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# A. H. Jones and H. M. C. Brown. (To accompany bill H.R. no. 727.)

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 534.

# TREATIES OF 1817 AND 1819 WITH THE CHEROKEE INDIANS.

MAY 18, 1860.—Ordered to be printed.

Mr. REAGAN, from the Committee on Indian Affairs, made the following

## REPORT.

*The Committee on Indian Affairs, to whom was referred "A Bill to execute the treaties of* 1817 *and* 1819 *with the Cherokees, by making provisions for the reservations under the same," beg leave to report:*

That they have examined the subject in its general bearings with great care, and are constrained to submit an adverse report. Your committee say that they have examined the bill "in its general bearings," because they have been required to act in the absence of any memorial setting forth a particular and specific state of facts directing them to particular points susceptible of precise determination, and from this fact they have labored under great embarrassment through a tedious, and, on this account, somewhat unsatisfactory investigation; and that embarrassment has been somewhat increased by the fact that they have had to come to a different conclusion on this subject from the one adopted by the Committee on Indian Affairs during the 35th Congress, and because the conclusion they have arrived at is adverse to the opinion of the Commissioner of Indian Affairs, for whose judgment they have great respect.

By the 8th article of the treaty of 1817 it is provided that—

"To each and every head of any Indian family residing on the east side of the Mississippi river, on the lands that are now or may hereafter be surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of six hundred and forty acres of land in a square, to include their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children, reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee agent, which shall be kept open until the census is taken, as stipulated in the third article of this treaty: *Provided*, That if any of the heads of families for whom reservations may be made should remove therefrom, then, in that case, the right to revert to the United States: *And provided further*, That the land which may be reserved under this article be deducted from

the amount which has been ceded under the first and second articles of this treaty."

By the second article of the treaty of 1819 it is provided that—

"The United States agree to pay, according to the stipulations contained in the treaty of the eighth of July, eighteen hundred and seventeen, for all improvements on land lying within the country ceded by the Cherokees which add real value to the land, and do agree to allow a reservation of six hundred and forty acres to each head of any Indian family residing within the ceded territory, those enrolled for the Arkansas excepted, who choose to become citizens of the United States in the manner stipulated in said treaty."

These are the articles of the treaties referred to, under which Cherokees wishing "to become citizens of the United States" were allowed to take reservations; but these articles are to be construed with reference to the preambles and other articles of the same treaties, with reference to the policy and object of the contracting parties—the United States of the one part and the Cherokee nation of the other—and with reference to the other treaties between the parties relating to the same objects and policy.

It will be seen by reference to the 8th article of the treaty of 1817, that the Indians were to take reservations, subject to the condition "That if any of the heads of families for whom reservations may be made should remove therefrom, then, in that case, the right to revert to the United States." This proviso is not inconsistent with the remainder of the article, nor repugnant to it, as has been supposed; but is in harmony with the wise and humane policy the contracting parties had in view. It was the policy of the United States to allow such of the Cherokees as had made sufficient advancement in the arts of civilization, to prefer agriculture and other useful vocations to the hunter life and ruder habits of those less civilized, to select their homes of 640 acres of land each, and to occupy and cultivate them, and become citizens of the United States, and subject to the laws and jurisdiction of the States in which they might reside. Many of them were partly of the white race, and many of them had acquired, to a great degree, the habits of civilization, and some of them large amounts of property. Some of them were fully competent to assume the character of citizens of the United States, and to become subject to State jurisdiction and laws, without the necessity of any special guardianship over their rights by the government of the United States. But, at the same time, it was possible and probable that a much larger number of those who would prefer taking reserves under these treaties to abandoning the homes of their fathers and removing to the wilds of the west, were not sufficiently intelligent to guard against the avarice and crafty overreaching of unprincipled white men, to be at once invested with the power of disposing of the homes secured to them and their wives and children, by the policy adopted in these treaties. And hence these reserves were allowed to the heads of Cherokee families for life, with dower to their widows, and the fee to their heirs, so as to carry out the wise purpose of the government. But this was no doubt regarded by the government as an experiment, with which some of them might become dissatisfied. And hence it

was provided, doubtless in view of the fact that they might afterwards wish to remove to their brethren in the west, that if they removed from these lands they were to "revert to the United States." And this view is fully sustained by the future action of the United States in relation to them, as will be seen when we come to examine the treaty of 1835 between these parties. This view is also supported by the fact that no time is provided in either of these treaties, during the life of the head of the family, when a removal from the land would not cause it to revert to the United States.

We are aware that it has been urged that the provision contained in the 3d article of the treaty of 1817, for taking the census of the whole Cherokee nation, was for the purpose of ascertaining what Indians had taken reserves. But a reference to the preamble, as well as the several articles of that treaty, which relate to the taking of the census, shows that it was for a totally different purpose. These show that one part of the Cherokees wished to move to the west, and that another part wished, at that time, to remain east of the Mississippi, on their old homes. And this census was to be taken to enable the parties to divide the annuities fairly between those who removed to the west and those who should remain east.—(See preamble and 3d and 4th articles treaty of 1817.)—And if further demonstration of this were wanting, it would be found that those who remained east reserved, by this treaty, a large tract of country for their occupation in the aggregate, as a nation, and not to them in severalty as reserves.

These remarks apply with the same force to the subject of reserves under the 2d article of the treaty of 1819, as those taken under it are, by its terms, to be taken in the manner stipulated in the treaty of 1817. And by these treaties, and those of 1828 and 1833, the Cherokees east and those west of the Mississippi were regarded and treated with as distinct communities. But it was found that those remaining in the old nation, east of the Mississippi, were intruded on by the whites, and, in many instances, overreached by them and deprived of the homes the government of the United States had attempted, by the treaties of 1817 and 1819, to secure to them, and so turned out of possession and left as thriftless vagrants to contend with a condition of society for which they were not qualified, and with an intelligence and enterprise to which they were strangers, and in contact with which they were doomed to dwindle out a short and miserable existence, in wretchedness and homeless poverty. At the same time the States in which their lands were situated, regarding them as bad neighbors, were urging the federal government to arrange for the extinguishment of their titles, so as to enable them to extend the laws of those States, respectively, over this territory. And conflicts grew up, under these circumstances, between these States and their citizens and the Cherokees, and between the government of the United States and the governments and citizens of these States. And in adjusting these conflicts the rights of the Cherokees, including some of those who had taken reserves under these treaties, were, in some instances, by these States and their citizens, and, in some instances, it is to be inferred from the treaty of 1835, some of those who had taken reserves were

deprived of them by the action of the federal government. But in what manner, if this occurred, does not now appear.

Under such circumstances, the Indians, many, if not most of them who had taken reserves, as well as those who had not, became restless and discontented, and it became apparent, both to them and the government of the United States, that justice and humanity to them, and an enlightened policy towards our own people, required them to be removed to the west and settled with their brethren there, where they could be left free to pursue their own habits, pursuits, and mode of life, among their own people, on their own soil, in their own government, free from the encroachments of the whites, where their condition could be gradually improved, instead of leaving them where their nationality was doomed to speedy extinction, and their individuals to the utmost horrors of misery and degradation.

It was in view of these circumstances that the treaty of 1835 was made. And in order to sustain the view here taken of the cause which led to the making of that treaty, we here copy the long preamble to that treaty, which is as follows:

"Whereas the Cherokees are anxious to make some arrangement with the government of the United States, whereby the difficulties they have experienced by a residence within the settled parts of the United States under the jurisdiction and laws of the State governments may be terminated and adjusted; and with a view to re-unite their people in one body, and securing a permanent home for themselves and their posterity in the country selected by their forefathers without the territorial limits of the State sovereignties, and where they can establish and enjoy a government of their choice, and perpetuate such a state of society as may be most consonant with their views, habits and condition; and as may tend to their individual comfort, and their advancement in civilization.

"And whereas a delegation of the Cherokee nation, composed of Messrs. John Ross, Richard Taylor, Daniel McCoy, Samuel Gunter and William Rogers, with full power and authority to conclude a treaty with the United States, did, on the 28th day of February, 183[illegible] stipulate and agree with the government of the United States to submit to the Senate to fix the amount which should be allowed the Cherokees for their claims, and for a cession of their lands east of the Mississippi river, and did agree to abide by the award of the Senate of the United States themselves, and to recommend the same to their people for their final determination.

"And whereas, on such submission, the Senate advised 'that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river.'

"And whereas this delegation, after said award of the Senate had been made, were called upon to submit propositions as to its disposition, to be arranged in a treaty, which they refused to do, but insisted that the same 'should be referred to their nation, and their general council to deliberate and determine on the subject, in order to ensure harmony and good feeling among themselves.'

"And whereas a certain other delegation, composed of John Ridge, Elias Boudinot, Archilla Smith, S. W. Bell, John West, William A. Davis, and Ezekiel West, who represented that portion of the nation in favor of emigration to the Cherokee country west of the Mississippi, entered into propositions for a treaty with John F. Schermerhorn, commissioner on the part of the United States, which were to be submitted to their nation for their final action and determination.

"And whereas the Cherokee people, at their last October council at Red Clay, fully authorized and empowered a delegation, or committee of twenty persons of their nation, to enter into and conclude a treaty with the United States commissioner then present *at that place or elsewhere;* and as the people had good reason to believe that a treaty would then and there be made, or at a subsequent council at New Echota, which the commissioners, it was well known and understood, were authorized and instructed to convene for said purpose; and since the said delegation have gone on to Washington city, with a view to close negotiations there, as stated by them, notwithstanding they were officially informed by the United States commissioner that they would not be received by the President of the United States, and that the government would transact no business of this nature with them; and that if a treaty was made, it must be done here in the nation, where the delegation, at Washington last winter, *urged that it should be done, for the purpose of promoting peace and harmony among the people.* And since these facts have also been corroborated to us by a communication recently received by the commissioner from the government of the United States, and read and explained to the people in open council, and therefore believing said delegation can effect nothing; and since our difficulties are daily increasing, and our situation is rendered more and more precarious, uncertain and insecure, in consequence of the legislation of the States, and seeing no effectual way of relief, but in accepting the liberal overtures of the United States.

"And whereas General William Carroll, and John F. Schermerhorn, were appointed commissioners on the part of the United States, with full power and authority to conclude a treaty with the Cherokees east, and were directed by the President to convene the people of the nation in general council at New Echota, and to submit said propositions to them, with power and authority to vary the same, so as to meet the views of the Cherokees in reference to its details.

"And whereas the said commissioners did appoint and notify a general council of the nation to convene at New Echota on the 21st day of December, 1835, and informed them that the commissioners would be prepared to make a treaty with the Cherokee people who should assemble there, and those who did not come they should conclude gave their assent and sanction to whatever should be transacted at this council; and the people having met in council according to said notice.

"Therefore the following articles of a treaty are agreed upon and concluded between Wm Carroll and John F. Schermerhorn, commissioners on the part of the United States, and the chiefs and headmen and people of the Cherokee nation in general council assembled this 29th day of December, 1835."

This preamble throws much light on the policy which was the basis of these several treaties, as well as on the immediate condition of things which controlled the action of the parties.

To the end of this treaty is appended the ratification of its provisions by the delegates of the western Cherokees, to wit:

"Whereas the western Cherokees have appointed a delegation to visit the eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people, and to urge upon them the expediency of accepting the overtures of the government, and that on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west, and the undersigned, two of said delegation, being the only delegates in the eastern nation from the west at the signing and sealing of the treaty lately concluded at New Echota, between their eastern brethren and the United States, and having fully understood the provisions of the same they agree to it in behalf of the western Cherokees. But it is expressly understood that nothing in this treaty shall affect any claims of the western Cherokees on the United States.

"In testimony whereof, we have, this 31st day of December, 1835 hereunto set our hands and seals.

"JAMES ROGERS, [SEAL.]
"JOHN SMITH, [SEAL.]
"*Delegates from the Western Cherokees.*"

This is given for the purpose of a clearer understanding of the fact that this treaty, provisions of which will be referred to hereafter, was intended to secure the final settlement of all the Cherokees together in the country west of the Mississippi, and as a final settlement of all the difficulties which had grown out of the previous division of the nation and attempt on the part of the United States to invest some of them with the character of citizens of the United States, the encroachment of the whites on them, and the attempts of the several States embracing parts of their territory, to extend their jurisdiction and laws over them.

But it was still found that a few of them wished to remain subject to State laws and jurisdiction. And they were provided for in the 12th article of the treaty of 1835, which is as follows:

"Those individuals and families of the Cherokee nation that are averse to removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside, and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and *per capita*, as soon as an appropriation is made for this treaty. Such heads of the Cherokee families as are desirous to reside within the States of North Carolina, Tennessee, and Alabama, subject to the laws of the same, and who are qualified or calculated to become useful citizens, shall be entitled, on the certificate of the commissioners, to a pre-emption right to one hundred and sixty acres of land or one quarter section, at the minimum Congress price, so as to include the

present buildings or improvements of those who now reside there, and such as do not live there at present shall be permitted to locate, within two years, any lands not already occupied by persons entitled to pre-emption privilege under this treaty; and if two or more families live on the same quarter section and they desire to continue their residence in these States, and are qualified as above specified, they shall, on receiving their pre-emption certificate, be entitled to the right of pre-emption to such lands as they may select not already taken by any person entitled to them under this treaty.

"It is stipulated and agreed between the United States and Cherokee people that John Ross, James Starr, George Hicks, John Gunter, George Chambers, John Ridge, Elias Boudinot, George Sanders, John Martin, Wm. Rogers, Roman Nose, Situwake, and John Timpson, shall be a committee on the part of the Cherokees to recommend such persons for the privilege of pre-emption rights as may be deemed entitled to the same under the above articles, and to select the missionaries who shall be removed with the nation, and that they may be hereby fully empowered and authorized to transact all business on the part of the Indians which may arise in carrying into effect the provisions of this treaty and settling the same with the United States. If any of the persons above mentioned should decline acting or be removed by death, the vacancy shall be filled by the committee themselves.

"It is also understood and agreed, that the sum of one hundred thousand dollars shall be expended by the commissioners in such manner as the committee deem best for the benefit of the poorer class of Cherokees as shall remove west or have removed west, and are entitled to the benefits of this treaty; the same to be delivered at the Cherokee agency west as soon after the removal of the nation as possible."

But when this treaty of 1835 was submitted to the President of the United States, he expressed his determination not to allow any pre-emptions or reservations, and his desire that the whole Cherokee people should remove together and establish themselves in the country provided for them west of the Mississippi river, as is shown by the preamble to the supplemental articles of May 23, 1836, to the treaty of 1835, which is as follows: "Whereas the undersigned were authorized at the general meeting of the Cherokee people held at New Echota, as above stated, to make and assent to such alterations in the preceding treaty as might be thought necessary; and whereas the President of the United States has expressed his determination not to allow any pre-emptions or reservations, his desire being that the whole Cherokee people should remove together and establish themselves in the country provided for them west of the Mississippi river."

And upon this view of the subject the first article of the supplemental treaty of 1836 provides that:

"It is hereby agreed that all pre-emption rights and reservations provided for in articles 12 and 13 shall be, and are hereby, relinquished and declared void."

And this policy was unquestionably adopted to put an end to the confusion and difficulties which so far had attended the efforts to

secure a portion of the Indians their homes in the old nation, and bring them under the laws and jurisdiction of the States in which they lived, and to protect them in the future from the multiplied misfortunes in which this policy was involving them.

The 13th article of the treaty of 1835 was adopted as a final adjustment of all the preceding difficulties in relation to reserves taken under the treaties of 1817 and 1819. It is as follows:

"In order to make a final settlement of all the claims of the Cherokees for reservations granted under former treaties to any individuals belonging to the nation by the United States, it is therefore hereby stipulated and agreed and expressly understood by the parties to this treaty, that all the Cherokees and their heirs and descendants to whom any reservations have been made under any former treaties with the United States, and who have not sold or conveyed the same by deed or otherwise, and who, in the opinion of the commissioners, have complied with the terms on which the reservations were granted as far as practicable in the several cases, and which reservations have since been sold by the United States, shall constitute a just claim against the United States, and the original reservee or their heirs or descendants shall be entitled to receive the present value thereof from the United States as unimproved lands. And all such reservations as have not been sold by the United States, and where the terms on which the reservations were made, in the opinion of the commissioners, have been complied with as far as practicable, they, or their heirs or descendants, shall be entitled to the same. They are hereby granted and confirmed to them; and also all persons who are entitled to reservations under the treaty of 1817, and who, as far as practicable, in the opinion of the commissioners, have complied with the stipulations of said treaty, although by the treaty of 1819 such reservations were included in the unceded lands belonging to the Cherokee nation, are hereby confirmed to them, and they shall be entitled to receive a grant of the same; and all such reservees as were obliged by the laws of the States in which their reservations were situated to abandon the same or purchase them from the States, shall be deemed to have a just claim against the United States for the amount by them paid to the States, with interest thereon for such reservations, and if obliged to abandon the same, to the present value of such reservations as unimproved lands, but in all cases where the reservees have sold their reservations, or any part thereof, and conveyed the same by deed or otherwise, and have been paid for the same, they, their heirs or descendants, or their assigns, shall not be considered as having any claims upon the United States under this article of the treaty, nor be entitled to receive any compensation for the lands thus disposed of. It is expressly understood by the parties to this treaty that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoliations and the cession of their lands, but the same is to be paid for independently by the United States, as it is only a just fulfillment of former treaty stipulations."

From this it will be seen that neither the government of the United States, nor the Cherokee nation, at the time of the making of this treaty, looked upon the titles of the heads of Cherokee families to these reservations as being so completely vested in them, their widows, and heirs, as to be taken out of the reach of negotiation. The United States regarded them as inchoate, incomplete grants, not vested, still liable to revert to the United States on the removal of the reservee. The Cherokee nation so regarded them, and there was no assertion at that time of any indefeasible title by the individuals holding these reserves; but they acquiesced in the arrangement, and it is fair to say that, so far as any information now existing shows, every one of them who did not retain his reserve accepted and received the consideration offered by the United States for it, and removed to the west. And to guard against wrong to any of them, the government provided that where any of them had been sold by the United States, or where they had been compelled to abandon them by the laws of the States, they should be paid for them; and as to those who still held their reserves, not sold by the United States or interfered with by State laws, and who had complied with the conditions on which they received them, they were, by this thirteenth article of the treaty of 1835, invested with full and perfect title to them by the words "*they are hereby granted and confirmed to them.*" Not, as in the treaties of 1817 and 1819, on condition that they should have them surveyed in a particular place or form, nor on condition that if they removed from them they were to revert to the United States, but by absolute and unconditional grant. And this is the first act of the goverment under which the titles to these reserves became complete in the heads of families for life, with dower to their widows, and the remainder in fee to their heirs, so that they might not be forfeited to the government by removal; and hence the subject of arrangement and contract between the parties to these inchoate grants.

And though it has been forty-three years since the treaty of 1817, and forty-one years since the treaty of 1819 was made, and though the country in which these reserves were allowed embraced parts of the States of North Carolina, Tennessee, Georgia, and Alabama, and might have been the subject of adjudication in all of these States, as well as in the courts of the United States, we have not been shown any case decided, and are not aware of the existence of any such case, in conflict with the view here stated.

If those holding these reserves were at any time ousted of their possession by the force or fraud of individuals, and appealed to the courts for their rights, without surrendering them upon contract and for a consideration to the United States, and removing from them, then, of course, the reservee or his widow or heirs could recover them at law, and ought to do so if suits were brought before the bar of prescription.

But in such a case as this it cannot upon any principle of reason or justice be said that the United States is any party to the matter, or in any way liable to either party to pay them out of litigation brought

about either by the fraud of the one or the folly of the other or by both combined. For every purchaser of such claims could not avoid knowing that he bought but a life estate from the head of the family at best, and that his claim was subject to the superior future right of the widow and heirs, where such existed. No person buys land without looking at the title, and if he neglects this important duty to himself neither law or equity will relieve him.

We conclude, therefore, that these reserves were conditional up to the date of the treaty of 1835. That if those holding them at any time before that period voluntarily removed from them they reverted to the government of the United States, and that neither the widow or heirs would, in such case, have any claim, and that none such could have been successfully set up at any time. That if there are disputes purely between individuals, about such of them as have not been forfeited, without fault on the part of the government, that they have no more claim on the public treasury to pay them out of their litigation than any other private litigants about purely private rights. And we go further, and say that, to allow a man to defraud another and then appropriate money out of the public treasury to buy for him his peace would be to offer a direct premium to fraud and overreaching. As evidence that many of these reserves were surrendered under the treaty of 1835, by those who held them, and other equivalents accepted for them, and with a view to the bettering of their condition by a removal to the west, we have but to look to the preamble and provisions of the treaty of 1835, and to the treaty supplemental to this of 1836. By the 3d article of this supplemental treaty "the sum of six hundred thousand dollars is allowed to the Cherokee people," a part of which was to be in lieu of the reservations and preëmptions which they gave up when they agreed under the treaty of 1835 and supplement of 1836 to abandon them and remove to the west. This six hundred thousand dollars was in addition to the five millions of dollars the Cherokees received for the cession of their tribal lands, &c., under the treaty of 1835. And the treaty with them of 1846, and several acts of Congress show, with those above referred to, that large sums of money were paid to them for the surrender of these reservations.

The principle asserted in the bill that "reversion in fee simple and reservation of dower could not be affected by any act of omission of the tenants of the life estate in such reservations, after the right once attached," is certainly correct as an abstract principle of law. But we are of opinion this principle cannot be invoked in behalf of the widows or heirs of such of the heads of Cherokee families as accepted the terms of subsequent treaties, and removed to the west prior to or under the treaties of 1835 and 1836; but only to such as were invested with absolute titles under those treaties, in view of a final settlement of all questions between the government and reservees in relation to them. And as to those titles made absolute by these treaties, as we have said in a former part of this report, if the heads of families have sold them, the purchasers must have taken them subject to the ultimate and superior rights of the widows and heirs, and there is no reason why the federal government should now use the public moneys to buy

the outstanding superior titles for them, any more than that they should appropriate money to buy the peace of any and all other private litigants. Besides, it is apprehended that if a general law like this be now passed, so many years after this whole matter was supposed to have been finally settled between the government and the parties with which it was concerned, the door would be thrown wide open to very extensive frauds on the treasury, and we have now no means of calculating what amount of money would be drawn from the treasury under it. It is believed to be true that persons have engaged extensively in buying from the heirs of those who had at some time indicated their intention to take reserves and afterwards accepted the benefits of other treaties and removed to the west, their claims to these reserves, with a view either to attempting the assertion of these titles in the courts of the country, or to securing a consideration for them from the federal government, under some such enactment as the one now before us. There is one claim now before this committee of this character. And the opinion is entertained by some persons that these titles may be successfully set up. But under the view we have taken of the subject, these claims could have no standing in a court of justice, and constitute no basis for a just claim against the federal government. And we are strengthened in this opinion by the fact that no adjudicated case has been shown us, after this long lapse of time, establishing a contrary doctrine. We have examined quite a number of cases in the reports of the federal and State courts, but they have all gone off on different grounds.

In addition to this, it is believed the passage of this bill might be construed to give rights where none now exist, and probably to revive rights of action, for the encouragement of merely speculative litigation, which may have ceased to exist under the law of prescription or statutes of limitation ; and it is always unwise to disturb the repose of titles to real estate where they have the sanction of a fair construction of existing law or treaty stipulations in carrying out the policy of those departments of the government having the proper control of the subject, and especially after more than a generation of our race have passed away.

It is not doubted that some honest people desire the passage of such a law as this, on account of their fears of the expense and supposed hazards of threatened litigation by those holding such claims as we have mentioned, but their fears of expense and trouble in resisting unjust claims constitute no reason why this bill should pass. The other interests demanding the passage of such a law are believed to be in those holding these speculative claims, or in persons who have, by improper and unlawful means, got in possession of lands belonging to the heirs of those who obtained reserves, and neither of these classes are entitled to any consideration from the government.

It may also be observed, in relation to the principle asserted in the bill, that no act of omission on the part of the heads of Cherokee families could prejudice the rights of their widows and heirs, that the assertion of such a principle may be liable to a very important qualification. As we have before said, its accuracy cannot be questioned

if the title of the parties had become vested under our local jurisdiction; but before the principle can properly be asserted, it must be ascertained that these titles had become absolute; and we have shown that they did not become absolute until made so by the treaty of 1835; and, in addition to this, it is to be observed that so long as these titles remained inchoate, they were under the power of the parties to these treaties, and the rights of the Cherokees were subject to the power and will of the political authority, as similar rights of the citizens or subjects of any other government would be subject to the action and control of the political sovereignty of such government. And the treaties of 1835 and 1836 show that the policy of the treaties of 1817 and 1819, with reference to allowing Cherokees to hold reserves and be admitted to the rights of citizens of the United States, and brought under State laws and jurisdiction, was changed, in view of the facts presented in former parts of this report, by the common consent of both nations, for the manifest good of the Cherokees themselves. But this policy, beneficial as it was to most of the Cherokees, was not allowed to affect the rights of those of them who did not chose to remove voluntarily to the west and accept the provisions of other treaties and laws of the United States for their benefit, so that even though the power existed in the two nations to affect the inchoate rights of individual Cherokees, still no such power was exercised.

Some stress has been laid on the fact that it had become the duty of the United States to extinguish the Indian title to the lands in the several States concerned. While it is true the government of the United States was charged with the duty of extinguishing these titles, it must be understood that it reserved to itself the determination of the time and circumstances when and under which they should be extinguished. And when we consider the multiplied difficulties the government has encountered in the removal of the Indians, and the vast amount of money it has expended in the removal of them and in extinguishing their title to the lands in the States embracing parts of their nation, it is not believed there is any just ground of complaint by these States or their citizens on this account. And in this connexion it should be remarked that, as to these reserves, the Cherokees who took them did so on the condition, among other things, that they were to become citizens of the United States, and subject to the laws and jurisdiction of the States in which they resided, so that, as to them, the Indian title was extinguished, and the title vested in them as citizens of the United States by the same acts which secured them their rights to these reserves. But if it be insisted that on the extinguishment of the title to these Indian lands they must have reverted to the States respectively, it is a sufficient answer that the federal government reserved the exercise of its discretion as to the time and manner of extinguishing these titles; that the allowance of these reserves was a part of the consideration given for the complete extinguishment of the title to the remainder of the Cherokee country; that these reserves constitute but an insignificant fraction of the vast tract of

country acquired from the Cherokees; that the States accepting these Indian lands did so upon the conditions stipulated by their agent in the management of this trust, the government of the United States, and cannot reasonably repudiate the contract without repudiating it altogether, and so relinquishing the large amount of lands secured to them by the contract. We regard this as rather technical and plausible than as a fair and reasonable ground on which to urge the passage of this bill. This it is not in their power to do. For these reasons we report against the passage of this bill.