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Report of Commission to the Five Civilized Tribes

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 10, 1894.—*Resolved*, That the Report of the Commission appointed to negotiate with the Five Civilized Tribes of Indians, known as the Dawes Commission, which report is attached to the Annual Report of the Secretary of the Interior as Appendix B, be printed as a Senate document.

Attest:

WM. R. COX,
Secretary.

B.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

WASHINGTON, D. C., *November 20, 1894.*

SIR: The Commission to the Five Civilized Tribes, appointed under the sixteenth section of an act of Congress making appropriations for the Indian service, approved March 3, 1893, report what progress has thus far been made by it,

Immediately upon receiving their instructions they entered upon their work and made their headquarters, on reaching the Territory, at Muskogee, in the Creek Nation, removing it in March to South McAlester, in the Choctaw Nation, where it still remains.

Upon arriving in the Territory the commission immediately sent to the chief or governor of each tribe an official notice of their appointment and of their authority and the objects of their mission in accord with their instructions, and requested an early conference with him, or those who might be authorized to confer with this commission, at such time and place as might be designated by him. Such conferences were held separately with the chief and duly authorized commission of each of the tribes. At each of these conferences the commission explained with great pains the wishes of the Government and their authority to enter into negotiations with them for an allotment of their lands and exchange of their tribal for a Territorial government. They were listened to attentively, and were asked many pertinent questions, which were fully answered so far as their authority justified. No definite action was taken at either of these conferences, though the indications were adverse to a favorable result. They all asked for time to consider, and promised a renewal of the conferences.

Afterwards, at the suggestion of one of the chiefs, an international council, according to their custom on important questions, consisting of delegates appointed for that purpose from each of the tribes, except the Seminoles, who took no part in it, was held to confer upon the purposes of this commission. The commission attended this conference, and on request presented the subject to them more elaborately and fully than had been done before. The conference continued three days, and at first the views of the commission were treated with seriousness, and the impression seemed favorable in the body that a change in their present condition was necessary and was imminent, and that it was wise for them to entertain our propositions. During the deliberations, however, telegraphic dispatches from Washington reached them indicating that the sentiment of the Government, and especially of Congress, from whose action they had most to apprehend, was strongly in favor of what they maintained as "the treaty situation," and that no steps would be taken looking to a change unless they desired it. This put an effectual check upon the disposition to negotiate, and the result at this international conference was the adoption of resolutions strongly condemning any change and advising the several tribes to resist it. Each of the tribes subsequently acted in accord with this advice, and several of them took official action condemning any change, and refusing to negotiate upon any terms looking to a change in the present condition in respect either to their form of government or the holding of their domains. This refusal has been repeated many times in these tribes in several ways since, and stands to-day as the official position of the governments of those who have taken action thereon.

It was apparent that this convention was dominated by the tribal officials and those having large holdings of land.]

CREEK NATION.

On the 23d of January, a commission appointed by the chief of the Creek tribe met us at Muskogee to confer with us, but had no authority whatever, as they stated, to enter into negotiations or conclude any agreement with us. After a conference, however, they expressed a desire that we should make any appointment to meet and address their people at Okmulgee, their capitol, and explain the policy and purposes of the U. S. Government in sending us to the Territory, which we accordingly did on the 3d day of April, 1894. Our audience was large, embracing the chief, council, and Creek citizens. A number of prominent citizens, who have almost absolute control of the government and a monopoly of the lands of the tribe, were present, actively opposing the work of this commission.

After arriving at Okmulgee, we had frequent and free conversations with quite a number of Creek citizens, who expressed themselves favorable to the propositions we were submitting, and detailed the poverty-stricken condition of the common people, and the consequent necessity for a change. They also expressed their desire that their council should accede to the proposed changes. After we had addressed fully and in detail the meeting upon the subject of our mission, we were followed by the chief, who addressed them in the Creek language, which was not interpreted and which we therefore could not understand. But we were informed by one present, and believe truthfully, that the chief stated to them that if they acceded to the propositions of the Government and accepted allotment they would each receive a lot of land only 4 by 8 feet, and thereupon called for a vote of the meeting upon the propositions discussed by us, and all of the meeting passed over to the side against our propositions. Immediately thereafter the council met and passed resolutions declining to appoint a commission to treat with us, or take any steps looking to the allotment of lands or change of government.

That our propositions to the Creek tribe might be definite and specific, and the action of their council thereon free from doubt and misconstruction, we, on the 25th day of July, 1894, submitted to the tribe, through its principal chief, written propositions upon which we proposed to negotiate with them, as follows:

PROPOSITIONS TO THE CREEKS.

The commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress approved March 3, 1893, propose to treat with the Creek Nation on the general lines indicated below, to be modified as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Creek Nation, not including town sites, among all citizens, according to the treaties now in force, reserving town sites, coal, and minerals for sale under special agreement. Sufficient land for a good home for each citizen to be made inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the land allotted to him, without expense to the allottee, that is, to remove from the allottee's land all persons who have not written authority to be on the same, executed by the allottee after the date of the evidence of title.

Third. Town sites, coal, and mineral discovered before allotment to be the subject of special agreement between the parties, such as will insure to the nation and to those who have invested in them just protection and adjustment of the respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds not devoted to school purposes, and all moneys derived from the sale of town sites, coal, and minerals, as well as all moneys found due from the United States, to be divided per capita among the citizens, according to their respective rights under treaties and agreements.

Sixth. All moneys due the citizens of said Nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. A board of three persons to be agreed upon, to whom shall be referred all questions of citizenship and right to allotment, to consist of one member of this commission and one Creek by blood, they to select the third member, wholly disinterested; and in case they shall fail to agree upon such third member, such third member shall be appointed by the President.

Eighth. If an agreement shall be reached with the Creek Nation, a Territorial form of government may be formed by Congress and established over the territory of the Creek Nation, and such other of the Five Civilized Tribes as may have at the time agreed to allotment of lands and change of government.

Ninth. Such agreement, when made, shall be submitted for ratification to the Creek government, and if ratified by it, shall then be submitted to Congress for approval.

Tenth. The present tribal government to continue in existence until after the lands are allotted and the allottees put in possession—each of his own land—after which a Territorial government may be established by Congress.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by the following letter of transmittal:

SOUTH MCALESTER, *July 25, 1894.*

DEAR SIR: The commission appointed by the President under the sixteenth section of an act of Congress approved March 3, 1893, has not heretofore submitted to the Creek government formal propositions looking to concluding an agreement as provided in such section. We, therefore, herewith inclose such propositions, and request that a commission be constituted by the Creek government, with full power to settle upon the terms of such agreement.

We also request a definite answer prior to 1st of October next, as at that time it is the purpose of this commission to report to the Secretary of the Interior the influences which prevent such an agreement should your government further decline to enter upon negotiations with this commission, as also all other matters which should properly be embraced in such report.

We are, very respectfully,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. LEGUS C. PERRYMAN,
Principal Chief, Creek Nation.

The national council of the Creek Nation convened in regular session in October, 1894, and adjourned without having taken any action upon the foregoing propositions, so far as this commission has been advised.

CHOCTAW NATION.

By agreement this commission met and addressed the council of the Choctaw tribe at the capitol, Tushkahoma, on the 25th day of January, 1894, explaining the objects of the commission, and the desires and purposes of the U. S. Government in sending it to the Territory. After the international council above alluded to, a commission of Choctaws waited upon us at Muskogee and requested that members of the commission visit and address the Choctaw people at a number of points in the Choctaw tribe; which we did during the spring and summer, accompanied by a commission of three, appointed by the Choctaw council, who could speak both the English and Choctaw languages, and who were instructed to use their influence to prevent favorable consideration of the propositions submitted by this commission.

On the 23d day of April, 1894, we submitted propositions to the Choctaw tribe as follows:

PROPOSITIONS TO THE CHOCTAW AND CHICKASAW NATIONS.

We propose to treat with the Choctaw and Chickasaw nations jointly, on these general lines, to be modified as may be deemed wise by both parties, after discussion and conference.

First. To divide all lands now owned by the Choctaws and Chickasaws, not including town sites, among all citizens of the two nations, according to the treaties now in force, reserving the coal, minerals, and town sites for sale.

Second. The United States to agree to put each allottee in possession of the land allotted to him without expense to the allottee.

Third. Town sites, coal and minerals discovered to be the subject of special agreements between the parties, and such as will secure to the nation and to those who have invested in them a just protection and adjustment of their respective rights therein.

Fourth. A settlement of all claims against the United States, including the "leased district."

Fifth. All invested funds and all moneys derived from the sale of town sites, coal and minerals, and from the sale of the leased district, as well as all moneys found to be due from the United States to either of said nations, to be divided per capita among their citizens according to their respective rights under the treaties and agreements.

Sixth. All the moneys due the citizens of said nations, except that devoted to school purposes, to be paid per capita to the citizens of each nation respectively by an officer of the United States, who shall be appointed by the President.

Seventh. If an agreement shall be reached with the Choctaws and Chickasaws, a territorial government shall be formed by Congress over the territory of the two nations, and such other of the Five Civilized Tribes as may have at the time allotted their lands and agreed to a change of government.

Eighth. The present tribal governments to continue until after the lands are allotted and the allottee put in possession, each, of his own land and the money paid to those entitled to the same.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by a letter of transmittal similar to the one to the Creeks above copied.

Six— these propositions were submitted the Choctaw council met in regular session in October last, and adjourned without having taken any action thereon, so far as this commission is advised.

CHICKASAW NATION.

In answer to our letter announcing our presence in the Territory, heretofore alluded to, Hon. Jonas Wolfe, governor of the Chickasaw Nation, suggested the 6th day of February, 1894, at Tishomingo, as the time and place for a meeting of this commission with a commission appointed by him. At that time and place we met and addressed the commission so appointed, together with a large number of Chickasaw Indians, on the objects and purposes for which this commission was appointed, and by request of the governor and members of said commission we met the citizens of the Chickasaw tribe at a number of places and addressed large audiences on the subject of our mission during the spring and summer.

On the 23d day of April, 1894, we submitted propositions to the Chickasaw tribe, through its governor, like those submitted to the Choctaw Nation and copied above, which were accompanied by a like letter of transmittal.

Since these propositions were submitted the national council of the Chickasaw Nation met in regular session and adjourned without having taken any action on such propositions, so far as we are advised.

CHEROKEE NATION.

On the 30th day of January, 1894, a commission of Cherokees met us at Muskogee, they having been appointed by the principal chief, in response to our letter heretofore referred to. They presented to us a copy of the resolutions adopted by their tribal council, under which they were appointed, which expressly forbade them from entering upon negotiations with this commission, looking to allotment of lands or change of government, and in effect instructing them to use all means within their power to prevent the accomplishment of our mission. After a conference with us, however, they invited us to make a number of appointments and to meet and address the citizens of the Cherokee tribe on the subject of our mission. This we accordingly did during the ensuing spring and summer.

On the 25th day of July, 1894, we submitted to the Cherokee tribe, through its principal chief, propositions as follows:

PROPOSITION TO THE CHEROKEES.

The Commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress approved March 3, 1893, propose to treat with the Cherokee Nation on the general lines indicated below, to be modified and extended as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Cherokee Nation, not including town sites, among all citizens according to treaties now in force, reserving town sites and minerals for sale under special agreements. Sufficient land for a good home for each citizen to be made inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the land allotted to him without expense to allottee—that is, to remove from the allottee's land all persons who have not written authority from the allottee to be on the same, executed after the date of the evidence of title.

Third. Town sites, coal and minerals discovered before allotment to be the subject of special agreement between the parties, such as will secure to the nation and to

those who have invested in them a just protection and adjustment of their respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds not devoted to school purposes and all moneys derived from the sale of town sites, coal and mineral, as well as all moneys found due from the United States, to be divided per capita among citizens according to their respective rights under the treaties and agreements.

Sixth. All moneys due the citizens of said nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. A board of three persons to be agreed upon, to whom shall be referred all questions of citizenship and right to allotment, except freedmen, to consist of one member of this commission and one Cherokee by blood, they to select the third member, who shall be wholly disinterested; and in case they shall fail to agree upon such third member, he shall be appointed by the President.

Eighth. A board of three persons to be agreed upon, to consist of two members of this commission and one Cherokee by blood, who shall revise the roll of freedmen, known as the Wallace roll, and erase the names of such as may be improperly placed on said rolls and add such as may be entitled thereto, including such as may have been born since that roll was made.

Ninth. If an agreement shall be reached with the Cherokee Nation, a Territorial government may be formed by Congress and established over the Cherokee Nation and such other of the Five Civilized Tribes as may have, at the time, agreed to allotment of lands and change of government.

Tenth. Such agreement, when made, shall be submitted for ratification to the Cherokee government, and if ratified by it shall then be submitted to Congress for approval.

Eleventh. The present tribal government to continue in existence until after the lands are allotted and the allottee put in possession of his own land, after which a Territorial government may be established by Congress.

Twelfth. The agreement entered into by the United States, in reference to intruders, is to be in no way impaired, but is to continue in force and be carried out as originally made, if desired by the Cherokee Nation.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by the following letter of transmittal:

SOUTH McALESTER, IND. T., *July 25, 1894.*

DEAR SIR: The commission appointed by you last January, upon an interview with this commission, under instructions from the Cherokee council, declined to take any steps looking to a change of land tenure and the organization of a territorial government by the United States. Believing the Cherokee people did not fully comprehend the changes proposed, and the willingness and anxiety of the United States Government to throw around them protection against any possible injury resulting from such proposed change, it was deemed advisable by this commission to disseminate among them such information as would enable them to fully understand the same, with the necessity therefor, and the reasons why the same was desired by our Government. This was promptly done, and a sufficient time has now elapsed for them to reach a deliberate conclusion.

We therefore have the honor to submit for the consideration of your government propositions outlining the prominent features of an agreement desired by the United States Government, and to request that the same be submitted to your legislative council, and that a commission on the part of the Cherokee Nation be appointed to negotiate with this commission under the provisions of the sixteenth section of an act of Congress approved March 3, 1893.

We shall be pleased to learn of the action of your government prior to the 1st day of October, 1894, at which time it will be the duty of this commission, if negotiations have not been previously entered upon, to report to the Secretary of the Interior the condition of the Cherokee people, the system of land holding now prevalent, and the influence now obstructing the policy of the Government in securing a change of both land tenure and government, and such other matters as should be embraced in said report.

We have the honor to be, governor, yours, with great respect,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. C. J. HARRIS,
Principal Chief, Cherokee Nation.

After these propositions were submitted, it came to our knowledge that the honorable Secretary of the Interior had decided that the Cherokee tribe was the exclusive judge as to who were citizens of said tribe, and we accordingly waived the appointment of a board as provided for in the seventh proposition, and notified the principal chief of the Cherokee tribe of such decision and waiver.

After said propositions were submitted to the Cherokee tribe, Chief Harris requested that the time for an answer thereto be extended until a meeting of the Cherokee council on the first Monday in November, 1894, which we agreed to. The Cherokee council is now in session, but up to this date no response has been received.

SEMINOLE NATION.

In answer to our letter to the governor of the Seminole tribe, he suggested that the national council of the Seminole tribe would convene early in April and named the 6th day of April, 1894, as the time and Wewoka as the place he desired this commission to meet and address said council. Pursuant to such suggestion we met and addressed the council and a large number of citizens of said tribe. Afterwards the council met and adopted resolutions declining to take any action whatever with a view of negotiating with this commission. Not having done so before, we, on the 26th day of July, 1894, in order to make our propositions more specific and definite, and to obtain a clear response thereto, submitted to the Seminole tribe the following propositions:

PROPOSITIONS TO THE SEMINOLES.

The commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress, approved March 3, 1893, propose to treat with the Seminole Nation on the general lines indicated below, to be modified as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Seminole Nation, not including town sites, among all citizens according to the treaties now in force, reserving town sites, coal and minerals, for sale under special agreement. Sufficient land for a good home for each citizen to be inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the lands allotted to him without expense to the allottee—that is, to remove from the allottee's land all persons who have not written authority to be on the same, executed by the allottee after the date of the evidence of title.

Third. Town sites, and coal and minerals discovered before allotment, to be the subjects of special agreements between the parties—such as will secure to the nation and to those who have invested in them a just protection and adjustment of the respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds, not devoted to school purposes, and all moneys derived from the sale of town sites, coal and minerals, as well as all moneys found due from the United States, to be divided per capita among the citizens according to their respective rights under the treaties and agreements.

Sixth. All moneys due the citizens of said nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. If an agreement shall be reached with the Seminole Nation a Territorial government may be formed by Congress and established over the territory of the Seminole Nation and such other of the Five Civilized Tribes as may have at the time agreed to allotment of lands and change of government.

Eighth. Such agreements when made shall be submitted for ratification to the Seminole government, and, if ratified by it, shall then be submitted to Congress for approval.

Ninth. The present tribal government to continue in existence until after the lands are allotted and the allottee put in possession, each of his own land, after which a territorial government may be established by Congress.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

The foregoing propositions were accompanied by the following letter of transmittal:

SOUTH McALESTER, IND. T., *July 28, 1894.*

DEAR SIR: Please find inclosed formal propositions indicating the general line upon which this Commission proposes to negotiate with the Seminole Nation.

We request that your nation appoint a commission to arrange the details of such an agreement as this commission is authorized to make under the sixteenth section of an act of Congress approved March 3, 1893.

We hope to be informed in regard to the action of your nation prior to the 1st of October next. If your nation should decline to appoint a commission as requested, we desire at that time to submit a report to the Secretary of the Interior of the condition of the Seminole people and the causes and influences obstructing the policy of the U. S. Government in regard to a change of land tenure and government, with such other facts as may seem pertinent and will enable the Government to take such further action as it may deem wise.

Information, alike accessible to all, must convince you of the earnest desire of the United States to effect a change in the condition of the Five Civilized Tribes, and of the many advantages which would accrue to your people if they shall effect such change by agreement.

We have the honor to be, respectfully, yours,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. JOHN F. BROWN,
Principal Chief, Seminole Nation, Wewoka, Ind. T.

To the above propositions we have not, as yet, received any reply.

SOME EXPLANATIONS.

Early interviews with us by commissioners appointed by the several tribes, and with citizens, satisfied us that the Indians would not, under any circumstances, agree to cede any portion of their lands to the Government, but would insist that if any agreements were made for allotment of their lands it should all be divided equally among them. Among other reasons assigned, it was stated that a cession to the United States would likely make operative and effective the various railroad grants; that they preferred each to sell his share of the lands and receive the money for it, as if ever their lands were converted into money it would go into the hands of the officers of the tribes, who would swindle them out of a large portion of it. Finding this unanimity among the people against the cession of any of their lands to the United States, we abandoned all idea of purchasing any of it and determined to offer them an equal division of all their lands. Hence the first proposition made to each tribe.

An objection very generally urged to allotment of lands was that they would be in possession, when allotted, of noncitizens, whom they could not dispossess without interminable lawsuits, and as the Indians, especially the full-bloods, have a settled aversion to go into our courts, we, to remove this difficulty, submitted the second proposition to each tribe.

There are towns in the Territory ranging in population from a few people to 5,000 inhabitants. Nearly all of them are noncitizens. These towns have not been surveyed or platted, and streets exist only by agreement and arrangement among the people who have constructed them, and are often bent and irregular. Many large and valuable stone, brick, and wooden buildings have been erected by noncitizens of these towns, and the lots on which they stand are worth many thousands of dollars. These town sites are not susceptible of division among the Indians, and the only practicable method of adjusting the equities between the tribes who own the sites and those who have constructed the buildings is to appraise the lots without the improvements and the improvements without the lots, and allow the owners of the improvements to purchase the lots at the appraised value, or to sell lot and improvements and divide the money according to the appraisement. Hence, the third proposition to all the tribes, town sites were reserved for disposition under special agreements.

Complaints are made by the Cherokees that many freedmen are on the rolls made under the direction of the Government, and known as the "Wallace Roll," who are not entitled to be there, and many freedmen complain that they have been improperly omitted. The chief of the Cherokee tribe suggested that they might be willing to submit all these disputes to this commission for decision, but it was believed that if an intelligent Cherokee by blood was one of such board, it would give the Cherokee people a knowledge of the good faith and correctness of the decision, and secure their confidence in the conclusions arrived at. Hence, in the eighth proposition to the Cherokees, we propose such board be composed of two members of this commission and one Cherokee by blood.

The Cherokee tribe is clamorous for the execution of the agreement in regard to intruders contained in the contract heretofore made with that tribe in purchasing the "Outlet," and we have been met by the declaration repeatedly made by those in power, that when that agreement was carried out it would be time to discuss the propriety of making another. We therefore provided that that agreement should

not in any way be impaired, though it is believed the proposition numbered second is certainly the most satisfactory and effective method of settling the intruder question that has been suggested.

Our instructions were to endeavor to secure the sixteenth and thirty-second sections for school purposes. This was strenuously objected to on the ground, as was claimed, that it would be requiring them to furnish a large school fund for a people of whom they did not constitute more than one-seventh. It was therefore omitted in the propositions made to all the tribes.

The Choctaws and Chickasaws are still claiming an interest in the south part of what is known as the "Leased district," and they insisted that if negotiations were entered upon this matter should also be adjusted before the abolition of their tribal governments, and we embraced it in the fourth proposition to them that the matter might properly come before the tribe and the Government when negotiations were concluded.

In addition to these official communications, and in order that their purport might reach as many individual Indians of the several tribes as possible and their importance be fully understood, we have held frequent conferences with the citizens themselves and personally with those in authority at their respective capitols, at our own headquarters, and whenever an opportunity presented itself. We addressed frequent meetings of the Indians also for that purpose in different parts of the Territory, and have visited all parts of it to acquaint ourselves with the condition of the people and with their views upon the subject-matter of our mission. We have also presented the subject through the public press of the Territory whenever possible, and have caused our addresses, circulars, and propositions to be translated into the languages of the different tribes and circulated among those who do not understand the English language. A copy of our address to the citizens of the Five Tribes, issued soon after our arrival in the Territory, is herewith submitted.

The east half of the Territory, inhabited by the Five Civilized Tribes, is mostly covered with dwarf oak, and a belt of similar timber extends west to Oklahoma through the north part of the Chickasaw and south part of the Creek countries, and covers most of the Seminole country. In the Chickasaw, Choctaw, and Seminole countries are mountains of considerable extent covered with pine forests. The margins of streams are bordered with heavy timber, in which are jungle and vines, constituting impenetrable thickets. The remainder of the country is prairie of rich alluvial soil and admirably adapted to agricultural purposes. The land covered with oak timber is generally poor, rocky, and mostly worthless for cultivation.

Coal of superior quality abounds in the Territory, and in the Choctaw country especially are immense beds, worth many millions of dollars, which are being extensively worked by large and costly plants. These coal beds are shingled over with leases and discoverers' rights, claimed under existing law, and complications are arising which will lead to conflict and endless litigation, and which are constantly growing worse.

The abundance of game, fine spring water, and convenience of wood led the Indians to settle in the timber country when first transferred to the Territory, and where the full-bloods still remain, eking out an existence on a few acres of corn raised in the small valleys, and the hogs raised on the acorns.

The real Indian is living in this sterile country, far from the whites and from all civilizing influences.

The mountains and thickets along the water courses afford a refuge and abiding place for criminals and outlaws, whence they sally in their forays on the surrounding country and States, and to which they return when pursued. The immunity thus afforded from arrest and punishment, encourages lawlessness and only the presence of large bodies of armed men or the settlement of the country can extirpate this evil.

Indians living in the woods are by the admission of their wisest men less civilized and fit for citizenship than they were twenty years ago. Theirs is a case of arrested progress, and it is believed that the only hope of civilizing them is to induce them to settle on the fertile lands, rent portions to the whites, mingle freely with them, attending the same churches and schools.

The barrier opposed at all times by those in authority in the tribes, and assuming to speak for them as to any change in existing conditions, is what they claim to be "the treaty situation." They mean by this term that the United States is under treaty obligations not to interfere in their internal policy, but has guaranteed to them self-government and absolute exclusion of white citizens from any abode among them; that the United States is bound to isolate them absolutely. It can not be doubted that this was substantially the original governing idea in establishing the Five Tribes in the Indian Territory, more or less clearly expressed in the treaties, which are the basis of whatever title and authority they at present have in the possession of that Territory, over which they now claim this exclusive jurisdiction. To that end the United States, in different treaties and patents executed in

pursuance of such treaties, conveyed to the several tribes the country originally known as the "Indian Territory," of which their present possessions are a part only, and agreed to the establishment by them therein of governments of their own. The United States also agreed to exclude all white persons from their borders.

These treaties, however, embraced stipulations equally clear, that these tribes were to hold this territory for the use and enjoyment of all Indians belonging to their respective tribes, so that every Indian, as is expressed in some of the treaties, "shall have an equal right with every other Indian in each and every portion of the territory," and the further stipulation that their laws should not conflict with the Constitution of the United States. These were executory provisions to be observed in the future by both sides. Without regard to any observance of them on their part, the Indians claim that these treaties are irrevocably binding on the United States. These stipulations naturally grew out of the situation of the country at the time they were made, and of the character of the Indians with whom they were made. The present growth of the country and its present relations to this territory were not thought of or even dreamed of by either party when they entered into these stipulations. These Indians were then at a considerably advanced stage of civilization, and were thought capable of self-government, in conformity with the spirit if not the forms of the National Government, within whose limits they were to remain. It was not altogether unreasonable, therefore, to conclude that it would be possible, as it was by them desirable, that these Indians could have set apart to them a tract of country so far remote from white civilization and so isolated that they could work out the problem of their own preservation under a government of their own, and that not only with safety to the Union but with altogether desirable results to themselves.

For quite a number of years after the institution of this project it seemed successful, and the Indians under it made favorable advance toward its realization. But within the last few years all the conditions under which it was inaugurated have undergone so complete a change that it has become no longer possible. It is hardly necessary to call attention to the contrast between the present conditions surrounding this Territory and those under which it was set apart. Large and populous States of the Union are now on all sides of it, and one-half of it has been constituted a Territory of the United States. These States and this Territory are teeming with population and increasing in numbers at a marvelous rate. The resources of the Territory itself have been developed to such a degree and are of such immense and tempting value that they are attracting to it an irresistible pressure from enterprising citizens. The executory conditions contained in the treaties have become impossible of execution. It is no longer possible for the United States to keep its citizens out of the Territory. Nor is it now possible for the Indians to secure to each individual Indian his full enjoyment in common with other Indians of the common property of the Territory.

The impossibility of enforcing these executory provisions has arisen from a neglect on both sides to enforce them. This neglect is largely the result of outside considerations for which neither is responsible and of the influence of forces which neither can control. These executory conditions are not only impossible of execution, but have ceased to be applicable or desirable. It has been demonstrated that isolation is an impossibility, and that, if possible, it could never result in the elevation or civilization of the Indian. It has been made clear that under its operations, imperfectly as it has been carried out, its effect has been to retard rather than to promote civilization, to impair rather than strengthen the observance of law and order and regard for human life and human rights or the protection or promotion of a virtuous life. To such a degree has this sad deterioration become evident that to-day a most deplorable and dangerous condition of affairs exist in the Territory, causing widespread alarm and demanding most serious consideration.

All the functions of the so-called governments of these five tribes have become powerless to protect the life or property rights of the citizen. The courts of justice have become helpless and paralyzed. Violence, robbery, and murder are almost of daily occurrence, and no effective measures of restraint or punishment are put forth to suppress crime. Railroad trains are stopped and their passengers robbed within a few miles of populous towns and the plunder carried off with impunity in the very presence of those in authority. A reign of terror exists, and barbarous outrages, almost impossible of belief, are enacted, and the perpetrators hardly find it necessary to shun daily intercourse with their victims. We are now informed that, within the territory of one of these tribes, there were 53 murders during the month of September and the first twenty-four days of October last, and not a single person brought to trial.

In every respect the present condition of affairs demonstrates that the permission to govern themselves, under the Constitution of the United States, which was originally embraced in the treaty, has proved a failure. So, likewise, has the provision that requires the United States to exclude white citizens from the Territory. The

course of procedure by the governments of the Five Tribes has largely contributed to this result, and they are quite as much responsible as the United States for the fact that there are 250,000 white people residing in the Territory. These citizens of the United States have been induced to go there in various ways and by various methods by the Indian governments themselves. These governments consented to the construction of a number of railways through the Territory, and thereby consented that they bring into the Territory all that is necessary in the building and operation of such railroads—the necessary depots, stations, and the inevitable towns which their traffic was sure to build up, and the large building which white men alone could develop and which these railroads were sure to stimulate and make profitable.

Besides these, they have, by their laws, invited men from the border States to become their employes in the Territory, receiving into their treasuries a monthly tax for the privilege of such employment. They have also provided by law for the intermarriage of white persons with their citizens and adopted them into their tribes. By operation of these laws large numbers of white people have become adopted citizens, participating in the benefits of citizenship. A single instance of such marriage has enabled one white man under the laws to appropriate to his exclusive use 50,000 acres of valuable land. They have, by their legislation, induced citizens of the United States to come in from all sides and under leases and other agreements with private citizens, sanctioned by their own laws, farmed out to them large ranges of their domain, as well as inexhaustible coal deposits within their respective borders, and other material interests which civilized white men alone could turn to profit. In some sections of the Territory the production of cotton has proved so feasible and profitable that white men have been permitted to come in by thousands and cultivate it and build trading marts and populous towns for the successful operation of this branch of trade alone.

In a single town of 5,000 white inhabitants, built there by their permission and also for the profit of the Indian, there were during last year marketed 40,000 bales of cotton. They have also sold off to the United States one-half of their original territory, to be opened up to white settlement on their western borders, in which, with their consent thus obtained, 300,000 white citizens have made their homes, and a Territorial government by this means has been erected in the midst of their own territory, which is forbidden by one of the executory provisions of the treaty. The day of isolation has passed. Not less regardless have they been of the stipulations in their title that they should hold their territory for the common and equal use of all their citizens. Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

In one of these tribes, whose whole territory consists of but 3,040,000 acres of land, within the last few years laws have been enacted under the operation of which 61 citizens have appropriated to themselves and are now holding for pasturage and cultivation 1,237,000 acres. This comprises the arable and greater part of the valuable grazing lands belonging to that tribe. The remainder of that people, largely the full-bloods who do not speak the English language, are excluded from the enjoyment of any portion of this land, and many of them occupy the poor and hilly country where they get a scanty living from such portions as they are able to turn to any account. This class of persons in the Territory are making little if any progress in civilization. They are largely dependent on those in control of public affairs, whose will they register at the polls and with whose bidding, in a large measure, they comply without question. Those holding power by these means oppose any change and ask only to be let alone.

In another of these tribes, under similar legislation, vast and rich deposits of coal of incalculable value have been appropriated by the few, to the exclusion of the rest of the tribe and to the great profit of those who operate them and appropriate their products to their individual use. Large and valuable plants for mining coal have been established by capitalists under leases by which, together with "discoverer's claims" authorized by the tribal governments, these coal lands are covered, and under the workings of which the rightful owners are being despoiled of this valuable property with very little or no profit to them; and it is clear that this property should be restored to the common domain and protected to the common people, and the mines worked under a system just and equitable to all who have rights therein.

The vast pine forests heretofore spoken of, which are of incalculable value, if not indispensable, in the future development of the country and the building up of homes and improvements of the agricultural lands, are being spoliated and laid

waste by attempts, under laws enacted for that purpose, to grant to a few, mostly adopted white citizens, the right to cut and market for their own use whatever timber they can turn to their own profit. This is an irreparable destruction of one of the most essential elements of the progress of the country in the future and should be at once arrested.

Towns of considerable importance have been built by white persons under leases obtained from Indians claiming the right to appropriate the common property to these uses. Permanent improvements of great value have thus been made by white citizens of the United States, induced and encouraged thereto by the tribal governments themselves, and have become immovable fixtures which can not be taken away. However difficult the problem of adjusting rights thus involved, nothing can be more clear than that the step can not be retraced. Towns built under such inducements can not be removed nor their structures razed to the ground, nor can the places they occupy be restored to the conditions originally contemplated by the treaties. Ruinous as any such attempt would be to those thus induced to expend their money in building these towns, it would not be less ruinous to the Indians themselves to be, by any such attempt, forced back to the methods of life existing before the coming of these white men. The original idea of a community of property has been entirely lost sight of and disregarded in every branch of the administration of their affairs by the governments which have been permitted to control this Territory under the treaty stipulations which are now being invoked, by those who are in this manner administering them, as a protection for their personal holdings and enterprises.

The large payments of moneys to the Indians of these tribes within the last few years have been attended by many and apparently well-authenticated complaints of fraud, and those making such payments, with others associated with them in the business, have, by unfair means and improper use of the advantages thus afforded them, acquired large fortunes, and in many instances private persons entitled to payments have received but little benefit therefrom. And worse still is the fact that the places of payments were thronged with evil characters of every possible caste, by whom the people were swindled, defrauded, robbed, and grossly debauched and demoralized. And in case of further payments of money to them the Government should make such disbursements to the people directly, through one of its own officers.

We feel it our duty to here suggest that any measures looking to any change of affairs in this Territory should embrace special, strict, and effective provisions for protection of the Indian and other citizens from the introduction, manufacture, or sale of intoxicants of any kind in the Territory, with penalties therefor and for failure by officers to enforce same, sufficiently severe to cause their perfect execution. A failure to thus protect these Indians will, in a measure, work their extinction at no distant day.

It is a deplorable fact, which should not be overlooked by the Government, that there are thousands of white children in this territory who are almost wholly without the means of education, and are consequently growing up with no fitting preparation for useful citizenship. A matter of so much concern to the country should not be disregarded.

When the treaties were reaffirmed in 1866, provision was made for the adoption and equality of rights of the freedmen, who had theretofore been slaves in the tribes, upon terms provided in the treaties. The Cherokees and Choctaws have appeared to comply with the letter of the prescribed terms, although very inadequately and tardily, and the Chickasaws at one time took some steps toward complying with these terms, but now deny that they ever adopted the freedmen, and are endeavoring to retrace the steps originally taken. They now treat the whole class as aliens without any legal right to abide among them, or to claim any protection under their laws. They are shut out of the schools of the tribe, and from their courts, and are granted no privileges of occupancy of any part of the land for a home, and are helplessly exposed to the hostilities of the citizen Indian and the personal animosity of the former master. Peaceable, law-abiding, and hard-working, they have sought in vain to be regarded as a part of the people to whose wealth their industry is daily contributing a very essential portion. They number in that tribe about 4,000, while the Chickasaws number 3,500. The United States is bound by solemn treaty to place these freedmen securely in the enjoyment of their rights as Chickasaw Indians, and can not with honor ignore the obligation.

Upon this subject, as also the claims and condition of the Choctaw freedmen, referred to us by the Department, we submit with this report briefs prepared and submitted to us by Hon. R. V. Belt, and Hon. J. P. Mullen, counsel for the Choctaw and Chickasaw freedmen.

The condition of the freedmen in the Choctaw and Cherokee tribes is little better than that of those among the Chickasaws, although they have been adopted according to the requirements of the treaties. They are yet very far from the enjoyment of all the rights, privileges, and immunities to which they are entitled under the

treaties. In the Choctaw tribe, the 40 acres to which they are entitled for a home has not been set apart to them and no one has any title to a single foot of land he may improve or occupy. Whenever his occupancy of land is in the way of any citizen Indian he is at once, by means sufficiently severe and threatening, compelled to leave his improvements. He consequently has no abiding place, and what he is enabled to get from the soil for his support, he is compelled to gather either furtively or by the most absolute subserviency to the will, caprices, or exactions of his former master. But meager provision is made for the schooling of his children, and but little participation in the management of the government of which he is a citizen is permitted him. He is nevertheless moral, industrious, and frugal, peaceable, orderly, and obedient to the laws, taking no part in the crimes which have of late filled the country with alarm and put in peril the lives and property of law-abiding citizens. A number of these sought an interview with us on one occasion, but were, as we were informed, warned by a prominent Indian citizen that if they called upon us they would be killed, which warning they heeded.

In the Cherokee tribe the schools provided for the freedmen are of very inferior and inefficient character, and practically their children are growing up in deplorable ignorance. They are excluded from participation in the per capita distribution of all funds, and are ignored in almost all respects as a factor in the government of a people of whose citizenship they are by the treaties in all respects made a part. Yet in this tribe the freedmen are conspicuous for their morality, industrial and frugal habits, and for peaceable and orderly lives.

Justice has been utterly perverted in the hands of those who have thus laid hold of the forms of its administration in this Territory and who have inflicted irreparable wrongs and outrages upon a helpless people for their own gain. The United States put the title to a domain of countless wealth and unmeasured resources in these several tribes or nationalities, but it was a conveyance in trust for specific uses, clearly indicated in the treaties themselves, and for no other purpose. It was for the use and enjoyment in common by each and every citizen of his tribe, of each and every part of the Territory, thus tersely expressed in one of the treaties: "To be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole." The tribes can make no other use of it. They have no power to grant it to anyone, or to grant to anyone an exclusive use of any portion of it. These tribal governments have wholly perverted their high trusts, and it is the plain duty of the United States to enforce the trust it has so created and recover for its original uses the domain and all the gains derived from the perversions of the trust or discharge the trustee.

The United States also granted to these tribes the power of self-government, not to conflict with the Constitution. They have demonstrated their incapacity to so govern themselves, and no higher duty can rest upon the Government that granted this authority than to revoke it when it has so lamentably failed.

In closing this report we may be permitted to add that we have observed with pain and deep regret that the praiseworthy efforts of the Christian church, and of benevolent associations from different parts of the country, so long continued among the tribes, are being counteracted and rendered in a large measure nugatory by the untoward influences and methods now in force among them tending directly to destroy and obliterate the beneficial effects of their good work.

Respectfully submitted.

HENRY L. DAWES,
MERIDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

HON. HOKE SMITH,
Secretary of the Interior, Washington, D. C.

STATEMENT OF THE CHOCTAW FREEDMEN,
SETTING FORTH
THEIR WRONGS, GRIEVANCES, CLAIMS, AND WANTS.

AUGUST, 1894.

Submitted to HON. HENRY L. DAWES, Chairman,
HON. MEREDITH H. KIDD,
HON. ARCHIBALD S. MCKENNON,
Commission to the Five Civilized Tribes, Muscogee, Indian Territory.

By E. D. COLBERT,
D. BARROWS,
WESLEY MCKENNEY,
Committee of the Choctaw Colored Citizens' Association.

HON. R. V. BELT, Washington, D. C.,
HON. J. P. MULLEN, Fort Smith, Ark.,
Attorneys and Counsel for Association.

INDIAN TERRITORY, August —, 1894.

Hon. HENRY L. DAWES, *Chairman*,
Hon. MEREDITH E. KIDD,
Hon. ARCHIBALD S. MCKENNON,

Commission to The Five Civilized Tribes, Muscogee, Indian Territory.

GENTLEMEN: For the purpose of considering the business, claims, and grievances of those persons who were formerly held in slavery by the Choctaw Indians, and their descendants, including those persons who have intermarried with Choctaw freedwomen, and those Choctaw Indian women by blood who have intermarried with persons of African descent, and all other persons of African and Choctaw blood and descent, residing in the Choctaw Nation, an association has heretofore been formed, whose membership is composed of the classes of persons enumerated, and is known by the name of the Choctaw Colored Citizens' Association.

REFERRED TO THE DAWES COMMISSION.

In response to a letter addressed to him on the subject, the honorable Secretary of the Interior has advised us to lay our grievances, condition, claims, etc., before the Commission appointed by the President to negotiate with the Five Civilized Tribes in the Indian Territory.

PROCEEDINGS OF THE CHOCTAW COLORED CITIZENS' CONVENTION.

In order that we might comply with this suggestion, a call was made, of which due and timely notice was given, for the members of the Choctaw Colored Citizens' Association to meet in convention at Goodland, Kiamichi County, Choctaw Nation, on the 1st day of February, 1894. At the time and place indicated, the convention was duly and regularly assembled and the proceedings thereof are contained in the accompanying printed pamphlet, embracing a "Memorial of the Choctaw Colored Citizens' Association," wherein is set out very briefly and very generally the wrongs and injustice suffered by the classes of persons comprising the association (who, for convenience, will hereafter be referred to in this paper as the "Choctaw freedmen") by reason of the failure of the Choctaw Nation and the United States to fulfill the treaty relations concerning and affecting the Choctaw freedmen.

It will be seen by reference to the printed pamphlet of the proceedings of the convention (copy herewith, Exhibit 1), that the undersigned were appointed a committee to call upon, confer with, and make known to your Commission the condition, status, grievance, and wants of the Choctaw freedmen.

CONFIDENCE IN THE DAWES COMMISSION.

The Choctaw freedmen consider themselves fortunate indeed in that they have the privilege of laying their claims and grievances before a Commission, now so close at hand, and composed of gentlemen so able, so wise, and so well known for their disposition to do what is fair, right, and just in all matters with which they have to deal. They consider themselves particularly fortunate that they are referred to a Commission whose chairman is a statesman of such exalted national reputation, having such long and thorough familiarity with and experience in the affairs concerning the Indians of this country, and whose wisdom in discerning what is right has contributed so largely to the solution and adjustment of so many difficult problems affecting the relation of the Indian tribes to each other and to the Government of the United States. We therefore feel encouraged that at the hands of your Commission some fair and just plan will be adopted whereby the great wrongs and injustice inflicted upon and suffered so long by the Choctaw freedmen will be righted and adjusted.

UNJUST DISCRIMINATION AGAINST CHOCTAW FREEDMEN AND THE RESPONSIBILITY THEREFOR.

The Choctaw freedmen had no choice in the establishment of the relation of slaves to the Choctaw Indians which previously existed. Their lot, like that of all slaves doomed to unrequited toil and the privations, sufferings, and sorrows of involuntary

bondage and servitude, was a hard one. But when their freedom was secured their great love and attachment for home, kindred, and the associations of their youth induced them rather to remain in the place of their birth, among familiar scenes, customs, and habits, notwithstanding all the surrounding embarrassments, hindrances, etc., than to adventure forth to new fields and occupations amid untried and unfamiliar environments.

The liberation of the Choctaw slaves was a consequence and result of the great war of the rebellion, in which the Choctaw Indians generally threw their aid and influence against the United States. The provision of the treaty of 1866, against slavery thereafter in the Choctaw Nation, was only to give formal acquiescence to what had already been accomplished and already existed.

The Choctaw freedmen claim that when the Choctaw Indians were seeking the reconstruction of their treaty relations with the United States the Choctaw freedmen at that time should have been recognized and treated as Choctaws in all respects, with equal rights with the Choctaw Indians by blood, without regard to their previous condition of servitude.

Upon every principle of justice the recognition of the right of the Choctaw freedmen to a proportionate share in all that belonged to or was claimed by the Choctaw Nation should have been secured to them when the treaty relations between the United States and the Choctaw Indians, broken during the war of the rebellion, were reconstructed.

That such recognition of the equal rights of the Choctaw freedmen in and to the national estate of the Choctaw Indians was not secured in the treaty of 1866 is no fault of the Choctaw freedmen, as they had no voice in the making of that treaty, and they were represented therein only so far as the United States looked after their interests and welfare. That treaty left them without defined rights; unsecured in any privileges, rights, and immunities, with only a stipulation for alternative prospective action for the establishment of their status by either the Choctaw Nation or the United States, as contained in articles 3 and 4 of said treaty, which are as follows:

“ART. III. The Choctaws and the Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98^c west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and the Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in said nations at the date of the treaty of Fort Smith and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively; and also to give to such persons who were resident as aforesaid, and their descendants, forty acres each of the land of said nations, on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulation, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to, as within ninety days after the passage of such laws, rules, and regulations, shall elect to remove, and shall actually remove, from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from said territory, in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining, or returning after having been removed from said nations, to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

ART. IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no dis-

tion affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree that while the said freedmen now in the Choctaw and Chickasaw nations remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and their families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid." (14 Stat., 769.)

The delay and failure of both the Choctaw Nation and the United States for so many years in any attempt at fulfillment of the treaty stipulations, wrought irreparable wrongs, untold hardships, and great injustice and suffering to the Choctaw freedmen.

They had no adequate legal security in any kind of property; no place they could call their own; were not encouraged by any sufficient legal protection, they could not build themselves homes, or surround themselves with even the barest means of existence; to say nothing of the comforts and pleasures which come with an advancing civilization. No provision was made by the United States or by the Choctaw Nation for the education of their children, and they, in their poverty, and with no defined rights, privileges, and immunities, could not procure and provide necessary educational facilities; in the absence of which their children grew up in ignorance, to their great harm, wrong, and disadvantage.

The status of the former slaves of the Indian tribes, among which slavery existed, after their liberation as a result of the war of the rebellion, was not in many respects analogous to that of the liberated slaves of the other sections of the country. The latter were made citizens of the United States, and of the States in which they resided, by an amendment to the Constitution. They became thereby owners in common with equal rights and interests, with all other citizens of the United States in all of the common property of the United States, and with the citizens of their respective States of the common property of said States, and became entitled to full and equal enjoyment of all benefits and advantages derived therefrom.

If the land and other property in the States had been held in common by the citizens thereof, instead of in severalty, as was and is the case, the former slaves and newly made citizens would have become entitled to a pro rata share thereof according to their numbers.

As the land, invested funds, annuities, and other moneys belonging to or claimed by the Choctaw Nation, and constituting the estate of said nation were—as they are yet—held in common by the citizens of the Choctaw Nation, the former slaves of the Choctaw Indians, when liberated as a consequence of the war of the rebellion, should have been recognized at once as Choctaws in all respects and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nation, and also including the right to share equally with the citizens of said nation in the annuities and other moneys and the public domain belonging to or claimed by said nation. That this claim is right and just is shown by the action taken in the reconstructed treaties of 1866 made with the Creeks, Seminoles, and Cherokees, of the Five Civilized Tribes.

In the treaty of 1866 with the Creeks, this provision is made:

"ART. II. The Creeks hereby covenant and agree, that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said Creek country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof) shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe." (14 Stat., 786.)

In the treaty of 1866 with the Seminoles, article 2 is to the same effect. (14 Stat., 756.)

In the Cherokee treaty of 1866 a right to occupy and improve the land, and "all the rights of native Cherokees" are accorded to the Cherokee freedmen and certain other free colored persons, by articles 4, 5, 6, 7, 8, 9, etc. (14 Stat., 800.)

There was no reason why the same principle of justice and right should not have been secured to the Choctaw and Chickasaw freedmen; and with the equality of rights, privileges, and immunities, including the interest in the tribal estate, so fully

acknowledged and recognized in the reconstructed treaties negotiated and concluded with the Creek, Seminole, and Cherokee nations, of the Five Civilized Tribes, to the former slaves of the people of said tribes, it is a cause for great wonder that the United States finally concluded any treaty at that time with the Choctaw and Chickasaw nations which did not fully recognize the equal rights and interests of the former slaves of said tribes in and to the tribal estates.

Who is responsible for this unjust and ruinous discrimination against the Choctaw and Chickasaw freedmen? To whom should they apply but to the United States for the proper measures of relief and reparation?

SUBSEQUENT INEFFECTUAL EFFORTS TO REMEDY ADMITTED TREATY INJUSTICE.

The Choctaw and Chickasaw treaty of 1866 failed to establish and define the status of the freedmen of said tribes. This failure was soon found to have been a serious mistake, the responsibility for which was certainly not with the Choctaw and Chickasaw freedmen.

It has been subsequently sought at various times to secure legislation by Congress to correct this mistake. And the justice of the claim that is here set up in behalf of the Choctaw freedmen, has been heretofore stated with great force and clearness by the honorable Secretary of the Interior (C. Delano) in a report made by him to the Senate Committee on Indian Affairs, on a bill (Stat., 680) for the relief of certain persons of African descent, resident in the Choctaw and Chickasaw nations, which had been objected to by these nations (see Senate Mis. Doc. No. 118, Forty-third Congress, first session). Therein, after referring to the condition of the Choctaw and Chickasaw freedmen, the provisions of the treaty of 1866 as to them, and the failure of fulfillment thereof by both the Choctaw and Chickasaw nations and the United States, the Secretary says:

"Now for the facts. Neither the Choctaw nor the Chickasaw nations have secured to said persons of African descent the rights, privileges, and immunities, including the right of suffrage, provided for in treaty. The United States has not removed any persons of African descent, because such persons are so identified by marriage and customs with said nations as to be unwilling to break up their homes and go elsewhere.

"The \$300,000 has not been invested nor paid to the Choctaw and Chickasaw nations; and the said persons of African descent, who are the most industrious and useful portion of the population of each nation, are without the rights, privileges, and immunities of citizens, without the right of suffrage, without land, and without money, and with a disinclination, under all the painful embarrassments, to leave their homes, friends, and relatives, and go elsewhere, for the pitiful sum of \$100 per capita. They are as meritorious, to say the least, as the average Choctaw and Chickasaw population. They have probably done as much toward securing the wealth possessed by said nations, per capita, as the average Choctaw and Chickasaw population. Under these circumstances their condition is not simply anomalous; it is unjustifiable, oppressive, and wrong, and ought to be remedied.

"Now for the provisions of the bill. It provided that the persons of African descent, before alluded to, shall have all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. Is this wrong? The Choctaw and Chickasaw nations are under treaty obligations to secure these people the rights, privileges, and immunities, of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong, and a great injustice, which should be speedily corrected. But ought these people to have an equal right in the annuities and public domain of the Choctaw and Chickasaw nations? Let us see. The present annuity fund of these nations amounts to about \$100 per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, \$100 per capita, and that is about what the said \$300,000 amounts to.

"By the second section of the bill objected to, this \$300,000 is to be invested and paid in trust for the use and benefit of the Choctaw and Chickasaw nations, so that these persons of African descent will bring to the trust fund of said nations a sum per capita equal to the amount per capita of the present annuity trust fund of the nations.

"This, it seems to me, answers satisfactorily the objections to the bill so far as it relates to the rights of the Africans in the annuity funds of the Choctaw and Chickasaw nations.

"But the bill also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in *common*. The treaty contemplated making the Africans citizens, with equal rights and privileges with the Choctaws and Chickasaws, and upon this principle, in justice and equity, the common property of the nations should

belong as much to the Africans made citizens, as to the native-born citizens of said nations.

"The argument against this provision, drawn from a pretended analogy between this case and the case of the liberated slaves of the United States, does not rest upon a solid foundation. The liberated slaves of the United States did not become entitled to the property held by individual citizens of the United States, in severalty, but to so much of the public domain and other property of the United States as was not the separate property of individuals. These liberated slaves, when they became citizens, did become entitled to equal rights and privileges as other American citizens.

"If you look at the manner in which the Choctaw and Chickasaw nations acquired their property, and if you consider that the improvements made thereon have been made by the labor of the African people, in as large, if not larger proportion, than by the labor of native Choctaws and Chickasaws, you will see that there is not any injustice in giving to these persons of African descent, made free and made citizens, equal rights in all respects with native Choctaw and Chickasaw people.

"A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the African people among the Choctaws and Chickasaws in their present unjust and disastrous situation; will preserve the strife, animosity, and disturbance incident to these relations, and therefore I can not too earnestly or too urgently recommend the passage of the bill during the present session of Congress.

"I beg your careful and attentive consideration of this subject, and hope you will bring it before such of your colleagues as feel an interest in the welfare of these people, and that if you concur with me in this opinion you will endeavor to secure the passage of the measure referred to immediately."

Like other projected measures of legislation designed to correct the mistakes made in negotiating the treaty of 1866, and to remedy the wrong brought thereby upon the Choctaw and Chickasaw freedmen, the bill referred to failed to become a law. It may be that this failure of legislation was due, as much as anything else, to the poverty of these people, and their consequent inability to provide for the employment of competent legal counsel to represent them and to press their case before Congress.

DUTY OF UNITED STATES AS TO FREEDMEN OF THE FIVE CIVILIZED TRIBES.

Justice I. C. Parker, in the case of *United States v. D. L. Payne*, tried in the United States district court for the western district of Arkansas, in the May term, 1881, referring to the right of the Government to locate freedmen in the country ceded by the Seminole Nation by treaty of 1866, containing the language, "In compliance with the desire to locate other Indians and freedmen thereon," says:

"We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there, as well as elsewhere in the United States, by the emancipation proclamation of the President, and by the thirteenth amendment to the Constitution, adopted the 13th of December, 1865, and such abolition was recognized by these tribes in the several treaties made with them in 1866.

"The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice, growing out of their former condition as slaves, and of race, would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied to them."

That this duty would ultimately be fully performed by the United States—notwithstanding the long delay of year after year—the Choctaw freedmen confidently hoped and believed; and they as confidently hoped and believed that reparation would be made, as far as possible, for the damage and injury suffered during the long years of waiting.

INJUSTICE SUFFERED BY CHOCTAW FREEDMEN.

The unsettled condition of the Choctaw and Chickasaw freedmen, and the need for some speedy adjustment of the matter, was frequently mentioned in the annual reports and other documents by the Indian Office, and of the Department of the Interior.

Agent T. D. Griffith, in his annual report for 1872, referring to these freedmen, says:

"But it is of great importance that they should somewhere have well-defined rights. As they are here now, I can not encourage them to make permanent improvements; and without them they are but hewers of wood for others. There should also be means provided for the education of their children. They are not able to employ suitable teachers, and the consequence is, many of these children are growing up ignorant, as their fathers were before them. It would cost something to

establish a school system for them and carry it on until they could do it themselves, but they will do all in their power to aid, and it will be cheaper to educate them than to allow them to grow up, as they are now growing, in ignorance." (Annual Report Indian Office, 1872, p. 238.)

The Commissioner of Indian Affairs, in his annual report for 1874, page 70, says: "The negroes who were formerly owned as slaves by the Choctaws and Chickasaws are in an anomalous condition. They have their freedom, but are without equal rights and privileges. There is no reason in justice and equity why these negroes should not be treated by the Government as a constituent part of these Indian nations, and share with them in all the right of landed property and educational facilities. They are orderly, industrious, and eager for the education of their children, and yet are obliged to spend their labor upon farms to which they have no title, and which, when once well improved, are not infrequently taken from them. Their children grow up in ignorance in sight of schoolhouses in which they may not enter."

Such quotations from official reports might be continued to a further extent. The foregoing are deemed sufficient to show that at least from the close of the war of the rebellion till the Choctaw legislature passed the act of May 21, 1883, adopting the Choctaw freedmen, the Choctaw freedmen continued to exist under great disadvantages, without any pretense at fulfillment of even treaty stipulations concerning them, either by the Choctaw Nation or by the United States.

No positive remedy can reach those who have passed away under unmerited afflictions. Nor can the damage and injury suffered by the living be wholly repaired; but the fullest possible measure of justice should be secured to them, especially for the benefit of the rising generation.

INSUFFICIENCY OF LAW ADOPTING CHOCTAW FREEDMEN FOR FULFILLMENT OF EVEN TREATY STIPULATIONS.

There has been little improvement in the condition of the Choctaw freedmen in many respects since the passage of the Choctaw act of May 21, 1883 (copy herewith, Exhibit 2).

Under that law no equal or adequate facilities for the education of their children are provided. No sufficient protection in the use and occupation of even the forty acres of the public domain guaranteed to them in the treaty of 1866 is secured. In these and many other respects the laws enacted by the Choctaw Nation are not equal in their operation upon the Choctaws and the negroes. No survey has been made by the United States of the Choctaw domain, as stipulated and provided in the treaty of 1866. This failure has added greatly to the embarrassments suffered by the Choctaw freedmen in the use and occupation of land for cultivation, and hindered them in asserting their claims for protection against intrusion upon their improvements and the fruits of their labors, or for dispossession thereof.

When said Choctaw act of May 21, 1883, was submitted to the Commissioner of Indian Affairs, as a compliance with the treaty provisions on the subject, it was objected to by him as not a satisfactory and sufficient compliance with the stipulations of the treaty, and as not calculated to secure the objects and purposes of said treaty stipulations. He therefore declined to give it his approval, but recommended that either the freedmen be removed to the Oklahoma district or that stringent laws be passed compelling the respective tribes to adopt their freedmen, as provided in their treaty. (See Annual Report Indian Office, 1883, p. 53.)

The Secretary of the Interior, however, subsequently held that the said act was a substantial compliance with the third article of the treaty of 1866. (See Annual Report Indian Office, 1884, p. 45.)

Accordingly, money appropriated by the act of Congress of May 17, 1882, for the education of the freedmen was paid to the Choctaw Nation instead.

Subsequently final balance of the claim of the Choctaw Nation upon the \$300,000 mentioned in the treaty of 1866, was placed to the credit of that nation, and its obligations under the treaty, so far as making the laws, rules, and regulations required by the treaty, have been treated as closed.

The practical operation of the provisions of that act of the Choctaw legislature has demonstrated how unsatisfactory and insufficient it is for securing and accomplishing the intents, objects, and purposes of the treaty stipulations on behalf of and for the benefit of the Choctaw freedmen. The children of the Choctaw freedmen are yet growing up in ignorance because of the inadequacy and insufficiency of proper school facilities and advantages. The Choctaw freedmen have no proper security and protection in their homes, property, etc., and whether or not the laws be considered equal in their provisions and purposes, without distinction against the Choctaw freedmen, they are not equal in their application and operation. The Choctaw freedmen feel and suffer the effects and results of discrimination against them in the administration of all departments and branches of the Choctaw government.

In the midst of such embarrassment the Choctaw freedmen have very little of the hope of better things to encourage them to industry, to make permanent improvements in their homes, or other proper efforts to advance in civilization.

The Choctaw freedmen have believed it to be, as it has been judicially declared to be, the duty of the United States, which gave them the boon of freedom, "to secure it, in all that the term implied, to them." They have waited and hoped, and are still waiting and hoping, that the United States will put them in possession and enjoyment of all the rights, privileges, and immunities, without any sort of limitation or distinction thereon, possessed and enjoyed by the Choctaw citizens by blood. And they appeal to the United States, and to your honorable Commission to whom they have been referred by the honorable Secretary of the Interior as the representative of the United States in these matters, to effectuate, by proper, just, and suitable negotiations, the necessary arrangements for securing to them full rights, privileges and immunities as Choctaw citizens, as well in the national estate as otherwise. And they further urge that such arrangements and provisions be so framed and made as to cover the past and present unjust discrimination and the consequent injuries resulting therefrom, as well as to relieve them from any future discrimination, injury, etc.

The immigrant recently landed upon the shores of the United States who has taken the preliminary steps of citizenship becomes entitled to appropriate as much of the public domain as a native-born American citizen, though he has done nothing to defend and maintain the Government, nothing to increase the value of the public domain, and nothing to add to the wealth of the country.

Why were not the Choctaw freedmen, born upon the soil of the United States, with the right of domicil and domiciled in the Choctaw country, whose labor had largely contributed to the wealth of the Choctaw Nation, given an equal interest with the Choctaw citizens by blood, in the lands and other common property of the Choctaw Nation?

To be a citizen of a free country, under a government of the people, by the people, and for the people, without the right to share in the common property of that government, is an absurdity. Such base citizenship inspires no loyalty, but debases and degrades the citizen, and dishonors the government that bestows it.

THE POWER OF CONGRESS TO REMEDY TREATY WRONGS BY LEGISLATION.

It is in the power of the United States, through Congress, to remedy the wrongs brought upon the Choctaw freedmen by the unjust treaty of 1866.

"Under the Constitution, treaties as well as statutes are the law of the land; both the one and the other, when not inconsistent with the Constitution, stand upon the same level, and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later." (Op. of Atty Gen^l U. S., Dec. 15, 1870, 13 Op., 354.)

"A treaty may supersede a prior act of Congress (Foster and Elam v. Neilson, 2 Peters, 314) and an act of Congress may supersede a prior treaty (Tailor v. Morton, 2 Curt., 454; The Clinton Bridge, 1 Walworth, 155). In the cases referred to, these principles were applied to treaties with foreign nations. Treaties with the Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance." (The Cherokee Tobacco, 11 Wall., 616.)

"In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." (Head-money cases, 112 U. S., 580; Whitney v. Robertson, 124 U. S., 190; Chinese exclusion cases, 130 U. S., 581.)

CLAIMS OF THE CHOCTAW FREEDMEN.

No claims not warranted by right and justice are asserted by the Choctaw freedmen.

FULL RIGHTS AS CHOCTAW CITIZENS, AND INDEMNITY FOR PAST WRONGS AND INJURIES.

The Choctaw freedmen claim that they should have and enjoy, and should be secured by the United States in the full possession and enjoyment of, all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, and also including the right to share per capita in the annuities, moneys,

and public domain claimed by or belonging to said nation. They claim that these rights should have been fully secured to them by the United States when the treaty of 1866 was negotiated and concluded; and that the loss, damage, and injury suffered by them by reason of the failure to secure them in the full and equal rights of Choctaw citizens, including the estate of the Choctaw Nation, should be repaired and provided for as far as possible.

This is the claim which they present for consideration of your Commission. And they ask that the fullest possible measure of their claim, within the power of your commission to obtain, be secured to the Choctaw freedmen.

The mistakes and injuries of the past, as well as the hardships and wrongs of the present, suffered by the Choctaw freedmen, should be kept in view in any present or future negotiations that may be had and concluded with the Choctaw Nation; or in any laws that may be enacted by Congress in ratification of any agreements that may be negotiated with them by the United States; or in any laws that may be enacted in carrying out any policy that may be adopted by the Congress with reference to the Choctaw Indians, upon failure of negotiations with them for modification of their existing treaties; and such remedies as may be right and just should be provided.

CLAIM TO AN INTEREST IN THE "LEASED DISTRICT" PAYMENTS.

In the Indian appropriation act of March 3, 1891, provision was made for the payment to the Choctaw and Chickasaw nations of \$2,991,450 as additional compensation for a part of the Choctaw "Leased district." In submitting that matter to Congress for further consideration President Harrison, in his special message of February 17, 1892, said:

"In view of the fact that the stipulations of the treaty of 1866, in behalf of the freedmen of these tribes, have not, especially in the case of the Chickasaws, been complied with, it would seem that the United States should, in a distribution of this money, have made suitable provision in their behalf. The Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, and their condition in that tribe, in a lesser degree in the other, strongly calls for the protective intervention of Congress." (Senate Ex. Doc. No. 42, Fifty-second Congress, first session, p. 3.)

That money has been paid to the Choctaws and Chickasaws; and it has been paid out to the Choctaw citizens by blood. The Choctaw freedmen have not received any portion thereof, nor derived any benefits from that large sum of money, a part of the Choctaw national estate.

A much larger sum is yet claimed by the Choctaw and Chickasaw nations for the remainder of said "Leased district," the payment of which they are expecting to receive when the pending agreements made with other Indians residing upon the land shall have been ratified by Congress.

The part payment already made upon the "Leased district" claim may be taken as a recognition, at least, by the United States, that there is merit in the further payment claimed by the Choctaw Nation on that account, when the remainder of said "Leased district" lands shall be opened to public settlement. It will require legislation by Congress to finally settle that claim. The Choctaw freedmen most respectfully and humbly urge and insist that in any plans, propositions, and arrangements considered by your Commission, in your negotiations with the Choctaw Nation, looking to any agreement with that nation, proper stipulations be incorporated therein for securing to the Choctaw freedmen a just and equitable share of any money that may be hereafter paid to the Choctaw Nation, or the citizens thereof, on account of that claim. They certainly indulge the hope that "the protective intervention of Congress," so strongly urged by President Harrison in their behalf as to the legislation for the payment already made on that claim, may be interposed without any failure in any future legislation on the subject.

THE SURVEY OF THE CHOCTAW LANDS.

The Choctaw freedmen desire and claim that the lands of the Choctaw Nation be surveyed, and also that provision be made for title in severalty to the Choctaw freedmen to the land to which they are justly entitled. They desire this that they may select and settle upon, and cultivate and improve their holdings, establish and furnish their homes, and surround themselves with more of the comforts of life, with some adequate security that they will be fully protected in the use and enjoyment of the fruits of their labors.

SUITABLE EDUCATIONAL FACILITIES.

The Choctaw freedmen desire, claim, and urge that sufficient and suitable provisions and facilities be secured to them at the earliest possible moment for the proper education of their children.

They were for so many years without schools of any sort, and those educational facilities now accorded to their children are so meager and limited that the Choctaw freedmen enjoy almost nothing of the great benefits of education. Their ignorance is pitiable and deplorable.

The past can not be redeemed; but the future can be made so bright that the past, if not atoned for, may be buried and forgotten. They therefore most humbly implore your honorable Commission to provide amply for the education of their children. We would not insult the intelligence and statesmanship of your Commission by consuming more of your time in urging the necessity and benefits of education to the rising generation of the Choctaw freedmen. These benefits we can not have while we continue in our present embarrassed condition; and our poverty is too universal for us to provide, as we should and desire, for the education of our children.

FULL AND EQUAL PROTECTION UNDER JUST LAWS.

Finally, we appeal for emancipation and extrication from our present peculiar and deplorable condition and embarrassments.

We claim and urge that our status be so clearly established, fixed, and defined that we shall be free in deed and in fact, in all that freedom implies. That we be secured in full and adequate protection under just and equal laws, in our person, our property, and our liberty.

When we shall be thus made free, with an equal chance for our lives, liberties, and homes, we shall be encouraged to set ourselves diligently about the task of improving our condition and surroundings, elevating ourselves, and advancing in the ways of civilization.

We ask that your Commission make such personal investigation as may be necessary to satisfy you of the facts in any of the matters herein alleged.

As you will see by the proceedings of our convention, Hon. R. V. Belt, of Washington, D. C., and Hon. Joseph P. Mullen, of Fort Smith, Ark., have been retained as our attorneys in these matters.

Valuable information concerning the Choctaw freedmen will be found in the following public document, one copy of which is herewith submitted:

Senate Ex. Doc. No. 82, Fortieth Congress, second session.

Senate Ex. Doc. No. 71, Forty-first Congress, second session.

H. R. Mis. Doc. No. 46, Forty-second Congress, second session.

H. R. Ex. Doc. No. 212, Forty-third Congress, first session.

We have the honor to be, very respectfully, your obedient servants,

E. D. COLBERT,
D. B. BARROWS,
WESLEY MCKENNEY,

Committee of the Choctaw Colored Citizens' Association.

R. V. BELT, *Washington, D. C.,*

J. P. MULLEN, *Fort Smith, Ark.,*

Attorneys and Counselors for the Choctaw Colored Citizens' Association.

STATEMENT OF THE CHICKASAW FREEDMEN,
SETTING FORTH
THEIR WRONGS, GRIEVANCES, CLAIMS, AND NEEDS.

1894.

Submitted to HON. HENRY L. DAWES, Chairman,
HON. MEREDITH H. KIDD,
HON. ARCHIBALD S. MCKENNON,
*United States Commission to the Five Civilized Tribes of Indians,
Muscogee, Indian Territory.*

By CHAS. COHEE,
ISAAC C. KEMP,
GEO. W. HALL,
MACK STEVESON,
Committee of Chickasaw Freedmen's Association.

Hon. HENRY L. DAWES, *Chairman*,
Hon. MEREDITH H. KIDD,
Hon. ARCHIBALD S. MCKENNON,
Commission to the Five Civilized Tribes, Muscogee, Ind. T.

GENTLEMEN: The undersigned, a committee appointed by the Chickasaw freedmen in convention assembled, as shown by the accompanying copy of the proceedings of said convention, to present to and lay before your honorable Commission the grievances, condition, claims, and the wants of the Chickasaw freedmen, most respectfully request that you give careful consideration to the "Memorial of the Chickasaw freedmen," adopted at said convention, and contained in the copy of the proceedings thereof before referred to; and also to what we, the duly authorized and empowered committee of the said convention of Chickasaw freedmen shall herein present in their behalf.

THEIR HOPE AND CONFIDENCE IN THE DAWES COMMISSION.

Coming, as does your honorable Commission, to the Indian Territory, with the authority of Congress, to negotiate with the Five Civilized Tribes, to such extent as will "enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory," the Chickasaw freedmen, whose domicile is within the Chickasaw country, where they have been born and reared, and where they have treaty rights unfulfilled, deem it right and proper that they should lay before your honorable Commission their condition and grievances, and present to you their claims, needs, and wants. And they do this with the greater confidence, because they recognize in the members of your honorable Commission men of great ability and broad statesmanship, desirous of ascertaining the true state and condition of the whole of the population domiciled within the domain of several Indian nations comprising the Five Civilized Tribes; what rights, if any, they have, their grievances, and the wrongs they have suffered, and not only anxious, but abundantly able to find and report what is the true remedy for the existing evils, and the proper measure of relief for those who have been compelled to suffer injustice at the hands either of the Chickasaw Nation or the United States.

The chairman of your Commission, the Hon. Henry L. Dawes, is a statesman of exalted national reputation, having had long and wide experience in both Houses of the Congress of the United States, where he was recognized as peculiarly and especially skilled in all matters concerning the relation of the Indian and negro population of the country to the United States Government, and where his wisdom and statesmanship have contributed to the satisfactory solution and adjustment of so many of the difficult problems connected therewith. Therefore we the more rejoice that it is our high privilege to lay our matters before your Commission, and we indulge in great hope that the dark night of our existence will soon give way to the dawn of a better day.

ATTORNEYS FOR THE CHICKASAW FREEDMEN.

We have secured for cooperation with our local attorney, Hon. Joseph P. Mullen, of Fort Smith, Ark., the assistance of Hon. R. V. Belt, late Assistant Commissioner of Indian Affairs, and so long connected with the Indian branch of the Department of the Interior under Secretaries Teller, Lamar, Vilas, and Noble, in the future prosecution of our claims, so long neglected for want of proper help.

TREATY PROVISIONS CONCERNING CHOCTAW AND CHICKASAW FREEDMEN.

The treaty relations between the Choctaw and Chickasaw nations of Indians existing at the outbreak of the war of the rebellion were broken and interrupted during that conflict, when loyalty to the United States was renounced and adherence to the Southern Confederacy was proclaimed by treaty, and in which many of the members of those nations gave active aid against the United States. After the close of that conflict, which resulted in the emancipation of African slavery wherever it existed in this country, it became necessary to reconstruct and reestablish treaty relations between the United States and the Five Civilized Tribes in the Indian Territory. The treaty of April 28, 1866, with the Choctaw and Chickasaw nations is the result as to them.

The provisions of that treaty, so far as they sought to establish and fix the status of the persons of African descent, formerly held in slavery by the Chickasaw Indians, and their descendants, are found in articles two, three, and four thereof, which are as follows:

"ART. III. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall exist in said nations."

"ART. III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislature of the Choctaw and Chickasaw nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations, at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said lands, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

"ART. IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree on the part of their respective nations that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in the place of the land cultivated as last aforesaid." (14 Stat., 769.)

NONFULFILLMENT OF TREATY STIPULATIONS.

The stipulations of the treaty of 1866, concerning the Chickasaw freedmen, have never been fulfilled nor carried out. The action of both parties to that treaty, the United States and the Chickasaw Nation, can best be shown by the acts passed by the Congress of the United States and by the Chickasaw legislature. It must be remembered that the Chickasaw freedmen had no voice in the making of the treaty of 1866, and were in no wise represented in the making thereof, except as their interests may have been looked after by the United States.

ACTION BY THE CHICKASAW LEGISLATURE.

November 9, 1866, the Chickasaw legislature passed an act declaring it to be the unanimous desire of the legislature that the United States hold the share of the Chickasaw Nation in the \$300,000, stipulated for the cession of the "Leased dis-

trict," for the benefit of the Chickasaw freedmen, and remove them beyond the limits of the Chickasaw Nation according to the third article of the treaty of 1866.

In 1868, similar action was taken by the Chickasaw legislature asking for the removal, by the United States, of the Chickasaw freedmen from the Chickasaw country.

January 10, 1873, the Chickasaw legislature passed an act entitled "An act to adopt the negroes of the Chickasaw Nation, etc." That act was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and was submitted by the Secretary of the Interior to the Speaker of the House of Representatives, on February 10, 1873, with recommendation for appropriate legislation for extending the time for the execution of the third article of the treaty. The papers were referred to the Committee on Freedmen Affairs, but no action thereon was had. (See Annual Report Indian Office, 1882, p. 57; and H. R. Ex. Doc. 207, Forty-second Congress, third session.)

October 18, 1876, the Chickasaw legislature adopted a resolution providing for a commission, to confer with a like Choctaw commission, looking to the agreement upon some plan for removing and keeping the freedmen from the Choctaw and Chickasaw country (Chickasaw laws, 1878, p. 148).

February 17, 1877, the Chickasaw legislature passed an act entitled "An act confirming the treaty of 1866." In section 3 thereof, "the United States are requested to remove the said negroes beyond the limits of the Chickasaw Nation according to the requirements of the third article of the treaty of April 28, 1866" (Chickasaw laws, 1890, p. 121).

October 4, 1887, the Chickasaw legislature passed the following:

"And, whereas, the Chickasaw people have kindly and friendly feeling towards the freedmen, their former slaves, and wishing them to receive full valuation of the places they live upon, for their support, as provided for in section 4 of the treaty of 1866, do hereby agree that they shall have two years from the passage of this act to sell their improvements in the Chickasaw Nation to the best advantage, that no loss may accrue to them: Therefore,

Be it resolved by the legislature of the Chickasaw Nation, That the nation shall refund to the United States the sum of \$55,000 to be used in removing the freedmen in the Chickasaw Nation to their new home as provided under the third and fourth articles of the treaty of 1866, made between the United States and the Choctaw and Chickasaw nations of Indians." (See Sen. Ex. Doc. 166, Fiftieth Congress, first session.)

The Chickasaw legislature had previously, on October 22, 1885, passed an act rejecting the adoption of the freedmen of the Chickasaw Nation (Chickasaw laws, 1890, p. 171).

ACTION BY THE CONGRESS OF THE UNITED STATES.

In the Indian appropriation act of May 17, 1882, the following provision of law was enacted by Congress:

"That the sum of ten thousand dollars is hereby appropriated out of the three hundred thousand dollars reserved by the third article of the treaty with the Choctaws and Chickasaws concluded April 8 (9), 1866, for the purpose of educating freedmen in said tribes, to be expended under the direction of the Secretary of the Interior, three-fourths thereof for the freedmen among the Choctaws, and one-fourth for the freedmen among the Chickasaws: *Provided, That said sum of ten thousand dollars shall be deducted in like proportion from any moneys in this act appropriated to be paid said Choctaws and Chickasaws: And provided further, That either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribe in accordance with said third article, and in such case the money herein provided for such education in said tribe shall be paid over to said tribe, to be taken from the unpaid balance of the three hundred thousand dollars due said tribe*" (22 Stat., 72).

(Under and subsequent to the foregoing provision of law the Choctaw national legislature passed an act adopting the freedmen of the Choctaw Nation.)

In the Indian appropriation act passed by Congress, August 15, 1894 (Public No. 197, p. 56), the following is contained:

"SEC. 18. That the approval of Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof, January 10, 1873, particularly as set forth in a letter from the Secretary of the Interior, transmitting to Congress a copy of the aforesaid act, contained in House Executive Document numbered two hundred and seven, Forty-second Congress, third session."

What effect, if any, this action by Congress will have upon the status of the Chickasaw freedmen, in view of the subsequent action of the Chickasaw legislature, directly the reverse of its action in the said act of January 10, 1873, is a problem for future solution. It is at least encouraging to the Chickasaw freedmen, notwithstanding it seems to be confusing an already badly confounded matter. It indicates

a desire on the part of the Congress of the United States to do something to carry out its pledges on behalf of the Chickasaw freedmen; and we feel sure that any proper and feasible plan for their relief that shall be formulated and presented by you for the consideration of Congress will receive consideration and action by that body.

ACTION BY THE CHICKASAW FREEDMEN.

The Chickasaw freedmen have waited many long and weary years for the settlement of their status, and the adjustment of their rights, privileges, immunities, claims, etc., so that they might have some security in the enjoyment of the fruits of their labors, educate their children, and surround themselves and their homes with some of the comforts of civilization. From time to time they have memorialized the United States, and laid their grievances before such officers thereof as they could reach, and who would hear them.

When the Chickasaw legislature passed the act of 1866 against the adoption of the Chickasaw freedmen, the latter, by a petition, represented to the United States the bitter feeling existing against them among the Chickasaws, and stated their anxiety to leave the Chickasaw country, and that they would settle on any land that might be designated for them by the United States; and they asked that transportation to such designated land be provided for themselves and families, and that they be furnished with supplies sufficient to enable them to make a start in their new homes.

No attention was given to this petition.

A similar petition was presented on June 10, 1868, which was laid before Congress but no action was taken thereon (see Senate Ex. Doc. 82, Fortieth Congress, second session).

In February, 1869, a delegation of the freedmen went to Washington and there submitted a memorial urging the fulfillment by the United States of the treaty stipulations.

Nothing was accomplished by this mission.

Complaints were presented from time to time, of the denial of rights, privileges, etc., to the freedmen by the Chickasaws; that their children were growing up in ignorance, and that they were all in great distress and poverty; but no action for our relief was taken, except, as shown hereinbefore, in the act of Congress of 1882; and that extended only for the one year, and only for the education of our children, to the extent of \$2,500. With that exception our children, growing up in the very midst of the most advanced civilization of the age, have been absolutely with no greater advantages for their education than if they were living in the very heart of the "Dark Continent."

CONDITION AND TRIALS OF THE CHICKASAW FREEDMEN.

From and after the ratification of the treaty of 1866, the condition of the Chickasaw freedmen has frequently been made the subject of investigation and report by officials of the United States. The results of these investigations can be ascertained by reference to the special reports, in the proper archives of the United States Government.

The annual reports of the United States Indian agents having charge of the Chickasaw Indians, as well as the annual reports of the Commissioner of Indian Affairs, as will be found by reference to the published volumes thereof, have year after year represented the wretched and deplorable condition of these Chickasaw freedmen; and have urged such appropriate and necessary legislation as the facts and circumstances from time to time seemed to them to require and warrant, to afford the proper relief.

In his annual reports for 1869 and 1870, the United States Indian agent, George T. Olmstead, captain, United States Army, strongly urged the necessity for the settlement of the status of the Chickasaw freedmen; and he suggested the negotiation of a supplemental treaty, under which they could be fairly settled and established as citizens of the Choctaw and Chickasaw nations (see Indian Office Annual Report, 1869, p. 409, and 1870, p. 292).

United States Indian agent, T. D. Griffith, in his annual reports for the years 1871 and 1872, invites special attention to the condition of the Choctaw and Chickasaw freedmen. In the latter report he says:

"As they are here now, I can not encourage them to make permanent improvements, and without them they are but hewers of wood for others. There should also be means provided for the education of their children. They are not able to employ suitable teachers, and the consequence is many of these children are growing up ignorant as their fathers were before them. It would cost something to establish a school system for them and carry it on until they could do it themselves, but they will do all in their power to aid, and it will be cheaper to educate them than to allow them to

grow up as they are now growing, in ignorance." (See Ind. Office Annual Rpt., p. 238.)

In his annual report for 1873, United States Indian agent, A. Parsons, stated that—"Some of the freedmen are improving farms and accumulating property. They seem very well satisfied, in all respects, except their uncertainty of their right to vote and the want of any educational opportunities for them. The honorable Secretary of the Interior decided that they clearly had the right to vote, but the disposition of the Chickasaws and Choctaws have been to oppose it, and the freedmen have, therefore, not voted for fear of offending them. The freedmen seem very anxious to have school privileges, and say they will furnish school buildings if by any means teachers and books can be obtained for them." (See Ind. Office Annual Rpt., p. 209.)

Hon. Edward P. Smith, Commissioner of Indian Affairs, states as follows, in his annual report for 1874, page 71:

"The negroes who were formerly owned as slaves by the Choctaws and Chickasaws are in an anomalous condition. They have their freedom, but are without equal rights and privileges. There is no reason in justice or equity why these negroes should not be treated by the Government as a constituent part of these Indian nations, and share with them in all the rights of landed property and educational facilities. They are orderly, industrious, and eager for the education of their children, and yet are obliged to expend their labor upon farms to which they have no title, and which once well improved are not infrequently taken from them. Their children grow up in ignorance, in sight of schoolhouses which they may not enter."

Action was strenuously urged upon Congress in the matter by Hon. Hiram Price, Commissioner of Indian Affairs, in his annual reports for 1881, 1882, 1883, and 1884.

Hon. J. D. C. Atkins, Commissioner of Indian Affairs, in his annual report for 1887, concludes a brief statement of the previous action of the United States with reference to the Chickasaw freedmen, as follows:

"During the year several complaints have been received from the freedmen relative to the denial of their rights, and particularly as to the utter lack of educational facilities. Recently Agent Owen held a conference with some of the leading freedmen, at which they expressed a desire to remain in the nation if their rights, especially in the matter of schools, could be accorded them, but signified their willingness to submit to the decision of the Government. The Chickasaw authorities positively refuse to take any steps looking to their adoption, and even refuse to provide for their education. This reluctance to carry out the stipulations of the treaty, is doubtless caused in great measure by the fear that the freedmen will out vote the Chickasaws, they being fully as numerous as the Indians. These people, therefore, whose rights, protection, and education were guaranteed by treaty, are left in ignorance, without civil or political rights, and with no hope of improvement.

Under these circumstances, I believe their removal from the nation is the only practicable method by which they can be afforded education and other privileges. It has been decided by Judge Parker, of the district court of the western district of Arkansas, that the United States may settle freedmen belonging to the Five Civilized Tribes upon lands acquired from the Seminoles and Creeks, and Agent Owen suggests that the Chickasaw freedmen be removed to that portion of Oklahoma lying on the Canadian River, west of the Pottawatomie Reservation.

"Many of the freedmen have doubtless made improvements on the lands which they and their fathers have occupied but not possessed; and if, because they can acquire no title thereto, they are forced to abandon these improvements, it would be but sheer justice to pay them the full value thereof, in addition to the \$100 per capita which the treaty promised them if they should emigrate.

"I have no reason to suppose that the Chickasaws would object to legislation requiring them to return the \$55,125 to the United States, provided, by the same legislation, they could be relieved of the presence of their freedmen. Congress has heretofore been asked to enact the necessary legislation for the removal of these freedmen, and in my opinion the recommendation should be renewed. A special report upon the subject with a draft of the necessary legislation will be prepared and submitted for your consideration before the meeting of Congress." (See pp. LXIII and LXIV.)

The foregoing is reiterated in his special report on the subject to the Secretary of the Interior, Hon. Wm. F. Vilas, who submitted said report with the draft of the bill, and the detailed and full information accompanying it, to the Congress for its consideration and action, on May 9, 1888. (See Senate Ex. Doc. 166, Fiftieth Congress, first session.)

We will not further weary your patience, nor consume your valuable time with recitals from the published reports of the officers of the United States Government, whose duty it is to present the facts, as to the condition of the Chickasaw freedmen to the attention and consideration of Congress, except to quote from the report of Dew. M. Wisdom, United States Indian agent for 1893, the following:

"The status of the freedmen also in the Chickasaw and Cherokee nations is a 'vexed problem.' In the former nation those people have never by any law or statute of that nation been incorporated into its 'body politic.' They do not vote or hold office, and are denied participation in its funds devoted to educational purposes. The negroes are clamorous for schools and for full recognition of their rights as citizens of the nation. Many of them were slaves to Chickasaw masters or owners, and were born upon Chickasaw soil, are well grounded in the customs and usages of that people, and speak the language as fluently as the natives themselves. They predicate their right to citizenship upon article 4 of the treaty of 1866, and upon the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States. This class of citizens, it is said, exceed in number the native population, and the Chickasaws in defense of their denial to them of the rights of citizenship assert that if the negroes were made citizens they would take charge of the Government and convert it into another Hayti. Doubtless this fear has controlled their course toward them; but nevertheless the condition of the negro is one to be deplored, and it would seem to be difficult to mitigate or remedy, and I have felt it my duty to suggest their condition to the Indian Bureau, without further amplification in the way of details." (See Indian Office Annual Report, 1893, p. 145.)

When we look at the condition of the Creek and Seminole nations, with their large preponderance of persons of African descent and blood, admitted by their treaties of 1866 to full membership into those nations, with equal rights in the nation's funds, domain or other estate, and behold the peace and prosperity within their borders, we must insist that the fears of the Chickasaws that the full adoption of the Chickasaw freedmen as Chickasaw citizens, with the right to share in the national estate, in whatever character or form it exists, will be detrimental to the welfare and interests of the Chickasaw Nation are not well founded. Some other reason must be found for their excuse for denying to the Chickasaw freedmen their just rights, privileges, and claims. Whether that reason be selfishness or unwillingness to accord that justice and equity to their freedmen that they insist for themselves from the United States or otherwise, is left to those who must pass in judgment upon these matters to determine.

Under a resolution of the Senate, March 29, 1894, the committee on the Five Civilized Tribes of Indians, of which Hon. H. M. Teller is chairman, visited the Indian Territory "to inquire into the present condition of the Five Civilized Tribes of Indians, and the white citizens dwelling among them, and the legislation required and appropriate to meet the needs and welfare of such Indians."

While this resolution did not in terms authorize an inquiry as to that class of persons who are neither Indians or white citizens, a class of persons left by Congress in 1866 without defined rights, and with no certain status, and whose condition and existence have been almost continuously ignored during the past twenty-eight years, the committee thought proper to bring to the attention of the Congress the following:

"The Indians maintain schools for their own children. The Choctaws, Cherokees, and Creeks maintain schools for the children of recognized colored citizens, but the Chickasaws have denied to these freedmen not only the right of suffrage, especially provided for in the treaty of 1866, but have also denied the children of freedmen the right to participate in their schools. We find in the Chickasaw country a freedman population somewhat in excess of that of the Indian population, not only deprived of citizenship, but denied the privileges of schools, so that the children of that class are growing up in ignorance, except in a few cases where schools have been maintained by individual means for the education of the freedmen children. This is a plain and open violation of the treaty of 1866."

The committee might have added further that this condition had existed since the making of the treaty of 1866. However, the committee did not complete its work, for it concluded its report as follows:

"As the matters submitted are so complicated and of such grave importance, the committee has thought proper to submit this preliminary report, and hopes, upon further investigation, to be able to make such further and more specific recommendation as to necessary legislation as will lead to a satisfactory solution of this difficult question." (See Senate Report No. 377, Fifty-third Congress, second session.)

This promise of prospective legislation holds out to us a gleam of hope, especially when the standing of the men making the report is considered.

It remains for your commission to present to the Congress some feasible plan of legislation for correcting the existing evils, to secure early legislation on the subject.

Such is our condition as officially reported by the constituted authorities of the United States. We are willing to let it pass without any further amplification. We might add material evidences and facts that would more strongly represent our real situation; but we do not desire even to seem to exaggerate our wrongs, distress, and embarrassments.

Surely we will not be left much longer in our deplorable situation.

Had we existed under such wrongs and hardships in any other land, we believe

that our cries for relief would ere this have been heard by the sympathetic and liberty-loving people of this country; and we would not only have had their pity, and their benevolence reached out to lift us out of our degradation and distress, but such influence in our behalf would have been exerted that the good offices of this great Government would have interposed for the amelioration of our condition long ere this.

We are prone to believe that had our cries of distress come from some distant island of the sea, instead of from the midst of an Indian tribe right here in the United States, the power and influence of the Government of the United States would have been exerted to extricate us from our bondage and barbarism.

Many have died in the midst of great sufferings while waiting and hoping for deliverance; they are now past relief here; others survive, suffer, and hope, having grown up in ignorance, and without the comforts of the civilization that surrounds them, and whose benefits they have longed for; others, still, are growing up to manhood and womanhood, and unless relief soon comes to us another generation must bear through life the blight of wrong and injustice which were inflicted upon their fathers and mothers.

Full and adequate remedy can never be provided. But the measure of relief to the living, and especially to the rising generation, should be as commensurate with the evils endured as it is possible to afford after the lapse of so great a time.

FAILURE OF CONGRESS TO ENACT PROPOSED LEGISLATION FOR FULFILLMENT OF TREATY STIPULATIONS, AND FOR RELIEF OF CHOCTAW AND CHICKASAW FREEDMEN.

The necessity for legislative action in the matter of the Chickasaw freedmen has been laid before Congress at various times, by the Executive Department of the Government, always urging speedy action, and sometimes submitting drafts of proposed legislation, which the condition, circumstances, justice, and equity of their case seemed to demand.

The efforts in this direction, to some extent, are shown by the contents of various Congressional documents on the subject, some of which are here briefly set forth:

Senate Exe. Doc. No. 82, Fortieth Congress, second session, contains a petition from delegates of the Choctaw and Chickasaw freedmen, stating the failure of their adoption by the legislatures of the Choctaw and Chickasaw nations, and asking that the \$300,000, stipulated in the treaty to be held for their benefit, be so used; and that they be removed from the Choctaw and Chickasaw country. This petition, with other papers, was submitted to Congress, with a letter from the Secretary of the Interior, Hon. O. H. Browning, dated July 20, 1868, informing that body of the terms of the treaty as to the freedmen; that the two years within which the legislatures of the nations should act had expired, and the freedmen had not been adopted; and that the duty of their removal, consequently, devolved upon the United States as a treaty obligation; but as no place had been designated to which they should be removed, and no funds provided, by treaty or otherwise, to defray the expense of removal, no action could be taken until Congress should enact the necessary legislation for carrying the treaty into effect. Early attention was earnestly invited to the subject. Congress did not heed this appeal; and no place was designated, and no funds were provided for the removal of the freedmen in fulfillment of the treaty obligations.

The Executive Document H. R. No. 207, Forty-second Congress, second session, contains the act of the Chickasaw legislature, of January 10, 1873, providing for the adoption of the Chickasaw freedmen. This was submitted to Congress by the Secretary of the Interior, concurring in the recommendation of the Commissioner of Indian Affairs, that necessary and appropriate legislation, suggested in the correspondence, be enacted.

It is remarkable that Congress, with such an opportunity for doing something in the matter, neglected to use it, and took no action on that enactment of the Chickasaw legislature for the adoption of their freedmen, from 1873 till 1894, a period of over twenty-one years, during which the Chickasaw legislature had, by several acts passed at different times, taken action directly the reverse of that contained in the act of 1873. By a provision in the Indian appropriation act of August 15, 1894, Congress gave its approval to the Chickasaw act of 1873, as hereinbefore set forth. This may involve the Chickasaw freedmen in a more doubtful status, which they fear not only will not be solved to their advantage, but will, on the other hand, serve to protract the delay in securing effective legislation for their relief.

The Executive Document, H. R. No. 212, Forty-third Congress, first session, contains the draft of a bill submitted to Congress by Acting Secretary of the Interior B. R. Cowan, by his letter of April 4, 1874, wherein he urged its adoption for the relief of the Choctaw and Chickasaw freedmen.

That proposed legislation reiterates, so far as necessary for its purpose, the provisions of the treaty of 1866; states the failure of fulfillment thereof; that the freedmen

were then anxious to remain in the Choctaw and Chickasaw country and to become incorporated as citizens thereof; and it provided—

“That all persons of African descent who were resident in the territory of the Choctaw or Chickasaw nations on the 28th day of April, A. D. 1866, and who had before that been held in slavery among said nations, or either of them, and all the descendants of such persons, shall be entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and the annuities, moneys, and public domain claimed by or belonging to said nations, respectively.”

The further provisions of said proposed legislation provided for disposing of the \$300,000 held under the treaty of 1866, and for carrying the measure into effect.

In urging Congress to take that action, the Acting Secretary, Mr. Cowan, said:

“Almost eight years have passed since the ratification of the treaty above referred to, and the legislatures of the Choctaw and Chickasaw nations have not enacted any laws, rules, and regulations in behalf of the persons of African descent above referred to.

“The ancestors of these negroes came to the Indian Territory with the Choctaw and Chickasaw nations from the State of Mississippi, and have been with them continuously since that time in the capacity of slaves. They were freed by the treaty of 1866, and have been since enjoying the privileges of freedom. They are reported to be industrious, sober, and frugal people, desirous to learn, anxious to secure to themselves homes in severalty, and, above all, anxious to remain in the country where they now live, and which is the only home they have ever known. And, so far as the Department has been able to ascertain, none of them will ever leave that country voluntarily. They have formed strong attachments to the soil; they have acquired, as far as the peculiar laws and regulations governing the Indian nations will permit, homesteads, and have cultivated farms. A strong prejudice seems to exist against these freedmen on the part of the Choctaw and Chickasaws, which will account in some measure for the failure of these nations to provide by law for the division among them of the lands of the nations.

“The Creek, Seminole, and Cherokee nations have each adopted the freedmen into their tribes, and given them equal rights and privileges with other citizens of the nation. The Choctaws and Chickasaws, I understand, have refused to do so. The condition of these negroes strongly appeals to the United States Government for some action that will fix their status, and give them all that they are entitled to by the terms of the treaty above quoted.

“I have the honor to submit herewith the draft of a bill which in my judgment will secure to these freedmen all the rights and privileges to which they are entitled under the treaty. The bill also gives them the right of suffrage, and an equal share in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. While this may not be exactly in accordance with the letter of the treaty, I am satisfied that it is simply a matter of justice to this class of persons who have always been residents of said nations and who are now industrious, law abiding, and useful citizens thereof.

“I respectfully invite the attention of Congress to this subject and trust that it may receive favorable consideration.”

The legislation thus proposed met with the opposition of the Choctaws and Chickasaws, who have always been able to have near the Capitol of the United States, especially during the sessions of Congress, duly accredited representatives, to watch legislation, and to otherwise look out for the interests of said nations respectively. It is not complained that this is so. It is right that they should take care of their affairs. But if the Choctaw and Chickasaw freedmen had been possessed of a small portion of the wealth that their years of unrequited toil had secured to the Choctaw and Chickasaw people, they too would have had active and energetic representatives present to intelligently press these measures for their relief.

As usual, the cause of the freedmen was strongly espoused by the executive branch of the Government. The Senate Committee on Indian Affairs sent the objections to the proposed bill, made by the representatives of the Choctaw and Chickasaw nations, to the Secretary of the Interior, for the report of his views thereon. His report is contained in Senate Mis. Doc. No. 118, Forty-third Congress, first session, wherein, after setting forth the then condition of the freedmen, Secretary C. Delano expressed his views vigorously and forcibly, as follows:

“Now for the facts. Neither the Choctaw nor the Chickasaw nations have secured to said persons of African descent the rights, privileges, and immunities, including the right of suffrage, provided for in the treaty. The United States has not removed any of said persons of African descent, because such persons are so identified by marriage and customs with said nations as to be unwilling to break up their homes and go elsewhere.

“The \$300,000 has not been invested nor paid to the Choctaw and Chickasaw

nations; and the said persons of African descent, who are the most industrious and useful portion of the population of each nation, are without the rights, privileges, and immunities of citizens, without the right of suffrage, without land, and without money, and with a disinclination, under all these painful embarrassments, to leave their homes, friends, and relatives, and go elsewhere for the pitiful sum of \$100 per capita. They are as meritorious, to say the least, as the average Choctaw and Chickasaw population. They have probably done as much toward securing the wealth possessed by said nations, per capita, as the average Choctaw and Chickasaw population. Under these circumstances their condition is not simply anomalous; it is unjustifiable, oppressive, and wrong, and ought to be remedied.

"Now for the provisions of the bill. It provides that the persons of African descent, before alluded to, shall have all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. Is this wrong? The Choctaw and Chickasaw nations are under treaty obligations to secure these people the rights, privileges, and immunities of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong and a great injustice, which should be speedily corrected. But ought these people to have an equal right in the annuities and public domain of the Choctaw and Chickasaw nations? Let us see. The present annuity fund of these nations amounts to about \$100 per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, \$100 per capita, and that is about what the \$300,000 amounts to.

"By the second section of the bill objected to this \$300,000 is to be invested and paid in trust for the use and benefit of the Choctaw and Chickasaw nations, so that these persons of African descent will bring to the trust fund of said nations a sum per capita equal to the amount per capita of the present annuity trust fund of these nations.

"This it seems to me answers satisfactorily the objections to the bill so far as it relates to the rights of the Africans in the annuity funds of the Choctaw and Chickasaw nations.

"But the bill also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in *common*. The treaty contemplated making the African citizens with equal rights and privileges with the Choctaws and Chickasaws, and upon this principle, in justice and equity, the common property of the nations should belong as much to the African made citizens as to the native-born citizens of said nations.

"The argument against this provision drawn from a pretended analogy between this case and the case of the liberated slaves of the United States does not rest upon a solid foundation. The liberated slaves of the United States did not become entitled to the property held by individual citizens of the United States in severalty, but so much of the public domain and other property of the United States as was not the separate property of individuals these liberated slaves when they became citizens did become entitled to equal rights and privileges as other American citizens.

"If you look at the manner in which the Choctaw and Chickasaw nations acquired their property, and if you consider that the improvements made thereon have been made by the labor of the African people in as large, if not larger, proportion than by the labor of native Choctaws and Chickasaws, you will see that there is not any injustice in giving to these persons of African descent, made free and made citizens, equal rights in all respects with native Choctaw and Chickasaw people.

"A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the African people among the Choctaws and Chickasaws in their present unjust and disastrous situation; will preserve the strife, animosity, and disturbance incident to their relations, and therefore I can not too earnestly or too urgently recommend the passage of the bill during the present session of Congress.

"I beg your careful and attentive consideration of this subject, and hope you will bring it before such of your colleagues as feel an interest in the welfare of these people, and that if you concur with me in this opinion you will endeavor to secure the passage of the measure referred to immediately."

This clear and forcible exposition of the justice of the then pending measure shows how strongly the executive branch of the Government of the United States has become convinced of the great injustice brought upon the Chickasaw freedmen by the ratification of the treaty of 1866.

The presence of active and energetic agents representing the Chickasaw Nation before the committees of Congress, and the absence of any such representatives of the freedmen, may account for the failure of enactment by Congress of that or some other remedial legislation for the fulfillment of the treaty stipulations as to the Chickasaw freedmen, and for securing to them the rights in the estate of the Chickasaw Nation to which they are so justly entitled.

The Senate Ex. Doc. No. 166, Fiftieth Congress, first session, contains another effort to secure legislation for the relief of the Chickasaw freedmen. That is the measure drawn under the direction of Hon. J. D. C. Atkins, Commissioner of Indian Affairs, providing for their removal to the Oklahoma district, the appraisal of and payment for their improvements before removal, and the payment to them of a per capita distribution of money to enable them to make a start in their new homes. That measure was submitted to Congress by Hon. Wm. F. Vilas, Secretary of the Interior, as hereinbefore shown, but, like all other appeals and measures presented to Congress for the relief of the Chickasaw freedmen, or even for carrying out the stipulations of the treaty which secured to them such limited, base, and indifferent rights, privileges and immunities, it bore no fruit whatever.

It is thus seen that Congress has taken no action for the fulfillment of its treaty obligations on behalf of the Chickasaw freedmen, nor adopted any measures for their permanent relief, notwithstanding the urgent requests made therefor by the Executive branch of the Government as above shown.

As late as the administration of President Harrison, Congress was appealed to for remedial legislation in their behalf, as will hereinafter appear, but it failed to embrace the opportunity then presented to accomplish something for their relief.

THE DUTY OF THE UNITED STATES TO SECURE NOT ONLY FREEDOM BUT JUSTICE TO THE FORMER SLAVES OF THE FIVE CIVILIZED TRIBES.

Justice I. C. Parker, in the case of United States *v.* D. L. Payne, tried in the United States district court for the western district of Arkansas, in the May term, 1881, referring to the right of the Government to locate freedmen in the country ceded by the Seminole Nation by treaty of 1866, containing the language "In compliance with the desire to locate other Indians and freedmen thereon," says:

"We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there as well as elsewhere in the United States by the emancipation proclamation of the President and by the thirteenth amendment to the Constitution, adopted the 13th of December, 1865, and such abolition was recognized by these tribes in the several treaties made with them in 1866.

"The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice growing out of their former condition as slaves and of race would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied, to them."

That this duty would ultimately be fully performed by the United States, notwithstanding the long delay of year after year, the Chickasaw freedmen confidently hoped and believed, and they confidently hoped and believed, that reparation would be made as far as possible for the damage and injury suffered during the long years of waiting.

There has not only been delay and neglect on the part of the United States in the performance of its clear duty toward the Chickasaw freedmen, but there has been absolute injustice and great damage to them in what has been done.

WHO IS RESPONSIBLE FOR THE UNJUST TREATY DISCRIMINATION AGAINST THE CHICKASAW FREEDMEN?

The Chickasaw freedmen had no voice in the making of the reconstruction treaty of 1866 with the Choctaws and Chickasaws. They had just been relieved from the bondage of slavery, as the result of the war of the rebellion. Their interests and welfare were wholly and absolutely in the keeping and power of the United States. For whatever they received, whether of good or evil, the United States must have the credit or bear the blame.

The time to have settled forever their status was when the treaty of 1866 was negotiated.

The treaty rights of those nations had been forfeited. They were seeking their restoration. Justice and right should then have been insisted upon for the freedmen. No treaty should have been concluded that did not secure to the freedmen the fullest rights that they were justly entitled to. The failure to do what should then have been done has not only entailed untold hardships and misery upon the Chickasaw freedmen that no legislation can ever fully remedy, but this problem so left unsolved, and the protracted delay, and the aggregated neglect to define, fix, settle, and establish the status and rights of the Chickasaw freedmen have made a dark page on the history of the United States.

The United States entered upon the negotiations for reestablishing the treaty relations with the Cherokees, Creeks, Seminoles, and the Choctaws and Chickasaws, comprising the Five Civilized Tribes, with the right purpose in view, and upon just

principles. The commission charged with the preliminary negotiations went to their duty with the distinct instructions that such treaties must contain seven distinct stipulations; the third of these stipulations, which they presented to each tribe, read as follows:

"The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for." (See Annual Report Indian Office, 1865, pp. 298, 320, etc., and H. R. Report No. 3147, Fifty-first Congress, first session, p. 11.)

The Chickasaw delegates, at least those representing the element in that nation that had remained loyal to the United States, expressed their assent to that proposition without change or qualification.

That the United States did not insist upon engrafting that stipulation into the treaty of 1866, that was finally concluded, has been a cause no less of wonder than of trouble and distress.

The provisions on the subject that were incorporated in that treaty show great skill in the methods of negotiation, and high attainments in the art of diplomacy, on the part of the Choctaw and Chickasaw nations and the learned counsel they employed and paid so well for assisting them in conducting those negotiations.

What was stipulated was shown by the second, third, and fourth articles of that treaty. The adoption of the freedmen was left optional with the Choctaw and Chickasaw legislatures. If they did not adopt the freedmen within two years from date of ratification of the treaty, the United States were to remove them elsewhere, pay each \$100, etc.

The promise was little; the performance has been nothing by either party to the treaty.

Let us see what was accomplished for the freedmen of the other tribes among which slavery had existed.

In the treaty of 1866, with the Creeks, this provision is made:

"ART. II. The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter those persons lawfully residing in said Creek country under their laws and usages, or who have been thus resident in said country, and may return within one year from the ratification of this treaty, and their descendants, and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof) shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe." (14 Stat., 786.)

In the treaty of 1866, with the Seminoles, Article II is to the same effect. (14 Stat., 756.)

In the Cherokee treaty of 1866 the right to occupy and improve the land and "all the rights of native Cherokees" are accorded to the Cherokee freedmen, and certain other free colored persons, by articles 4, 5, 6, 7, 8, 9, etc. (14 Stat., 800.)

When it is thus seen how fully the former slaves of the Creek, Seminole, and Cherokee nations were adopted as citizens of those nations, with equality of rights of other members by blood of those nations, in the respective national estates, it is past understanding why the same measure of justice was not insisted upon by the United States for the freedmen of the Choctaw and Chickasaw nations.

The status of the former slaves of the Indian tribes, among which slavery existed, after their liberation as a result of the war of the rebellion, was not in many respects analogous to that of the liberated slaves of the other sections of the country. The latter were made citizens of the United States, and of the States in which they resided, by amendment to the Constitution. They became thereby owners in common, with equal rights and interests, with all other citizens of the United States, in all of the common property of the United States; and with the citizens of their respective States, of the common property of said States, and became entitled to full and equal enjoyment of all benefits and advantages derived therefrom.

If the land and other property in the States had been held in common by the citizens thereof, instead of in severalty, as was and is the case, the former slaves and newly made citizens would have become entitled to a pro rata share thereof according to their numbers.

As the land, invested funds, annuities, and other moneys belonging to or claimed by the Chickasaw Nation and constituting the estate of said nation were—as they are

yet—held in common by the citizens of the Chickasaw Nation, the former slaves of the Chickasaw Indians, when liberated as a consequence of the war of the rebellion, should have been recognized at once as Chickasaws in all respects, and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nation, and also including the right to share equally with the citizens of said nation in the annuities and other moneys and public domain belonging to or claimed by said nation. If this was not right and just, why was it required of the Creeks, Seminoles, and Cherokees, of the Five Civilized Tribes, as hereinbefore set forth?

Had the latter nations been more disloyal to the United States than the Choctaws and Chickasaws? Or were the former slaves of the latter less deserving than those of the other nations? Certainly the unjust discrimination against the Chickasaw freedmen can not be justified on these accounts.

THE POWER OF CONGRESS TO REMEDY TREATY WRONGS BY LEGISLATION.

It is in the power of the United States, through Congress, to remedy the wrongs brought upon the Choctaw freedmen by the unjust treaty of 1866.

"Under the Constitution, treaties as well as statutes are the law of the land; both the one and the other, when not inconsistent with the Constitution, stand upon the same level and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later." (Op. of Attorney-General U. S., Dec. 15, 1870, 13 Op., 354.)

"A treaty may supersede a prior act of Congress (Foster and Elam v. Neilson 2, Peters, 314), and an act of Congress may supersede a prior treaty. (Taylor v. Morton, 2 Curt., 454; The Clinton Bridge, 1 Walworth, 155). In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, can not be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. (The Cherokee Tobacco, 11 Wall, 616.)

"In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." (Head-Money Cases, 112 U. S., 580; Whitney v. Robertson, 124 U. S., 190; Chinese Exclusion Cases, 130 U. S., 581.)

The Chickasaw freedmen have no redress for the evils brought upon them by the treaty of 1866, and no remedy for the wrongs they have consequently suffered thereunder, except through legislation by Congress.

While no more treaties are made with the Indian tribes of the country by the treaty-making power of this Government, agreements are entered into between the United States and said tribes, which, if acceptable, are ratified by acts of Congress, and become the law of the land. Your Commission can, if the Chickasaws are willing, negotiate an agreement with them for our relief. If this can not be accomplished to the satisfaction of all parties, then we ask that you formulate and propose to Congress such legislation as you may be able to recommend for our relief, and for fixing and defining our status, taking into your careful consideration the requests herein presented.

THE CHOCTAW AND CHICKASAW CLAIM FOR ADDITIONAL COMPENSATION FOR THE "LEASED DISTRICT" LANDS, AND PRESIDENT HARRISON'S APPEAL FOR USING A PORTION OF THE MONEY FOR THE FREEDMEN.

It is well known that the Choctaw and Chickasaw nations of Indians asserted claim to further compensation to the land known as the "leased district," ceded by the treaty of 1866 to the United States, claiming that the cession made by that treaty was only for the purpose of locating other Indians and freedmen on said lands, and that if other disposition be made of said lands by the United States, they should have further compensation therefor.

When Congress had under consideration the opening to public settlement of the surplus lands of the Cheyenne and Arapahoe Reservation, a portion of which was included in the said "Leased district," it gave full consideration to the claim of the Choctaw and Chickasaw nations for further compensation for said land, and finally appropriated the sum of \$2,991,450.

President Harrison was not satisfied that the United States were legally or equitably bound to pay the Choctaw and Chickasaw nations anything further for said lands, holding that the treaty of 1866 passed the full title of the Indians to and in said lands.

So fully was he impressed with his belief on the subject he declined to pay over the money to those nations, but resubmitted the matter for the further consideration of Congress, taking occasion, in his special message on the subject, to call

attention to the facts that preparations were being made by those nations to distribute that money to the members thereof by blood only, excluding from participation therein the white persons adopted into the tribes, and also the former slaves thereof, and their descendants.

In this latter connection he said:

"In view of the fact that the stipulations of the treaty of 1866, in behalf of the freedmen of these tribes, have not, especially in the case of the Chickasaws, been complied with, it would seem that the United States should, in a distribution of this money, have made suitable provision in their behalf. The Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, and their condition in that tribe, and in a lesser degree in the other, strongly calls for the protective intervention of Congress." (Senate Ex. Doc. No. 42, Fifty-second Congress, first session, p. 3.)

The matter was further considered by Congress and resulted in a resolution affirming the position already taken by that body as to the justice of the claim of the Choctaw and Chickasaw nations.

The money has, accordingly, been paid over by the United States to the credit of the proper authorities of those nations; and it has been by those nations distributed to the members thereof by blood only.

When that claim was first reported upon by the Indian Office, attention was invited to the unfulfilled treaty stipulations as to the Chickasaw freedmen, and it was urged:

"In any adjustment that may be made of this claim the interests of the Chickasaw freedmen should be guarded and protected." (See H. R. Report No. 3147, Fifty-first Congress, first session, p. 15.) Congress, however, failed to take any action to guard and protect the interests of the Chickasaw freedmen in its adjustment of the claim as recommended by the Indian Office, or to interpose any protective intervention in behalf of the Chickasaw freedmen in the distribution of the money, as so strongly urged by President Harrison.

The amount already paid is for so much of the "Leased district" as was within the boundaries of the Cheyenne and Arapahoe Reservation, opened to public settlement April 19, 1892. The balance of the claim is for so much of the "Leased district" as is within the reservations of the Kiowa and Comanche, and the Wichita, etc., Indians, embracing an area of 3,712,503 acres, which, at the same rate of additional compensation—\$1.05 per acre—allowed for the proportion in the Cheyenne and Arapahoe reservations (aggregating nearly \$3,000,000), makes the balance of that claim amount to about \$3,520,264.65, the allowance and payment of which the Choctaw and Chickasaw nations are seeking from Congress in connection with the ratification of the pending agreements, with the occupying tribes above-named, for opening the surplus lands to public settlement.

The nearly \$3,000,000 already paid to the Choctaws and Chickasaws in part settlement of their claim may be taken as a recognition, at least, by Congress that the claim is an equitable one, and that full payment will ultimately be made, unless the trust upon which the lands are recognized to be held is applied.

The Chickasaw freedmen received no share of the nearly \$3,000,000 heretofore paid, nor have they been participants in anywise in the benefits of said payment. But of that immense sum of money not a schoolhouse was built for the education of the children of the freedmen, now and heretofore growing up in ignorance in the Chickasaw country, and not a cent of it was in any way used to ameliorate and improve the condition or to advance the welfare and interests of the Chickasaw freedmen.

Will Congress pay the balance of the claim and make no provision out of it for the benefit of the Chickasaw freedmen? Will Congress let what seems to be the last opportunity pass without applying some suitable remedy for the wrongs and sufferings of the Chickasaw freedmen at the hands of the Chickasaw Nation?

The claims of the Chickasaw Nation upon the Government of the United States in the matter of this claim are certainly no greater and no more just than are the claims of the Chickasaw freedmen herein presented. If "the protective intervention of Congress," so strongly but vainly urged by President Harrison in behalf of the Chickasaw freedmen, for a share of the payment already made is not interposed in their behalf when the legislation is enacted as to the balance of the claim, then the Chickasaw freedmen can see little hope but to look to the Treasury of the United States alone for redress of their grievances and payment of the claims they have for damages and otherwise resulting to them, not only by reason of failure of fulfillment of treaty stipulations, but by reason of unreasonable and unjust treaty discrimination against them.

RIGHTS OF THE CHICKASAW FREEDMEN IN THE "LEASED DISTRICT."

It will be observed that in the third article of the treaty of 1866, by which the Choctaws and Chickasaws ceded "to the United States the territory west of the 98° west longitude, known as the leased district," there are no words of express limitation upon the title to said land thus conveyed to the United States.

That cession is unlike the cession made at the same time by the Cherokees, Creeks, and Seminoles.

The trust upon which the United States received the lands ceded by these latter nations will be found as follows:

In article 16 of the Cherokee treaty of 1866 (14 Stat., 804). In article 3 of the Creek treaty of 1866 (14 Stat., 786). In article 3 of the Seminole treaty of 1866 (14 Stat., 756).

In the treaties with the Creeks and Seminoles the trust is expressed in these words: "In compliance with the desire of the United States to locate other Indians and freedmen thereon."

There are no such words in the Choctaw and Chickasaw treaty; but those nations were able to satisfy the Congress of the United States, by reference to the records of the negotiations and otherwise, that it was the intention of the parties to that treaty that the lands ceded thereby were coupled with the same trust as expressed in the treaties with the Creeks and Seminoles.

The Chickasaw Nation strongly urged this contention, as will appear in the declarations of B. C. Burney and Overton Love, their accomplished and intelligent delegates, in their "memorial of the Chickasaws relating to the President's message of February 17, 1892," presented to Congress February 26, 1892, wherein they said:

"The President expresses the opinion that the conditions attached to the cessions in the Creek and Seminole treaties of 1866 were the same as those which were attached to the lease in the Choctaw and Chickasaw treaty of 1855, and that, therefore, the claim of the Choctaws that the cession in their latter treaty of 1866 was encumbered by a condition, or trust, is not supported by any analogies of the Creek and Seminole cases. This is a mistake. The trusts created in the Creek and Seminole treaties of 1866 were trust (1) for the location of friendly Indians, in general, without restriction, and (2) for the location of freedmen. Neither of these two trusts were created by the Choctaw and Chickasaw treaty of 1855. Neither of them existed, in the case of the leased district, until created by the Choctaw and Chickasaw treaty of 1866. The trust created by the Choctaw and Chickasaw treaty of 1855 was a trust not to locate Indians in general but to locate certain Indians whose ranges were included within the boundaries designated in the treaty. This treaty of 1855 contained no trust whatever for the location of freedmen. That trust was first created for the leased district by the Choctaw and Chickasaw treaty of 1866.

"It is true that these two trusts of the Choctaw and Chickasaw treaty of 1866 are not created by express words qualifying the grant; but this is also true of the Creek and Seminole treaties. In those treaties the trusts are not expressed, but are implied in words used in recitals only. They are not implied in either of those treaties in words used in the body of the grant. The recital in each case is in the following words: 'In compliance with the desire of the United States to locate other Indians and freedmen thereon,' etc. The words of the grant are even stronger in the Creek and Seminole treaties than in the Choctaw and Chickasaw treaty. The Choctaws and Chickasaws 'cede;' but the Creeks and Seminoles 'cede and convey.'

"These trusts, in the Choctaw and Chickasaw treaty of 1866, are implied in the language of the third article, in which the words of conveyance, the statement of consideration, and the arrangements for the freedmen are placed in such juxtaposition as not only to warrant, but to necessitate the inference that it was the object of the parties and the effect of the treaties to authorize the United States to locate upon these lands Indians whose ranges were not embraced within the limits designated in the treaty of 1855, and also to locate Choctaw and Chickasaw freedmen thereon, and that the cession was encumbered by corresponding trusts. (See Senate Mis. Doc. No. 82, Fifty-second Congress, first session.)

The same position had been taken by the Chickasaws in their memorial, presented to Congress March 19, 1890, by B. C. Burney, chairman Chickasaw commission, and J. D. Collins and Overton Love, Chickasaw delegates, wherein they state as follows:

"One-fourth of the interest of the Choctaws in the proceeds of the land west of the one hundredth meridian had been acquired by the Chickasaws in the purchase of 1837.

"On the 28th day of April, 1886, the Choctaws and Chickasaws, by a treaty of that date, conveyed a trust estate in the lands between the ninety-eighth and one hundredth meridians to the United States. The trust created by this treaty was to remove to and settle on said lands 3,000 Choctaw and Chickasaw freedmen, if willing to be removed. These lands thenceforth remained subject to the trust for the settlement of Indian tribes and bands, whose homes and ranges were within certain designated limits, which trust had been created by the lease of 1855, and also subject to this second trust for the settlement of freedmen thereon. But the Choctaws and Chickasaws surrendered and lost by this treaty all right to settle on those lands themselves, which right had been reserved by the lease of 1855. The United States have located upon the lands west of the ninety-eighth meridian a small number of Indians, and

have also paid for the emigration thereto of 72 Choctaw freedmen. Whether these freedmen emigrated to said lands, or remained in the Choctaw or Chickasaw district, your memorialists are not advised. (See Senate Mis. Doc. No. 107, Fifty-first Congress, first session.)

That contention was settled in favor of the claims of the Choctaws and Chickasaws, as will be seen by the report of the Senate Committee on Indian Affairs, of which Senator Henry L. Dawes was chairman, which declared as follows:

In the message of the President, transmitted to Congress February 17, 1892, he says:

"After a somewhat careful examination of the question, I do not believe that the lands for which this money is to be paid were, to quote the language of section 15 of the Indian appropriation bill already set out, 'ceded in trust by article 3 of treaty between the United States and said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866.'

"The President is of the opinion that the lands in question were not ceded in trust to the United States by this treaty. He thinks that an absolute, unqualified title was conveyed by the treaty, and as he elsewhere says, that the United States paid the Choctaws and Chickasaws therefor the sum of \$300,000. On the contrary your committee believe that the estate conveyed was a trust estate only; that whereas the treaty of 1855 empowered the United States to locate upon these lands only those Indians whose ranges were included within certain specified limits, this treaty of 1866 authorized the United States—

"(1) To locate upon these lands Indians like the Cheyennes and Arapahoes, whose ranges were not within the limits designated in the treaty of 1855, and whom, prior to the treaty of 1866, the United States had no right to locate upon the lands.

"(2) To locate upon the lands Choctaw and Chickasaw freedmen.

"(3) Deprived the Choctaws and Chickasaws themselves of the right to settle thereon." (See Senate Report No. 552, Fifty-second Congress, first session, p. 11.)

Provision was made for the payment of the portion of the claim then contended for, by the act of March 3, 1891 (26 Stat., 1025), appropriating the sum of \$2,991,450.

There are within the occupancy of the Kiowa and Comanche and the Wichita, etc., Indians 3,712,503 acres, which is the remainder of the "leased district," and the basis of the unsettled portion of the claim of the Choctaw and Chickasaw nations for additional compensation.

The statement of these facts and conclusions are here set forth to serve as the basis of an alternative proposition for the settlement of the claims of the Chickasaw freedmen, to be hereinafter stated.

CLAIMS OF THE CHICKASAW FREEDMEN.

The Chickasaw freedmen claim

FULL AND EQUAL RIGHTS, ETC., AS CHICKASAW CITIZENS.

They insist that they were justly and equitably entitled to be, and that they should have been invested, by the treaty of 1866, with full and equal rights, privileges, and immunities with the Chickasaw citizens by blood, including the right of suffrage, the right to equal educational privileges for their children, the right to equal protection under equal and just laws, and the right to share equally in the annuities and other moneys, and in the public domain claimed by and belonging to the Chickasaw Nation, or in which said nation is interested. And that the refusal and denial of the rights so claimed, and the failure and neglect to secure to them said rights, etc., the same as were secured for the freedmen of the Creek and Seminole nations, have been the cause of great damage, loss, and injury to the Chickasaw freedmen, for which they are justly and equitably entitled to indemnification.

The Chickasaw freedmen claim and insist that they be now invested with the full rights, etc., so claimed.

The Chickasaw freedmen claim and insist that they be now indemnified for the damage, loss, and injury sustained and suffered by them from 1866 till they shall be invested with the full rights as Chickasaw citizens, and for the damage, loss, and injury, sustained and suffered by them by reason of the denial of said rights and the failure and neglect to secure said rights to them; and also by reason of the failure and neglect of both parties to the treaty of 1866, or either of them, as shall be determined to fulfill and carry out the stipulations for the very limited rights and benefits provided for them thereunder.

The measure of their claim for indemnification for damages, etc., can be ascertained by the statement of an account of the moneys that have come into the possession of the Chickasaw Nation from payment of annuities, licenses, taxes, and other public charges, and from payments for lands, or on any other account; and prorating the moneys so received between the Chickasaws who received the benefits thereof, and the former slaves of Chickasaws and their descendants.

The amount of the damage, etc., so ascertained, to be paid by the United States directly out of the Treasury, or by the Chickasaw Nation out of its national funds, according as it shall be determined which of the parties are chargeable for such damages, etc.

The funds of the Chickasaw Nation in the custody of the United States, amount to \$1,337,695.65 (not including certain permanent treaty provisions for goods), upon which that nation receives annually from the United States as interest the sum of \$68,221.44.

Out of the payment of the claim for damages the Chickasaw freedmen desire and propose to provide suitable and sufficient educational facilities for their children, and otherwise improve their condition and surroundings.

The Chickasaw freedmen also desire and claim that when they shall be invested with the full rights, etc., so claimed, the lands occupied by the Chickasaw Nation should be surveyed and sectionized, and that provision be made for title in severalty, at least to the Chickasaw freedmen, for the quantity thereof that they would be severally entitled to have and to hold.

The Chickasaw freedmen claim and insist that the foregoing claims are right, just, and equitable; and they insist and urge that said claims be adjusted by an agreement between the United States and the Chickasaw Nation; and that the claim for damages, etc., be speedily paid to and for the Chickasaw freedmen.

PLANS FOR THE ADJUSTMENT OF THE CLAIMS OF THE CHICKASAW FREEDMEN.

We greatly desire that the adjustment of our claims be effected by an agreement between the United States and the Chickasaw Nation. That the adjustment be such as shall be just to both parties, the Chickasaw Nation, and the Chickasaw freedmen, and also to the United States. We desire to remain in the land of our birth, among the people with whose language, customs, and habits we are trained and familiar, and whose friendship we desire and esteem, and against whom we have refrained from stating anything in this paper not necessary to a clear presentation of our case.

If, however, it is found impossible to so adjust our said relations and claims, then and in that event we insist and urge that the adjustment be made by the appropriate and necessary legislation by Congress. Both the right and the duty of Congress to do this have been hereinbefore shown.

ANOTHER FEASIBLE METHOD FOR ADJUSTMENT.

If the claims and relations of the Chickasaw freedmen can not be adjusted on either of the plans above suggested, and it shall be found absolutely necessary for the Chickasaw freedmen to remove from the Chickasaw country, for the public welfare as well as for their own best interests, then, as a dernier resort, we suggest that a sufficient quantity of the surplus lands within the present reservations of the Kiowa and Comanche and the Wichita, etc., Indians, which comprise what remains of the "leased district," be set apart and designated as the land for the location for the Chickasaw freedmen, under the treaty of 1866. That the said freedmen be removed to said land at the expense of the United States. That an appropriation be made of a sum sufficient to pay to each of said freedmen entitled thereto, a per capita payment of \$100, as provided for in the treaty of 1866, with interest thereon from the date said per capita payment should have been made to the date of the payment thereof. That the quantity of land so set apart and designated for the location of the said freedmen thereon shall contain a sufficient number of acres, which, at the rate of \$1.05 per acre, will cover the fair and reasonable amount of damages, loss, and injury sustained and suffered by the Chickasaw freedmen, by reason of the failure and neglect of the parties to the treaty of 1866, to secure to them their just and equitable rights, and the denial, refusal, and neglect of said parties to fulfill the stipulations of that treaty providing for the very limited rights and benefits as therein set forth, and also for the value of the improvements made and put by them on land in the Chickasaw country. That the land so set apart and designated for the location of the Chickasaw freedmen be allotted and patented to them on a fair and just basis, with such limitations and restrictions as to alienation, incumbrance, and so forth, as will prevent the disposal thereof of more than one-fourth the first year, one-fourth after the expiration of five years, and with the right to receive title in fee simple for the remainder after the expiration of ten years.

The right of the United States to locate the Chickasaw freedmen on the lands of the "leased district" has been fully set forth in this paper.

Such disposition of the lands of the "leased district," or what remains thereof undisposed of, will serve double purpose of adjusting the Chickasaw freedmen problem, and at the same time dispose of a large part, if not the whole, of the remainder of the claim of the Choctaw and Chickasaw nations for additional compensation for said lands.

Finally, we beseech your Commission to consider our case carefully, and mature

and put in form some measure for adoption by Congress that will extricate us from our present deplorable and distressed situation, a condition worse than slavery, in which we have been compelled so long to remain, without proper effort for our relief, or remedy for our wrongs.

We hope that your Commission will use the opportunity, while present in the Indian Territory, to acquaint yourselves with all the facts necessary to a full understanding of our claims, our needs, and of the remedies and the measures of relief that right, justice, and equity require to be provided, in order to correct, as far as it can possibly be done at this time, the evils, wrongs, and great injustice under which we have been so long, and are yet, existing.

We hold ourselves in readiness to respond to any demands your Commission may make upon us for facts, information, suggestions, or otherwise, so far as it may be in our power to comply therewith.

Very respectfully, your obedient servants,

CHAS. COHEE,
ISAAC C. KEMP,
GEO. W. HALL,
MACK STEVESON,

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