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CLAIM OF CHOCTAW NATION.

MEMORIAL

IN BEHALF OF

THE CHOCTAW NATION,

IN RELATION TO

Their claim to the net proceeds of their lands ceded to the United States by treaty of Dancing Rabbit Creek, September 27, 1830.

JANUARY 17, 1871.—Referred to the Committee on the Judiciary.

JANUARY 18, 1871.—Ordered to be printed.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The undersigned, in behalf of the Choctaw Nation of Indians, appears before your honorable body to urge the claim, so often presented by the nation, for payment of the moneys due to them as awarded by the Senate when acting as the referee, to whom the nation submitted their demand for the net proceeds of their lands on the east side of the Mississippi, under the treaty of June 22, 1855.

That the nature and merits of this claim may be clearly understood, and with a view to present to your honorable body a brief history of it, it is necessary to go back to the treaty of Dook's Stand of the 18th October, 1820, between the Choctaws and the United States.

After reciting that "it was an important object with the President of the United States to promote the civilization of the Choctaw Indians, by the establishment of schools among them, and to perpetuate them as a nation by exchanging, for a small part of their land here, a country beyond the Mississippi River, where all who live by hunting, and will not work, may be collected and settled together," and that it was desirable for the State of Mississippi to obtain a small part of the land belonging to the nation, the first article of the treaty ceded, on the part of the Choctaw Nation to the United States, all the land lying within the boundaries described, and "*in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same,* the commissioners of the United States, in behalf of said States, ceded to said nation a tract of country west of the Mississippi River, and bounded as follows:" (U. S. Stat. L., vol. 7, p. 210.)

Beginning on the Arkansas River, where the lower boundary of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles

below the mouth of Little River, which empties into Red River on the north side thence a direct line to the beginning.

By the treaty between the same parties of February 19, 1825, a part of the land so ceded to the Choctaw Nation was retroceded to the United States; that is to say, "all that portion lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red River." (U. S. Stat. L., vol. 7, p. 234.)

What remained after this deduction was the land that has been held by the Choctaws and Chickasaws up to this time, the Chickasaws obtaining a portion of it under the convention between the two nations of January 17, 1837. (U. S. Stat. L., vol. 11, p. 573.)

The treaties of 1820 and 1825 are important in this connection, because it has often been erroneously supposed and argued that the lands west of the Mississippi River, ceded to the Choctaws, formed a part of the consideration upon which they ceded to the United States the residue of the lands east of the river by the treaty of Dancing Rabbit Creek, concluded September 27, 1830. On the contrary, it is very evident that the whole of the Choctaw and Chickasaw lands, now held by them, are held under a title from the United States *acquired in 1820*; and although, in the second article of the treaty of 1830, the United States stipulate to convey a tract of country west of the Mississippi *in fee simple* to the Choctaw Nation and their descendants, to inure to them *while they shall exist as a nation and live on it*; yet the "boundary of the same is declared to be agreeably to the treaty made and concluded at Washington City in 1825," which was the boundary described in the treaty of 1820, less the deduction made in 1825.

It is to be observed, too, in this connection, that while the treaty of 1820 was, on its face, an unqualified cession to the Choctaws of the country west of the Mississippi, the second article of the treaty of 1830, although it bound the United States to convey to the nation and their descendants the same land *in fee simple*, which might have been held to make them the absolute owners, so qualified the grant, nevertheless, as to prevent any disposition of the property, such as, it had been contended, could have been made under the treaty of 1820, by making it enure to the Choctaw Nation only *while they exist as a nation and live on it*, which was, in fact, no better title than was held under the treaty of 1820. This whole question was, however, discussed before the Committee on Indian Affairs of the Senate, in their report of June 19, 1860, in which it was held that "the country west was no part of the consideration for the cession by the Choctaws of their country east in 1830." (36 Cong., 1st session, Senate, Rep. Com. No. 283, p. 4.)

At the date of the treaty of Dancing Rabbit Creek, September 27, 1830, the Choctaw Nation, upon the above statement of facts, held, under a title recognized by the United States, in accepting the cession from the nation in 1820, all their lands east of the Mississippi not ceded by the treaty of 1820, amounting to upwards of 10,000,000 acres. This residue was ceded by the treaty of 1830. It has all, long since, been sold by the United States for many millions, which have gone into the Treasury, and it is for the NET PROCEEDS of these sales, to which the Choctaws insist that, by a fair construction of the treaty and agreeably to the understanding at the time, they are entitled—it is for these "net proceeds" that they have made persistent claim from the date of the treaty to the present hour.

This claim, however, as it is now presented, is to be considered in connection mainly with the treaty of June 22, 1855. (U. S. Stat. L., vol. 11, p. 611.)

Few Indian treaties involved more important interests, or were nego-

tiated with more care, apparently, than this. It embraced many subjects besides the Choctaw claims under the treaty of 1830. The articles preceding the 11th settled the boundaries between the Choctaws and Chickasaws, and defined their respective interests in the lands, and provided, in detail, for the operation of the laws of the respective nations. The Choctaw lands west of the 100th degree of west longitude were ceded, and their lands lying between the 98th and 100th degree were leased to the United States. One of the articles guaranteed the Choctaws and Chickasaws from domestic strife and from hostile invasion, and from aggressions by other Indians and white persons. Other articles related to the extradition of criminals—licenses to trade—the military posts of the United States; provided for the right of way for railroads and telegraphs; stipulated that thereafter there should be but one agent for the two nations—Choctaw and Chickasaw; and the last article but one superseded former treaties inconsistent thereto, and substituted the treaty of 1855 in place of them. These provisions of the treaty are referred to, that Congress may understand that the “net proceeds” claim, now under consideration, was not, as has sometimes been supposed, the main object of the parties, or that the treaty, as has been alleged, was gotten up as a means of speculating upon the Government.

The 11th article of the treaty of 1855 is as follows:

ARTICLE XI. The Government of the United States, not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws, as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much. (U. S. Stat. L., vol. 11, p. 613.)

The 12th article declares that “the adjudication and decision of the Senate shall be final.”

The Senate, in assuming the position of referee in this matter, but acted as it has done both before and since. By the supplementary treaty of New Echota, March 1, 1836, with the Cherokees, it was stipulated that, in certain events, such further provision might be made as the Senate, on a reference to them, might deem just, (U. S. Stat. L., vol. 7, pp. 488, 489,) and Congress subsequently carried out the award. (U. S. Stat. L., vol. 5, p. 73.) So, in a treaty with certain bands of the Sioux, it was agreed that the title of the Indians should be submitted to the Senate for decision, and, if the title was good, what compensation should be paid them for the land, (U. S. Stat. L., vol. 12, pp. 1032–3;) and here, too, Congress appropriated what was necessary to pay the award. (U. S. Stat. L., vol. 12, p. 237.)

The treaty of 1855 was proclaimed on the 22d of June, and on the 18th of March following the memorial of P. P. Pitchlynn, then, as now, a Choctaw delegate, asking for action under it, was referred to the Senate Committee on Indian Affairs. The committee, however, did not report until the 15th February, 1859. (See Senate Rep. No. 374, 2d sess. 35th Cong.) The document they then presented is full and exhaustive; it states the arguments on both sides fairly, furnishes abundant details, showing the care taken in its preparation, and resulting in the following

resolutions adopted by the Senate March 9, 1859. (Senate Journal, 2d sess. 35th Cong., 1858-59, p. 493.)

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the first day of January last, deducting therefrom the cost of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of \$1 25 per acre; and further, that they also be allowed 12½ cents per acre for the residue of said lands.

Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above-described principles of settlement, and report the same to Congress.

On the 8th May, 1860, the Secretary of the Interior transmitted to Congress the report of the Commissioner of Indian Affairs of March 22, with the account stated by the Second Auditor of the Treasury, February, 1860. (See Ex. Doc. No. 82, 36th Congress, 1st session, H. R., pp. 1-3.) And, on the 19th June, 1860, the Committee on Indian Affairs, "having had under consideration the report of the Secretary of the Interior, and the account stated under his direction showing the amount due the Choctaw tribe of Indians, according to the principles of settlement prescribed by the award of the Senate," made their report. (36th Congress, 1st session, Senate Rep. Com. No. 283.)

At page 2 of the report of the Secretary of the Interior above mentioned will be found the statement of account required by the decision and resolutions of the Senate of March 9, 1859, from which it appeared that the balance due by the United States to the Choctaws was \$2,981,247 30. This statement exhibits the following facts, viz:

	Acres.
That the total area ceded by the Choctaws under the treaty of 1830 was.....	10, 423, 139. 69
From which was to be deducted reservations allowed and secured.....	334, 101. 02
Actual quantity sold up to January 1, 1859.....	5, 912, 664. 63
	<u>6, 246, 765. 65</u>
Leaving the residue of the land.....	<u>4, 176, 374. 04</u>
The proceeds of sales of land up to January 1, 1859, viz, 5, 912, 664. 63, were	\$7, 556, 568 05
To which were to be added 12½ cents per acre for 4, 176, 374.04 acres.....	522, 046 75
	<u>\$8, 078, 614 80</u>
Making the gross amount due the Choctaws	\$8, 078, 614 80
From this were to be deducted the cost of survey and sale of 10, 423, 139.69 acres, estimated by the Commissioner of the Land Office at ten cents per acre	1, 042, 313 96
Other payments and expenditures as per treaty.....	4, 055, 053 54
	<u>5, 097, 367 50</u>
Leaving the balance reported by the Secretary	<u>2, 981, 247 30</u>

This balance of \$2,981,247 30 was the amount to which the Choctaws were entitled under the resolutions of the Senate of March 9, 1859; but when the statement showing it, and required by the second resolution, came before the Senate with the report of the Committee on Indian Affairs, of June 19, 1860, (36 Cong., 1st sess., Senate Rep. Com. No. 283,) it was reduced by deducting five per cent. on the actual sales of land, which the United States had paid to the State of Mississippi, amounting to \$362,100 70, and the value of certain lands, at 12½ cents per acre, that Congress had given to that State for railroad and school purposes, amounting to \$286,595 75, making an aggregate of \$648,696 45 to be taken from the "net proceeds," as ascertained by the Secretary of the Interior, which reduced the claim under the report of the Senate, com-

mittee to \$2,332,550 85. "It is difficult to see," adopting the language of the House Committee on Indian Affairs, in their report of July 6, 1868, (40th Cong., 2d session, II. R. Report No. 77,) "why, under the treaty, the Indians should have been charged with the 10 cents per acre on the unsold lands, amounting to \$451,047 50; or with the money and lands *given away* by Congress to the State of Mississippi, amounting, as shown above, to \$286,595 75, and to 2,292,766 acres of land; but, as a speedy settlement was earnestly desired, the Choctaws have not heretofore been disposed to question it, and the facts are referred to for the purpose of proving that the Senate's committee in their report to the Senate, when acting in the character of referee, did not show any favor to the Indians. The amount of the final report of the committee in 1860 was arrived at by making every possible deduction from the gross amount received from the sale of said lands, so that the sum of \$2,332,560 85, thus found to be due, was the net profit that the United States had realized in the transaction, after deducting presents to the State of Mississippi, a sum which was then in the Treasury belonging to the Indians." (See page 2 of the report last cited.)

It is to be said, further, in this connection, that by referring to the report of the Senate committee suggesting the deductions here referred to, of June 19, 1860, it appears that one of the reasons for allowing them, "in fulfillment of the duty created by that treaty, to give the rights and claims of the Choctaw people a just, fair and liberal consideration," was "because of the impossibility of ascertaining the real amount to which, upon a fair settlement, the Choctaw Nation and individuals were entitled; but which amount, it was evident, was of *startling magnitude!*" Nor is it, perhaps, quite clear why the committee of June 19, 1860, after admitting that it was an equitable construction of the award and its true intention—that the United States should return to the Choctaws only so much as remained in their hands as profits from the lands ceded by the treaty of 1830, after payment of all expenses and disbursements of all kinds, under said treaty—why the committee should have included in these expenses and disbursements 10 cents an acre for survey of land that never *was* surveyed for the benefit of the Choctaws, or the *free gifts* for railroad and school purposes to the State of Mississippi. On the same principle, if the United States had *given away* all the Choctaw lands to the State of Mississippi, instead of selling some of them at \$1 25 an acre, the Choctaws might have been brought in debt, under the 11th article of the treaty of 1855!

Pursuing the history of the "net proceeds" in order of date, Congress, on the 2d March, 1861, appropriated \$500,000 in part payment of the claim, in these words:

For payment to the Choctaw Nation or tribe of Indians, on account of their claim, under the 11th and 12th articles of the treaty with said nation or tribe, made the 22d June, 1855, the sum of \$500,000; \$250,000 of which sum shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of said nation or tribe, on their requisition, bonds of the United States authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws under the treaty aforesaid the sum shall be charged against the said Indians." (U. S. Stat. L., vol. 12, p. 238.)

Of this sum the \$250,000 was paid, but the bonds, although prepared and ready to be issued, were withheld on the breaking out of the rebellion "for safe-keeping," with the consent if not at the request of the Choctaw delegation then in the city of Washington; but, on the 3d March, 1865, Congress directed the amount to be paid to the Interior Department for the support of refugee Indians, in lieu of said bonds. (U. S. Stat. L., vol. 43, p. 562-3.)

This act of Congress, the Attorney General of the United States, after a full examination of the subject and an exhaustive argument, has decided to be void, so far as it operated a repeal of the act of March 2, 1861, authorizing an issue of the bonds. (See Ex. Doc. H. R. No. 25, 41st Congress, 3d session.)

Deducting from the amount due under the report of the Senate's Committee on Indian Affairs of \$2,332,550 85 the \$500,000 here mentioned, and there remains the sum of \$1,832,550 85, which is the amount the Choctaws have at various times expressed a willingness to accept in order to obtain a speedy settlement of the "net proceeds" claim. But it is most respectfully submitted, that inasmuch as this settlement has been so long delayed, they are entitled to claim the whole amount due under the award of the net proceeds of their lands by the Senate, as reported by the Secretary of the Interior, under said award.

After the rebellion, the treaty of April 28, 1866, was made with the Choctaw Nation, which contains two articles that are supposed to bear on this subject. They are as follows :

ARTICLE X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation, with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith, and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year, ending on the 30th June, in the year 1866.

ARTICLE XLV. All rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty. (U. S. Stat. L., vol. 14, pp. 774-779.)

Having shown the circumstances under which the Senate's award was made, and the amount of it, the question is whether the United States are not bound for it.

The Committee on Indian Affairs of the Senate, April 13, 1869, recommending its reference to the Judiciary Committee, speaks of it as "the *so-called* award of the Senate." The Choctaws contend, however, that it is, to all intents and purposes, an award in exact accordance with the reference which authorized it; a reference made by parties to a treaty into which they were competent to enter, having full authority from their respective principals, the United States being represented by the Senate in the exercise of its constitutional power, and the Choctaws by their delegates appointed for the purpose. If, as is undoubted, it is competent for the President and Senate to acquire territory by treaty—and every acquisition of land from the Indians has been made in this way—and if the consideration is not agreed upon at the time, or a dispute arises subsequently in regard to it, the treaty-making power on behalf of the United States certainly may refer the adjustment to a third person; or, with the assent of the other party, who alone would be entitled to object, refer the settlement to the Senate, in which event its action becomes an award between them. As already said, the Senate, in agreeing to act as referee in this particular case, has but conformed to its practice heretofore in like cases. In the case of the treaty with the Cherokees at New Echota, and as well as in the case of the treaty with certain bands of the Sioux, Congress recognized the awards of the Senate respectively by making the appropriations necessary to carry them into effect. So, here, Congress recognized the award of the Senate by the act of March 2, 1861, in the appropriation "for the payment to the Choctaw Nation, or tribe of Indians, *on account of their claim* under the 11th and 12th articles of the treaty with said nation or tribe, made the

22d June, 1855," the 11th article, as already seen, having made the Senate the referee when it provided for the submission to *its adjudication* the question, "whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the land ceded by them to the United States by the treaty of September 27, 1830," &c.

The Choctaws contend, therefore, that the Senate, having the power to agree to the reference and the power to act as referee, rendered an award which was binding upon the United States, and was so recognized by Congress when it made the appropriation for carrying it, in part, into effect.

It is true that the proviso of the appropriation clause above quoted speaks of the future adjustment of the claim of the Choctaws, but the award of the Senate had settled the *right* in replying to the question submitted by the treaty, and in directing the Secretary of the Interior to state the account showing the amount to be due. This had been done, and the only adjustment to be effected was to determine whether, from the balance to the credit of the Choctaws, under the award of \$2,981,247 30, as found by the Secretary of the Interior, there should be deducted the \$648,696 45 recommended by the report of the Committee on Indian Affairs of June 19, 1860, and what amount of interest would be due on final settlement of this account under the award of the Senate.

Having arrived, then, at the conclusion that the United States were bound by the Senate's award at the time it was rendered, we are next to inquire whether this obligation has been affected in any way by what has since occurred; and here two questions present themselves:

1. Does the fact that during the late rebellion the Choctaws were involved on the side of the confederates forfeit the claim established by the Senate's award?

2. If it was forfeited, has it not been placed *in statu quo* by the tenth and forty-fifth articles of the treaty of April 22, 1866?

1. The strongest light in which the case can be put, as against the Choctaws, is to regard them as alien enemies, to whom the United States were indebted at the breaking out of the war. The law in this connection is to be found in the opinion of the Supreme Court in the case of *Brown vs. the United States*, reported in 8 Cranch, 123. Here some timber, enemy's property, was within the limits of the United States at the breaking out of the war of 1812 with Great Britain.

In delivering the opinion of the court, Marshall, Chief Justice, said:

Is the declaration of war such a law as divests the owner of his property? Does that declaration, by its own operation, so vest the property of the enemy in the Government as to support proceedings for its seizure and confiscation, or does it only vest a right, the assertion of which depends on the sovereign power.

The universal practice of forbearing to seize and confiscate debts and credits, the principle universally received that the right to them revives on the restoration of peace, would seem to prove that war is not an absolute confiscation of this property, but simply confers the right of confiscation.

Referring, then, to the modern rule, as stated by the court in regard to the immediate confiscation of enemy's property, the Chief Justice continues:

This rule appears to be totally incompatible with the idea that war does, of itself, vest the property in the belligerent government. It may be considered as the opinion of all who have written on the *jus belli* that war gives the *right* to confiscate, *but does not itself confiscate the property of an enemy.*

Again, after discussing the question in connection with the Constitu-

tion of the United States, and referring to acts of Congress for illustration, the Chief Justice, speaking always for the majority of the court, says, (p. 127):

The proposition that a declaration of war *does not, in itself, enact a confiscation of the property of the enemy within the territory of the belligerent, is believed to be entirely free from doubt.*

Judge Story dissented in the above case, but upon grounds not at all inconsistent with those above taken.

He held, that after the declaration of war by the particular act of Congress, the President might proceed to confiscate by the proper proceedings, without further action on the part of Congress; but he nowhere, in his very extended opinion, held that the declaration of war, or the state of war, amounted, in itself, to a confiscation of the belligerent's property.

In Lawrence's edition of Wheaton's Elements of International Law, of 1863, the same doctrine is maintained. In Dana's edition of 1866, of the same work, it is again asserted, § 805, *in notis*, thus:

Certainly no private property is now lost to the owner unless its confiscation is *especially ordered by the highest authority in the State.*

The *legislation of Congress* has been in exact conformity with the law thus laid down.

The act of August 6, 1861, declares what property shall be liable to confiscation, and prescribes the proceedings necessary to that end.

The act of July 17, 1862, § 5, makes it the duty of the President to seize property, moneys, stocks, credits, and effects belonging to the parties indicated; and the 6th section makes it the duty also of the President to seize and use the property, &c., of persons, ("*within any State or Territory within the United States,*") "*being engaged in armed rebellion against the Government,*" "*or aiding and abetting such rebellion,*" who shall not cease to aid, &c., within sixty days after warning and proclamation by the President. And the section prescribes the proceedings necessary "*to secure the condemnation and sale of such property,*" "*that it may be available for the purpose aforesaid.*"

The Indian country, however, is neither a State nor a Territory of the United States, within the meaning of the Constitution. (See the decision of Chief Justice Marshall, in the case of the Cherokee Nation *vs.* The State of Georgia, 5 Peters, 17.) The law being as here stated, recognized to be so by Congress in its action in this connection, what is the situation of the claim, originating and perfect before the war, *now that peace has been established?*

In the case of Ware *vs.* Hylton, in the Supreme Court of the United States, 3 Dallas, 227, the court refers with approbation to Sir Thomas Parker's Reports, p. 267, (11 Wm. 3d,) "in which it was determined that the *choses in action* belonging to an *alien enemy* are *forfeitable* to the crown of Great Britain; but there must be a *commission and inquisition* to entitle; and if peace is concluded *before* inquisition taken, it *discharges the cause of forfeiture.*"

Again, Kent, 1 vol., 173, 8th ed., says: "Debts existing prior to the war, and injuries committed prior to the war, but which made no part of the reasons for undertaking it, remain entire, and the remedies are revived," the authority referred to being Vattel, b. 4, ch. 2, §§ 19, 21.

The fact that the United States is the debtor here, cannot affect the principle. The *status in quo, ante bellum*, was restored by peace. Vattel, quoted by Wheaton, 527, says:

The state does not even touch the sums which it owes to the enemy. Everywhere, in case of war, the *funds confided to the public* are *exempt from seizure and confiscation.*

And, again, he says:

Everything which belongs to the enemy is liable to reprisal as soon as it can be seized, *provided it is not a deposit confided to the public faith*, which ought to be respected in open war.

Upon these authorities it would seem difficult, indeed, to arrive at any other conclusion than that, even regarding the Choctaws as alien enemies, their claim for the net proceeds, suspended while the war lasted, revived in full force when it ended, and needed no subsequent treaty to reëstablish it.

Nor did Congress, while the war was in progress, regard the claims of the Choctaws arising under treaties with the United States as forfeited by the war.

The act of 1862, July 12, (U. S. Stat. L., vol. 12, p. 528,) provides:

That in cases where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized *by proclamation* to declare all treaties with such tribe to be abrogated by such tribe, *if, in his opinion, the same can be done consistently with good faith and legal and national obligations.*"

No such proclamation, as is well known, was ever issued; and the treaty of 1866 was subsequently entered into with the Choctaws and Chickasaws, containing numerous provisions, and among others one reaffirming all obligations arising out of treaty stipulations and acts of legislation. And recently the Attorney General has advised the Secretary of the Treasury that the treaty of 1866 repealed the act of Congress of 1865 in relation to the bonds of the United States authorized and directed to be issued to Choctaws under the act of 1861, and that he (the Secretary) is legally authorized to issue and deliver said bonds for \$250,000, without reference to Congress. In the view here taken, the Choctaws have been regarded as alien enemies, to whom the law, as laid down by the Supreme Court, was applicable. The act of 1862, however, places them in a more favorable position by its recognition of all existing treaties, in the absence of any abrogating proclamation from the President.

That it was not the intention of Congress to abrogate the treaties with the Choctaws is further proved by that clause in the act of 1862 which declares "that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be *suspended and postponed*, wholly or in part, at and during the discretion and pleasure of the President;" a clause that would hardly have been inserted in the act had Congress believed that the treaties were abrogated by the rebellion, or had intended, in such an event, to proceed to confiscate the moneys due on account of them.

2. The second proposition, as to the effect of the 10th and 45th articles of the treaty of 1866, in restoring the claim under the Senate's award to its *status ante bellum*, supposing it to have been forfeited *jure belli*, has been necessarily discussed in what has been already said, and it is needless to expatiate upon it.

The first clause of the 10th article, in reaffirming preëxisting obligations, did no more than recognize the law in regard to them here stated. The second clause renewed the payment of the annuities and other moneys accruing under such treaty stipulations and acts of legislation, the payment of which had been *suspended* by the President under the act of 1862, already more than once referred to.

Thus presented, then, the Choctaws contend most respectfully, upon the facts,

1. That the action of the Senate, under the treaty of 1855, was an award binding the United States to pay to the Choctaw Nation the net proceeds of their lands ceded in 1830, amounting to \$2,981,247 30, less such sum as they are properly chargeable with under the act of March 2, 1861.

2. That the claim thus awarded to the Choctaws was not affected by the war further than to suspend its payment while the rebellion lasted.

3. That even were there any doubt in this respect, it would be removed by the act of Congress, passed while the war was in progress, recognizing the existence of this treaty among others, and by the treaty of 1866, which, in reaffirming the obligations of the United States in regard to treaty stipulations and acts of legislation, but corroborated the conclusions of law applicable in this instance.

4. That, taking into consideration the circumstances that led to the treaty of 1855; the losses and suffering of the Choctaw Nation in removing from the State of Mississippi to their new homes in the Indian Territory west of the river, of which there is abundant proof in the report of the Senate Committee on Indian Affairs of February 15, 1859, (35th Congress, 2d session, Senate report No. 374,) the fact that the United States has had the use, without interest, for many years, of the amount claimed under the award as the net profit realized in the sale of the Choctaw lands, beside the advantages, not to be estimated in money, resulting from the extinguishment of the Indian title east of the Mississippi, and the growth there of prosperous States, while the original possessors of the soil, decimated by their removal, and yet struggling on through all obstacles to an honorable civilization—taking all this into consideration, the Choctaws contend that not only as a matter of strict law are they entitled to the Senate's award, but that technical equity, as well as common honesty, require it should be paid to them with interest; and it is most respectfully submitted that no further delays should be interposed, inasmuch as their claim has received the examination and sanction of both Committees on Indian Affairs of the House and Senate, and of the Judiciary Committee of the Senate last session of the present Congress.

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