEROKEE NATION.

APRIL 6, 1897.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. CULLOM presented the following

APPEAL OF THE DELEGATES OF THE CHEROKEE NATION IN REFERENCE TO PENDING LEGISLATION AFFECTING THEIR INTERESTS WITH THE GOVERNMENT OF THE UNITED STATES.

WASHINGTON, D. C., *April 6, 1897.*

The Senate of the United States.

GENTLEMEN: The Cherokee Nation, by the undersigned, who are its authorized delegates and representatives in this city in regard to matters affecting their interests with the Government of the United States, beg leave to invite the special attention of your honorable Senate to that provision of bill (H. R. 15) which commences on page 58, line 6, and is concluded on page 59, line 12.

It is the purpose of that amendment, without the consent of said nation, to accomplish the following results:

First. To destroy the courts which now exist in the Cherokee Nation for the protection of property and the punishment of crimes committed by their own citizens against each other, which courts exist by virtue of the constitution and laws of that nation, and are authorized by treaties made between the United States and said nation.

Second. To confer upon the United States courts now established in the Indian Territory original and exclusive jurisdiction and authority to determine all civil causes in law and equity instituted after the 1st day of January, 1898, and to try and determine all criminal causes for the punishment of any offense committed after the passage of this act by any person in the Indian Territory.

Third. That the United States Commissioners for said Territory, whose appointment was authorized by the act of Congress approved March 1, 1895, shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said Territory.

Fourth. That the laws of the United States and the State of Arkansas in force in the Territory shall apply to all persons therein, irrespective of race, said courts exercising jurisdiction thereof as now conferred upon them in the trial of like cases.

Fifth. That any citizen of any one of said tribes otherwise qualified, who can speak and understand the English language, may serve as a juror in any of said courts.

Sixth. That on and after January 1, 1898, all acts, ordinances, and resolutions passed by the council of either of the Five Civilized Tribes

shall be certified immediately upon their passage to the President of the United States, and shall not take effect if disapproved by him, or until thirty days after their passage.

The coercive purpose of these provisions becomes evident from their slightest examination. There can be no doubt that this legislation is only the initial proceeding or action by means of which the tribal independence of these Indians is to be destroyed. Their character as distinct political communities is to be obliterated, and then their extermination as independent political organizations whose rights have been assured by the solemn covenants of treaty stipulations becomes easy of accomplishment. This legislation is inspired by that greed and selfishness which usually precedes an assault upon the rights of those Indians who are so fortunate as to possess valuable lands which are coveted by their white brethren. The success of the attack becomes easier and less liable to resistance if it is preceded by the assertion that the occupants of the territory set apart to the Indians of said tribes have become lawless, dissolute, immoral, and violent to such an extent as to require the protecting care of the United States. Hence it became necessary for the "Dawes Commission" to paint a most lurid picture of the lawlessness, violence, immorality, disorder, and consequent danger to life and property existing within the territory occupied by said tribes. It is believed that the imaginary and baseless character of the reports which asserted the existence of such an unhealthy and dangerous condition of affairs in that part of the Indian Territory occupied by these tribes has been not only asserted but demonstrated.

If, however, such a condition of immorality and violence does in fact exist in said Territory, as justifies legislation of a character so extraordinary as that proposed in said bill, we assert without the slightest fear of successful contradiction, that the United States, and not the Indians, are responsible for its existence. We make this statement because the power to prevent the existence of lawless violence, and that immorality which shocks society, is vested by the statutes in the United States. There would have been no opportunity for so vicious an arraignment of these people as is contained in the several reports if there had been a proper observance of the treaties existing between the United States and those Indians who are to become the unwilling victims of the proposed legislation, or any attempt to enforce the statutes of the United States against those who have come within the limits of the territory ceded to and occupied by the Indians of said Five Civilized Tribes, in violation of the provisions of treaties and statutes concluded and enacted for their protection. The treaty between the United States and the Cherokee Nation, concluded on the 29th day of December, 1835, made a covenant with these Indians which was designed to secure them in the absolute and continued possession of their own territory, the right to adopt their own forms of government, make their own constitution, and enact their own laws. These rights were secured by article 5 of that treaty, which is as follows:

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they 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.

You will observe that the amendment to the bill aforesaid is in direct conflict with this section of the treaty. The last part of this amendment provides that no acts, ordinances, or resolutions of the legislatures

of any of the Five Civilized Tribes shall take effect unless approved by the President of the United States, or rather if disapproved by him. This, of course, is destructive of local self-government. The President of the United States with his many duties to perform can not in person investigate the needs of the several nations in the Indian Territory, and as a consequence, can not know the advisability or the necessity for the enactment of any of the laws passed by their legislatures or national councils. Hence, when one of these acts or ordinances is certified to him as provided in this bill, he would, of course, refer it to the Secretary of the Interior, who in turn would refer it to the Commissioner of Indian Affairs for a report. The Commissioner of Indian Affairs would also refer it to some clerk in one of the divisions of his office for a report to him. This clerk would, in fact, be the executive of all of the Five Civilized Tribes in the Indian Territory.

As is always the case, there is no legislation that absolutely meets with universal approval, and there will be some who will object to the enactment of any law, howsoever fair and necessary it may be for the general good, and those objecting would file protests and affidavits galore, which would be referred to the clerk in the Indian Office, to whom the bill was referred for a report, and he would make his report upon the ex parte statements of those interested in the disapproval of the legislation. We can see no good reason why, inasmuch as these tribes have enacted their own laws for half a century, that they should not be permitted, in the brief time that is allotted to their future existence, to enact legislation for their own people themselves. Their constitution and their laws are modeled after the constitution and laws of the various States of the United States, modified of course to meet the peculiar conditions of their people and their system of land tenure, which is one in common. Their legislature is divided into two branches, the members of which, together with their governor, are elected by the people at regular biennial and quadrennial elections. Hence, if laws not for the benefit of their people are enacted or approved, they are removed at the next regular election by the people.

Your attention is particularly invited to the other part of the amendment proposed in the aforesaid bill which takes away the jurisdiction of the tribal courts and vests it in the Federal courts in the Indian Territory. This part of the amendment is designed evidently to take effect on and after January 1, 1898. As to the transfer of civil jurisdiction the language is quite plain, but you will observe that as to criminal causes the language reads "for the punishment of any offense committed after the passage of this act by any person in said Territory." It is doubtful as to when this clause takes effect, so far as criminal causes are concerned, whether immediately after the passage of this act or whether after January 1, 1898. The language should at least be plain and not capable of a double construction.

The whole of this amendment is in direct conflict with article 13 of the treaty entered into by and between the United States and the Cherokee Nation of Indians, concluded on July 19, 1866, which is as follows:

> 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.

The representatives of the Cherokees, as well as of those of the United States, evidently foresaw that many noncitizens would find

residence in the Cherokee Nation under the terms of various treaty stipulations, as well as by the consent of the Cherokees themselves. Hence this reservation for the establishment of a Federal court in their midst. You will observe that the representatives of the United States at this time did not interpret that they had the power to establish Federal courts in the country without the consent of the Indians. This article expressly provides that the judicial tribunal of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of their nation by nativity or adoption should be the only parties. For thirty years this provision or this treaty has been studiously observed by the Government of the United States. While the United States, so far as the spirit of the treaty is concerned, has not always kept its faith, yet it never has by a positive statute absolutely annulled in the open any provision of a treaty heretofore entered into with the Cherokee Nation. You have refused to comply with a great many provisions of the treaties heretofore entered into, but it was always argued that another construction than that placed upon it by the Cherokees was the reason given.

But it is argued as a reason why the tribal courts should be abolished and the jurisdiction transferred to the Federal courts that the tribal courts are corrupt, that they are subject to wholesale bribery, and that no protection is afforded to life and property. It is easy for anyone to make these charges. It is never difficult to deal in generalities; but we, as the representatives of the Cherokee people, beg of the Senate of the United States that when these charges are made on the floor of the Senate that the member making such charges be specific and give one single instance where corruption has been practiced or bribery used in the trial of a single case, either criminal or civil, by the tribal courts in the Cherokee Nation. Certainly if the Indians themselves are satisfied with their own courts we can see no good reason why the United States should complain. Under the act of March 1, 1889, as amended by act of May 2, 1890, and March 1, 1895, Federal courts were established in the Indian Territory under and by virtue of the thirteenth article of the treaty of 1866, as above quoted. As now constituted, there are three divisions of this court, presided over by separate judges, and each judge holds two terms of court annually in four different places in his division. These courts have both civil and criminal jurisdiction over all causes except those between the Indians of the same tribe or nation.

Hence it can not be argued that there is no protection to the noncitizen residing in that country, because he has the same protection now as would be afforded him in case this bill is passed. The only jurisdiction that is retained to those tribal courts, as above observed, is over citizens of their own tribes, and inasmuch as there has been no complaint by the citizens of the Cherokee Nation we can see no good reason why their system of government should be interfered with. In case this bill is passed you will observe that their judiciary is destroyed. Without courts, why enact laws? There will be no need then of any legislation. Hence, their local self-government is absolutely destroyed. We are not at this time disposed to argue the constitutional phase of this question. We will agree that Congress has the power to annul treaties conferring only political rights, yet we very much question whether or not there are not vested rights given these people in their local self-government, guaranteed to them most solemnly by all the treaties heretofore made with them, that Congress has not the constitutional power to annul. Aside from the constitutional question and the keeping of

faith with these Indians, we desire to call your attention to the bad policy of enacting this legislation at this time.

Under the act of March 3, 1893, and subsequent acts of Congress, a commission was sent to the Indian Territory to negotiate with the Five Civilized Tribes, looking to a change in their form of government and their system of land tenure. True, several years have elapsed, and no favorable reports until last year have been made of the work of this commission. Each of the Five Civilized Tribes have appointed commissions now to negotiate with the Commission on the part of the United States along the lines indicated by the several acts of Congress. Last year the Choctaws entered into an agreement with the Commission, commonly known as the "Dawes Commission," but because the consent of the Chickasaws was not obtained and other minor changes deemed necessary, the agreement was not ratified, but returned to the Choctaw Nation. The Chickasaws and Choctaws are now in conference with the "Dawes Commission," and the newspapers report that an agreement has been reached.

The Cherokees last summer appointed a commission to meet and confer with the Commission on the part of the United States, but because of the extra duties imposed upon said Commission by the act of June 10, 1896, viz, to make a roll of the Five Civilized Tribes, it was found impossible for the Cherokee commission to meet the Dawes Commission in time to make an agreement to be certified here before the convening of the last session of Congress in regular session. The two commissions had agreed, however, to meet soon after January 1 and see if terms could not be agreed upon whereby a change in the form of government of the Cherokee Nation could not be effected when the Dawes Commission was summoned to Washington, D. C., by the Secretary of the Interior for consultation. They were detained here until the close of the last session and have only recently met again in the Indian Territory, and, as above observed, are now busy in attempting to negotiate with the Choctaws and Chickasaws. Inasmuch as these two commissions are about to come together, we hope you will pardon us for saying that we deem it exceedingly bad policy, if not dangerous to negotiations, for the enactment of this legislation, destructive of the past solemn agreements you have entered into with our people.

Our people are very greatly concerned over this action, and they are now seriously debating in their minds the advisability of making any further agreements with the Government of the United States if those you have made are not to be kept or respected. We have heretofore sent you the correspondence between these commissions, found in Senate Document No. 112, Fifty-fourth Congress, second session, which shows conclusively that our people had determined to negotiate before the introduction of this legislation. Your Commission will be seriously embarrassed in attempting to convince a trusting people that you are sincere and that you mean to keep faith with them in the future agreement if, pending the making of that agreement, you strike with a fatal blow their local self-government. This amendment will not go into effect until the 1st of January, 1898, anyway, and if no agreements are reached between now and the convening of the next regular session of Congress, you will then have ample time to enact legislation to meet the wants and needs of those people.

Yours, very respectfully,

G. W. BENGE,
W. W. HASTINGS,
Cherokee Delegates.