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Chickasaw freedmen.

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Recommended Citation

S.Doc. No.157, 55th Cong.,1st Sess.(1897)

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CHICKASAW FREEDMEN.

JUNE 23, 1897.—Laid on the table and ordered to be printed.

Mr. PLATT, of Connecticut, presented the following

MEMORANDUM OF THE CASE OF THE CHICKASAW FREEDMEN, BRIEF AND ARGUMENT, BY R. V. BELT, THEIR ATTORNEY; ALSO THE LAWS OF THE CHICKASAW LEGISLATURE, AND ACTS OF THE CONGRESS OF THE UNITED STATES, TOGETHER WITH A MEMORIAL OF THE CHICKASAW NATION AND CHICKASAW FREEDMEN ON THE SUBJECT, WITH ARGUMENT BY GEN. H. E. PAINE, ATTORNEY FOR THE CHICKASAW NATION.

THE CHICKASAW FREEDMEN; THEIR RIGHTS UNDER THE CHOCTAW AND CHICKASAW TREATY OF 1866.

The Choctaw, Chickasaw, Cherokee, Creek, and Seminole Indians, comprising what is known as the "Five Civilized Tribes," were formerly slaveholders. During the war of the rebellion each of said tribes broke off their treaty relations with the United States and made treaties with the Southern Confederacy. When the war closed the reestablishment of treaty relations between the United States and said tribes became necessary. For this purpose a commission was authorized and appointed. Hon. D. N. Cooley, then Commissioner of Indian Affairs, chairman of the Commission, acting under the instructions of the President, informed the said tribes, among other things, as follows:

* * * * *
The President is anxious to renew the relations which existed at the breaking out of the rebellion.

We, as representatives of the President, are empowered to enter into new treaties with the proper delegates of the tribes located within the so-called Indian Territory, and others above named, living west and north of the Indian Territory.

Such treaties must contain substantially the following stipulations:

* * * * *
3. 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.

4. A stipulation in the treaties that slavery, or involuntary servitude, shall never exist in the tribe or nation, except in punishment of crime. * * * (See Annual Report, Indian Office, 1865, p. 298.)

A treaty of peace was concluded in 1865 with all of the tribes. That was followed by a separate treaty with each of the tribes, concluded in 1866, by which slavery was abolished, the duties and obligations of the Indians and of the United States set out, and cessions of lands made to the United States by the respective tribes, upon which to locate other Indians and freedmen.

The former slaves of the Creek, Seminole, and Cherokee Indians were made citizens of those tribes, respectively, by the treaties then negotiated. (See art. 2, Creek treaty, 14 Stat., 786; art. 2, Seminole treaty, 14 Stat., 756; articles 4, 5, 6, etc., Cherokee treaty, 14 Stat., 800.)

Strong but unsuccessful effort was made to conclude satisfactory and final stipulations for the adoption of the former slaves of the Choctaw and Chickasaw Indians, in the treaty of 1866, made with those tribes. The agreement reached, as shown by the third and fourth articles of said treaty (14 Stat., 769), left it optional with the Choctaw and Chickasaw legislatures to adopt their freedmen as citizens, give them certain rights, privileges, and immunities, and give them 40 acres of land each. Two years were allowed for this; meanwhile the freedmen were to have land to cultivate in the Chickasaw country. If the freedmen were not so provided for within the two years from ratification of the treaty, it became the duty of the United States to remove and provide for the freedmen elsewhere, paying each one removed \$100. The \$300,000 stipulated to be allowed for the lands in the "leased district," ceded by that treaty to the United States, was to be held in trust by the United States, to be paid to the tribes, if they provided for the freedmen according to the treaty stipulations; if they did not so provide for their freedmen, the \$300,000 was to be held by the United States for the use and benefit of the freedmen to be removed from the Chickasaw country by the United States. (See Exhibit No. 1 for said articles of the treaty.)

It is now more than thirty-one years since the making of that treaty with the Choctaws and Chickasaws, and the Chickasaw freedmen have not yet been put into the enjoyment of their rights, according to the clear meaning and intent thereof.

There has been legislation by the Chickasaw legislature, by the Congress of the United States, petition by the freedmen, and so forth, on the subject, as follows:

1866.—The Chickasaw legislature passed an act, approved November 9, 1866, declaring it to be the "Unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of \$300,000 for the benefit of said negroes, and the governor of the Chickasaw Nation be requested to notify the Government of the United States that it is the wish of the Chickasaw Nation for the Government to remove said negroes from within the limits of the Chickasaw Nation according to said third article of the treaty of April, 1866. (Exhibit No. 2.)

1866.—The Chickasaw freedmen petitioned the United States, in view of the apparent feeling of the Chickasaws toward them, to be removed and located elsewhere, etc. (Exhibit No. 3.)

1868.—Choctaw and Chickasaw officers, on August 17, 1868, informed the Commissioner of Indian Affairs that their legislatures had not passed the laws, rules, and regulations, as provided in article 3 of the treaty of 1866, but had by act expressed their desire for removal of the freedmen by the United States, as stipulated in the treaty. (Exhibit No. 4.)

1868.—The Chickasaw freedmen again petitioned the United States to remove them from the Chickasaw country. (See Senate Ex. Doc. No. 82, Fortieth Congress, second session. Exhibit No. 5.)

The Chickasaw freedmen again memorialized the United States to remove them and fulfill the treaty stipulations. (Exhibit No. 6.)

No action resulted from these petitions and memorials.

1873.—The Chickasaw legislature passed an act, approved January

10, 1873, to adopt the negroes of the Chickasaw Nation, as per the stipulations of the treaty of 1866; the said act—

to be in full force and effect from and after its approval by the proper authority of the United States. And all laws, or parts of laws, in conflict with this act are hereby repealed.

This act was submitted to the President, and was laid before Congress for action, as a proceeding "done after the expiration of the two years within which the action was limited by the treaty." (See House Ex. Doc. No. 207, Forty-second Congress, third session. Exhibit No. 7.)

1874.—The Secretary of the Interior strongly urged legislation by Congress that would give to the Chickasaw and Choctaw freedmen the rights, and so forth, of full members of those tribes, the same as had been done for the freedmen of the Cherokee, Creek, and Seminole Indians. (See House Ex. Doc. No. 212, and Senate Mis. Doc. No. 118, both of Forty-third Congress, first session. Exhibit No. 8.)

1876.—The Chickasaw legislature passed an act, approved October 18, 1876, for the election of commissioners to confer with Choctaw commissioners to agree upon plan for the removal of the freedmen from their respective nations. (Exhibit No. 9.)

1877.—The Chickasaw legislature passed an act, approved October 17, 1877, to the same effect as the act of November 9, 1866, against the adoption of their freedmen. (Exhibit No. 10.)

1882.—Congress enacted the following on the subject:

That the sum of \$10,000 is hereby appropriated out of the \$300,000 reserved by the third article of the treaty with the Choctaws and Chickasaws, concluded April 8, 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 \$10,000 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 tribes 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 \$300,000 due said tribe. (22 Stat., 72.)

The Choctaws promptly adopted their freedmen by act of their legislature, approved May 21, 1883, which was approved by the Interior Department.

1885.—The Chickasaw legislature passed an act, approved October 22, 1885, reciting its failure to pass the laws, rules, etc., and the reasons therefor; the failure of the United States to remove the freedmen, and enacting that the Chickasaw people refuse to adopt their freedmen, and memorializing Congress: "To provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Oklahoma in the Indian Territory," or make other suitable provision for them. (Exhibit No. 11.)

1887.—The Chickasaw legislature passed an act, which is entitled a "memorial," approved October 4, 1887, wherein, after reciting how the Chickasaws became possessed of slaves, continued:

The Chickasaws agreed and did liberate their former slaves, and did give them a home as good as their own and \$100 per capita that would emigrate to it; and those emigrating and returning, and those who refused to emigrate should remain in the Chickasaw Nation as other citizens of the United States, as provided under the third and fourth articles of the treaty of 1866. The United States has failed to carry out the stipulations of said treaty, while the Chickasaws have continually asked their removal to the leased land or to Oklahoma, that was purchased by the United States for the settlement of Indians and freedmen. The Chickasaws have furnished the freedmen, their former slaves, for the past twenty years, a home, and treated them with uniform kindness, and want them to enjoy all the benefits of the treaty of 1866, except to share a home among them. The number of freedmen being so great, if

adopted, will soon control our schools and government that we have been building and fostering for the past forty years. We love our homes, institutions, and government, and will not surrender them. The Chickasaws have done more for their freedmen than the Southern States—they liberated them, gave them suffrage—while the Indians who adopted their freedmen gave them a franchise and a home among them, we gave them a home as good as our own, and \$100 per capita for all those who will accept, to emigrate to it, where they can build their own government, schools, and churches, under the fostering care of the United States Government. * * *

And whereas the Chickasaw people having 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 fourth 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 Exhibit No. 12, Senate Ex. Doc. No. 166, Fiftieth Cong., first session.)

The \$55,000 referred to in the foregoing act is the portion of the \$300,000 for cession of land which had been advanced to the Chickasaws by the United States, an account of which will more fully appear by referring to the report of Hon. J. D. C. Atkins, set out in the document cited as containing the act or "memorial."

As I have been unable to procure a complete set of the laws of the Chickasaw Nation, reference is made to the most authentic sources available—Congressional documents and files of the Indian Office—for such as are not copied from the published laws of the nation.

Reports of investigation made by committees of Congress, and reports by the Executive Department of the Government, have from time to time presented to Congress the condition of the freedmen in the Chickasaw country, and the fact that the treaty stipulations as to them had never been fulfilled. Proper action has been repeatedly urged upon Congress, and drafts of bills to meet the case, according to the views of the executive officers presenting them, have been submitted for the consideration and action of Congress. Reference to these, so far as discovered, and to reports on the subject, will be found in the "statement" accompanying the first report of the commission to the Five Civilized Tribes, printed in Senate Mis. Doc. No. 24, Fifty-third Congress, third session, pages 27-43.

From the foregoing it will be seen that the Chickasaw act of 1873 repeals all laws and parts of laws in conflict therewith, and it also provides that it "shall be in full force and effect from and after its approval by the proper authority of the United States."

No limitation as to the time within which said approval shall be given is specified. While subsequent acts of the Chickasaw legislature are in apparent conflict therewith, no direct or specific repeal of it is found.

1894.—Congress considered the subject of the status of the Chickasaw freedmen in 1894, and found the Chickasaw act of 1873 as presented to that body, and it evidently held that the said act had not been repealed by the subsequent acts of the Chickasaw legislature, as it gave thereto "approval by the proper authority of the United States" in the Indian appropriation act of August 15, 1894, as follows:

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 tenth, eighteen hundred and seventy-three, particularly 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. (28 Stat., 336.)

If the Chickasaw legislative act of 1873, for adopting the Chickasaw freedmen, had not been repealed, then, by the approval thereof by the act of Congress cited, it has become a law, and, as such, is binding upon the Chickasaw Nation and upon all other parties concerned. And under it the Chickasaw freedmen have become citizens of the Chickasaw Nation and entitled to the rights, privileges, and immunities stipulated for them in the third article of the Choctaw and Chickasaw treaty of 1866, including the 40 acres of land in the Chickasaw country to each of the said freedmen.

If it should be contended, and even determined, that the Chickasaw legislative acts passed after the act of 1873, and conflicting therewith, work a repeal of said act of 1873, then the question must be considered whether said 1873 act, by reason of its approval by the law of Congress, has not become a law, notwithstanding the alleged conflicting Chickasaw acts passed subsequently thereto; and if it has so become a law, whether it does not fix the status of the Chickasaw freedmen and establish their rights under the provisions of the treaty.

On behalf of the Chickasaw freedmen, it is contended that the approval of the Chickasaw legislative act of 1873 by the act of Congress amounts to a complete enactment of law by Congress, as fully as though the whole of the said Chickasaw act of 1873 were bodily incorporated into the approving section 18 of the act of Congress of 1894. If this be so, and it will hardly be contended otherwise, then what is the effect? Can a disputed question, arising out of a treaty between the United States and one of the Indian tribes within its borders, thus be settled by a law of Congress?

It has been held quite frequently that an act of Congress subsequent to a treaty must be enforced as the supreme law of the land, as is shown by the following authorities on the subject:

As between a law of the United States made in pursuance of the Constitution and a treaty made under the authority of the United States, if the two in any of their provisions are found to conflict, the one last in point of time must control. For the one as well as the other is an act of sovereignty, differing only in form and in the organ or agency through which the sovereign will is declared. Each alike is the law of the land in its adoption, and the last law must repeal whatever that is of no higher authority is found to come in conflict with it. A treaty may therefore supersede a prior act of Congress; and, on the other hand, the act of Congress may supersede a prior treaty. (Cooley's Principles of Constitutional Law, p. 32, and cases there cited; *Foster v. Neilson*, 2 Pet., 253, 314; *Doe v. Braden*, 16 How., 636; *Head Money Cases*, 112 U. S. Rep., 580; *The Cherokee Tobacco*, 11 Wall., 616; *Ropes v. Clinch*, 8 Blatch., 304; *Taylor v. Morton*, 2 Curt. C. C., 454; *Gray v. Clinton Bridge*, 1 Woolworth, 150. See also *Whitney v. Robertson*, 124 U. S. Rep., 190, and *Chinese Exclusion Cases*, 130 U. S. Rep., 581.)

In the *Head Money Cases* this very clear and strong language is found:

But a treaty may also confer private rights on citizens or subjects of the contracting powers which are of a nature to be enforced in a court of justice, and which furnish, in cases otherwise cognizable in such courts, rules of decisions. The Constitution of the United States makes the treaty, while in force, a part of the supreme law of the land in all courts where such rights are to be tried. In this respect, so far as the provisions of the treaty can become the subject of judicial cognizance in the courts of the country, they are subject to such acts as Congress may pass for their enforcement, modification, or repeal. (112 U. S. Rep., 580.)

The Chickasaw freedmen claim that the approval by Congress of the Chickasaw legislative act of 1873 constitutes a fixing and settlement of their status legally, determines what are their rights, and they claim all the benefits accruing to them under said law, and ask the United States to put them in possession and enjoyment of their said rights.

As the agreement concluded by the Commission to the Five Civilized Tribes with Choctaw and Chickasaw commissioners on April 23, 1897, and now pending before Congress, contains no stipulations for effectuating the rights of the Chickasaw freedmen as the same have been determined, as hereinbefore set out, but wholly ignores their said rights, and leaves the Chickasaw freedmen entirely unprovided for, it is earnestly protested that such agreement should not be ratified by the United States until it shall have been suitably amended so as to secure the Chickasaw freedmen in all their rights, privileges, and immunities, including the right to Chickasaw citizenship, the right to 40 acres of land in the Chickasaw country, and so forth.

I am not unmindful of the fact that views contrary to the foregoing are entertained, and it may be that they are urged, on behalf of the Chickasaw Nation, as to the effect of the legislation by Congress approving the Chickasaw act of 1873. While not anticipating that such contrary views will be sustained, and while strenuously holding, on behalf of my clients, the Chickasaw freedmen, to the conclusions hereinbefore stated, I deem it well to present some views on the question as to what would be the status of the Chickasaw freedmen should it by any possibility be held that their status and rights have not been determined as hereinbefore claimed.

It is clear that the stipulations of the Choctaw and Chickasaw treaty of 1866, the third and fourth articles particularly, constitute a clear contract that the Chickasaw freedmen shall be provided for, first, by the Chickasaw legislature, within the Chickasaw country, where they are to have Chickasaw citizenship, certain rights, privileges, and immunities, 40 acres of land each, etc.; or, second, they must be provided for by the United States removing them from the Chickasaw country to lands elsewhere, paying each one removed \$100, etc. The lands to which they may thus be removed are those secured by the United States by cessions from the Five Civilized Tribes, under the treaties of 1866, upon which to locate other Indians and freedmen.

The fair and just interpretation of said provisions of the treaty, as well as their clear meaning and intent, demand the performance of one or the other of the foregoing alternative propositions to meet the treaty requirements as to the Chickasaw freedmen. This can not be disputed. It is not disputed, so far as I am aware. It is too clear for dispute. It is made clear by the negotiations leading up to the treaties of 1866, with the former slaveholding Indians, as hereinbefore shown. It is made clear by the full and ample provisions, securing the same rights, etc., enjoyed by the Indians, for the freedmen of the Creek, Seminole, and the Cherokee Indians, in the treaties made with them in 1866. It is made clear by reports of Congressional investigating committees, of authorized commissions, and in special and the annual reports of the Secretary of the Interior, and the Commissioner of Indian Affairs. In the latter is advocated one or the other of the foregoing stated propositions, according as the question may have been viewed by the officer making the report; none have advocated removing the freedmen and setting them adrift without locating them upon lands elsewhere.

The latest report containing anything like a brief history of the matter is that of May 8, 1888, by Hon. J. D. C. Atkins, then Commissioner of Indian Affairs, and submitted by Hon. William F. Vilas, then Secretary of the Interior, to Congress for consideration and action, wherein Mr. Atkins, after reciting facts, etc., concludes that it is best for all concerned that the Chickasaw freedmen should be removed from the Chickasaw country; and with his report he submitted the draft of a bill for their removal "to the Creek and Seminole ceded lands within

the tract known as Oklahoma;" for the per capita payment of \$100 to each freedman removed, and for the appraisement of and payment for the improvements made by them in the Chickasaw country. (See Senate Ex. Doc. No. 166, Fiftieth Congress, first session.)

That one or the other of the foregoing stated propositions must be performed to meet the requirements of the treaty contract as to the freedmen, is made more clear by the plainly stated understanding of the Chickasaw legislature as to the meaning of the provisions of the treaty of 1866, now under consideration, as set out in their act of October 4, 1887, hereinbefore referred to, wherein they recognize and admit that the obligations of the treaty stipulations as to the freedmen require that they be furnished with lands for homes, either in the Chickasaw country, if adopted, etc., or on the ceded lands if removed from the Chickasaw country.

In the concluding paragraph of the memorial of the Chickasaw Nation to the President of the United States, set out on pages 10-13 of Senate Ex. Doc. No. 166, Fiftieth Congress, first session, the same understanding is made manifest by these words:

In view of the considerations above set forth, the Chickasaws earnestly ask the United States to fulfill the treaty of 1866 by removing, without delay, to the leased district west of the ninety-eighth meridian of longitude, or to the Oklahoma country, ceded by the Creek treaty of 1866, or elsewhere, all the freedmen who shall consent to such removal, and by placing all those who shall refuse to go on the same footing as other citizens of the United States in the Chickasaw Nation. (Exhibit No. 13.)

It has always been the understanding of the Chickasaws that they ceded the "leased district" to the United States for the location thereon of other Indians and freedmen. A recognition of this understanding on the part of the United States is found in the appropriation of \$2,991,450 to pay the Choctaws and Chickasaws for their interest in that portion of the lands occupied by the Cheyennes and Arapahoes, formerly comprising a part of said "leased district." (See section 15, act March 3, 1891, 26 Stat., 1025.)

That appropriation was additional compensation for the portion of said "leased district" opened to white settlement, over and above the \$300,000 paid as per the treaty of 1866, for the qualified cession of the whole of it.

The portion of the "leased district" not already opened to white settlement lies within the Kiowa and Comanche Indian Reservation. An agreement is pending before Congress for the relinquishment by the Kiowa and Comanche Indians of their title to about 2,500,000 acres of said land. (See Senate Ex. Doc. No. 17, Fifty-second Congress, second session.)

If, as the Chickasaws say, they have given their freedmen homes, not in the Chickasaw country, they must be in the "leased district," to which they have so persistently urged that they be removed.

In a decision of a judge of a United States court thoroughly familiar with the status of the Indians in the Indian Territory and Oklahoma, and especially with the treaties made with the Five Civilized Tribes, the following is found particularly referring to the cession made by the Seminole treaty of 1866:

What did the Government mean by locating "freedmen thereon?"

Let us go back to the history of the time when this treaty was made. 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 of slavery 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 Indian tribes who had held them in

slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudices 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. The Government feared that to do this it might be necessary to settle them in a colony by themselves. This purpose of the Government, should it become necessary, was manifested by the terms of the Choctaw treaty of April 15 (28), 1866. Therefore, in making the treaty with the Seminoles it sought to provide a home for such freedmen as had been held in slavery by the Indians in the Indian Territory, should that necessity occur to secure them in their rights. In the face of the surrounding condition of things at the time this treaty was made, we must conclude the Government meant these freedmen who had been slaves in the Indian Territory and none others, and these could only be settled on this land by the authority of and with the permission of the Government. Colored persons who were never held as slaves in the Indian country, but who may have been slaves elsewhere, are like other citizens of the United States, and hence have no more right in the Indian country than other citizens of the United States. (See decision by Judge I. C. Parker, in case of United States v. D. L. Payne, 8th Federal Reporter, p. 891.)

Thus the obligation of the Government of the United States to see to it that the Chickasaw freedmen are secured in homes of their own is clearly recognized and admitted by all branches of the Government—the legislative, executive, and judicial—and by the Chickasaw nation, and these constitute the two contracting parties to the treaty of 1866.

There can be no other fair, just, or equitable conclusion of the matter than that the Chickasaw freedmen are entitled, under the Choctaw and Chickasaw treaty of 1866, to be clothed with Chickasaw citizenship, with the rights, privileges, and immunities in said treaty specified, and with 40 acres of land each, all in the Chickasaw country, or they must be removed by the United States from the Chickasaw country and placed upon lands elsewhere, paid \$100 each when removed, and also be paid the fair and just valuation of the improvements made in the Chickasaw country by them during the past thirty years.

It is the desire of the Chickasaw freedmen that they be properly provided for in the Chickasaw country where they now live and have their homes; and that they be removed and provided for elsewhere only as a dernier ressort.

This desire on their part is shown by the resolutions adopted at a convention of the Chickasaw freedmen, held at Dawes Academy, Chickasaw Nation, Indian Territory, on the 29th day of May, 1897. (See Exhibit No. 14.)

Justice and humanity demand that such action be had by Congress as will repair the neglect and resulting damage of the past, and put the Chickasaw freedmen in their promised homes, where they may have the advantages of the freedom bestowed upon them, be able to educate their children, and surround themselves with the comforts of civilization.

R. V. BELT,

Attorney for the Chickasaw Freedmen.

WASHINGTON, D. C., June 8, 1897.

STATEMENT OF HALBERT E. PAINE, COUNSEL FOR CHICKASAW NATION.

The Chickasaw freedmen are the former slaves of the Chickasaws and their descendants. They do not include any of the former slaves of the Choctaws now settled in the Chickasaw Nation. Nor do they include any part of the multitude of colored people from the States,

who have swarmed into the Chickasaw Nation, and now enjoy the gratuitous use of Chickasaw land.

I am informed that after our civil war ended several bodies of colored troops were mustered out of the service of the United States in the Chickasaw Nation; and that many of them remained there, and their presence attracted to that nation not only colored people from the States, but also Choctaw freedmen from the Choctaw Nation.

It may prove to be the fact that more Choctaw freedmen than Chickasaw freedmen now occupy Chickasaw lands. Certainly no obligation, legal or moral, rests upon the Chickasaws to grant any land to Choctaw freedmen, or to colored people from the States. Indeed, the Chickasaws have been under no obligation to permit them to enjoy the gratuitous use of Chickasaw lands from the close of the war to the present time.

The Choctaws could not, without the concurrence of the Chickasaws, confer upon the Choctaw freedmen undivided interests, equal to those of the Choctaws and Chickasaws, in the lands held in common by the citizens of the two nations. If an act of the Choctaw council, purporting to confer such ownership upon the Choctaw freedmen, would have any effect, it could, at the utmost, only make those freedmen equal owners of the Choctaws' share of the lands held in common by the members of the two tribes.

1. This would be true, even if there were no treaty stipulations in force expressly interdicting such a grant. The treaty of 1855 contains the following paragraph:

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall be sold, without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

These lands were originally ceded not to the members of the Choctaw tribe, but to the Choctaw Nation. By this cession, which was made in the treaty of 1820, the lands were constituted the public property of the Choctaw Nation. Thereupon the Choctaw Nation, in its corporate capacity, owned and held the lands as public property; but by the treaty of 1855 the public property of the nation in these lands was transformed into the private property of the members of the Choctaw and Chickasaw tribes. And such is now the status of the title.

Every Chickasaw has an equal undivided interest in every foot of land in both nations. So has every Choctaw. It is obviously not competent for the Choctaw council by a statute, or for the Choctaw people by an ordinance, to effectuate such a transfer of the land, or of an interest therein, as will diminish or change the undivided property of the Chickasaws in the land held in common by the members of the two tribes.

If it will be competent for the Choctaw government in the exercise of its power of eminent domain to alienate interests of the Choctaws in these lands in such a way as not to affect those of the Chickasaws, it will manifestly be out of the power of that government to divest or impair the property rights of the Chickasaws therein. The furthest possible scope of Choctaw legislation would be to make the Choctaw freedmen equal sharers with the Choctaws themselves in their undivided three-fourths of the aggregate territory held in common by the two nations. It would not diminish or affect the undivided interests of the Chickasaws in the whole.

2. The first article of the treaty of 1855 expressly prohibits the transfer of any part of these lands by one of the nations without the consent of the other. It contains the proviso that—

No part thereof shall ever be sold without the consent of both tribes.

The investiture of the Choctaw freedmen with the right to share equally with the Choctaws and Chickasaws in the ownership of the lands held in common by the two nations would be, in effect, the grant to the freedmen of a part of the property of both the Choctaws and Chickasaws in these lands. Such a grant, if not made by the treaty wholly ineffectual and absolutely void, would certainly be a nullity so far as it impaired or affected the property rights of the Chickasaws.

3. But there is a proviso in the first article of the treaty of 1855 which interdicts the alienation of any interest in these lands without the concurrence not only of the Choctaws and Chickasaws, but also of the United States. It appears in the last clause of that article, as follows:

Said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

If the Choctaws could, with the concurrence of the Chickasaws, but without the consent of the United States, effectively transfer to their freedmen shares in the aggregate territory of the two nations equal to those of the Choctaws and Chickasaws, and should afterwards abandon the land, the part so granted to their freedmen could not revert to the United States. But if the Choctaws could, with the consent of the Chickasaws, and without the consent of the United States, so grant to their freedmen a part of the territory held by the citizens of the two nations, they could grant the whole, and thus absolutely nullify the reversion of the United States.

4. The stipulations of the third article of the treaty of 1866 relating to the freedmen, although never, in fact, executed, manifestly negate the theory that either, or both, of the two nations can convey their land to the freedmen, without the consent of the United States. That article empowered the Choctaw and Chickasaw nations to make—

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 are residents as aforesaid, and their descendants, 40 acres each of the land of said nations.

5. Not only is it incompetent for the Choctaws, without the consent of the Chickasaws and of the United States, to make their freedmen sharers in the lands held in common by the members of the Choctaw and Chickasaw nations, by admitting them to citizenship or otherwise, but it is also, for the same reasons, incompetent for the Choctaws, without the concurrence of the Chickasaws and the United States, to grant to each Choctaw freedman 40 acres of land held in common by the citizens of the Choctaw and Chickasaw nations. An attempt on the part of the Choctaws to make such grant, without the concurrence of the Chickasaws and the United States, whether out of the common stock, thereby reducing the interest held by the citizens of each nation, or out of the undivided three-fourths held by the Choctaws, without reducing the interest held by the citizens of the Chickasaw Nation, could find no warrant in the treaties or in the laws or constitution, but would necessarily prove an absolute failure.

Such an attempt to grant land to the Choctaw freedmen out of the common stock would fail, for the reason already stated. Such an attempt to grant 40 acres to each Choctaw freedman, out of the Choctaw share, without reducing the interest held by the Chickasaws, would be ineffectual for the following reasons:

(1) Every citizen of the Chickasaw Nation is the owner in fee simple of an undivided share of every part, every foot, every inch of the entire territory of both nations. The Choctaw government can not, by the exercise of its treaty powers, or by the exercise of its right of eminent domain, or in any other way, transfer the land of Chickasaw citizens to Choctaw freedmen or to anybody else.

(2) The treaty of 1855 forbids any alienation whatever of these lands without the consent of both the Choctaw and Chickasaw nations, and, inasmuch as the Government of the United States was a party to the treaty, it has a right to insist upon the observance of this stipulation of the treaty. While, then, it may be true that the United States, in the third article of the treaty of 1866, consented to such grant, if made within two years after the date of the treaty of 1866, and have ever since been ready to consent to such grant, although made after the expiration of the two years limited in the treaty, it is not true that the Chickasaws have ever consented, either by the adoption of the third article of the treaty of 1866 or otherwise, that the Choctaws should, either before or after the expiration of the two years, grant to the Choctaw freedmen each 40 acres of the land held in common by the citizens of the Choctaw and Chickasaw nations.

By the third article of the treaty of 1866 the Choctaws and Chickasaws were authorized, within two years after the date of the treaty, to elect to make such grants; but in that treaty neither nation made such election or authorized the other to make it without the concurrence of both. On the contrary, express provision was made in the third article of the treaty for the case of the failure of the Choctaws and Chickasaws to make such election within the period of two years fixed by the treaty.

(3) No statute of the United States can validate a grant of "common" land made by the Choctaws without the concurrence of the Chickasaws, whether enacted before the grant to authorize it or after the grant to confirm it, unless such statute embraces a provision for compensation to the Chickasaws for the interest conveyed. It is true that the Government of the United States may, in the exercise of its paramount right of eminent domain, by appropriate proceedings, transfer the property of one citizen of the United States to another. But this can not be done without due compensation to the owner who is deprived of his property. Moreover, it is possible that a mere act of Congress may so transfer private property (due compensation being made therefor) without proceedings for its condemnation. But it can not be true that an act of Congress which provides no compensation for the owner can transfer the property of the citizens of the Chickasaw Nation to the Choctaw freedmen, or can validate, either by antecedent authorization or by subsequent confirmation, a transfer of property of citizens of the Chickasaw Nation to Choctaw freedmen by the Choctaw government without the concurrence of the Chickasaws.

As shown by the documentary proofs filed with the committee, the rights, privileges, and immunities of citizens referred to in the third article of the treaty of 1866 have never been conferred upon the Chickasaw freedmen; nor have any grants of 40 acres of land ever been made to them by the Chickasaw Nation.

The treaty of 1866 was ratified on the 10th of July of that year. It authorized the Choctaws and Chickasaws, within the period of two years from that date, ending July 10, 1868, to elect to confer upon, or withhold from their freedmen certain "rights, privileges, and immunities of citizenship." During that period so limited, the Chickasaws elected to withhold from their freedmen the "rights, privileges, and immunities of citizenship" specified in the treaty. On the 9th of November, 1866, an act of the Chickasaw legislature was approved containing the following paragraph:

And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States 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.

Neither of the two nations, during the period limited by the treaty, conferred upon the freedmen the "rights, privileges, and immunities of citizenship" specified in the treaty, or reversed its own action withholding the same. So far as this option of the Choctaws and Chickasaws was concerned, the treaty expired on the 10th of July, 1868. Any law thereafter enacted by the Chickasaw legislature or Choctaw council proffering to the freedmen the specified "rights, privileges, and immunities," or any other, would not have resulted from an exercise of the option secured by the treaty, but would have constituted a new proposition of the legislative body enacting the law, to be accepted or rejected by the other parties concerned. An act of the Chickasaw legislature approved January 10, 1873, contained the following provisions:

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That all the negroes belonging to the Chickasaws, at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted, in conformity with the third article of the treaty of 1866, between the Choctaws and Chickasaws and the United States: *Provided however*, That the proportional part of \$300,000 specified in article third of said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation, for its sole use and benefit: *And provided further*, That said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of said \$300,000 nor be entitled to any benefit from the principal and interest on our invested funds, or claim arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres, per capita, provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: *And provided further*, That the said negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case, just as if the said negroes were Chickasaws.

SEC. 2. *And be it further enacted*, That this act shall be in full force and effect from and after its approval by the authority of the United States, and all laws or parts of laws in conflict with this act are hereby repealed.

This act was not passed within the period of two years limited by the treaty. It was not passed in the exercise of any option granted by the treaty. It was a new proposition. If not concurred in by the Choctaws and by the United States within a reasonable time it must necessarily fall to the ground as a rejected proposition. The Choctaws did not respond to this action of the Chickasaws until the expiration of a period of more than eight years—until long after the proposition had been withdrawn by the Chickasaw legislature. The United States delayed action for twenty-one years.

On the 15th of August, 1891, the Congress of the United States enacted the following statutory provisions:

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 tenth, eighteen hundred and seventy-three, particularly 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.

But on the 17th of October, 1877, an act of the Chickasaw legislature had been approved containing the following provision:

And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government should 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.

On the 18th of October, 1876, an act of the Chickasaw legislature was passed containing the following provisions:

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation during the next regular session of the general council of said nation, with instructions to confer with the commissioners on the part of the Choctaw Nation, and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

On the 6th of May, 1882, an act of the Chickasaw legislature was approved containing the following provision:

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That Wm. L. Byrd and B. F. Overton, delegates of the Chickasaw Nation, are hereby fully authorized and directed to enter their protest in behalf of the Chickasaw Nation against the ratifying by Congress of the United States of an act passed by the general council of the Choctaw Nation adopting and granting to the freedmen of the Choctaw Nation full rights of citizenship without conferring with the Chickasaws, or obtaining their consent to said adoption; and said delegates are hereby fully authorized and directed to represent the Chickasaw people in any and all measures that might be presented before the Department and Congress of the United States affecting the interest of our people and country.

On the 22d of October, 1885, an act of the Chickasaw legislature was approved, containing the following:

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

By these four successive acts of the Chickasaw legislature the conditional proposition, embraced in the Chickasaw statute of January 10, 1873, was withdrawn from the cognizance of the United States. It was not thereafter in the power of the United States, with or without the cooperation of the Choctaw Nation, to galvanize into life the dead Chickasaw statute of January 10, 1873.

I respectfully submit, therefore, that the act of Congress, approved August 15, 1894, did not ratify or confirm anything. There was nothing in existence for it to ratify or confirm.

HALBERT E. PAINE,
Counsel for Chickasaws.

JUNE 21, 1897.

EXHIBIT No. 1.

The provisions of the treaty of April 28, 1866, 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 II, III, and IV thereof, which are as follows:

"ARTICLE II. 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.

"ARTICLE 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 legislatures 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 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 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.

"ARTICLE 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.)

EXHIBIT No. 2.

Be it enacted by the legislature of the Chickasaw Nation, That whereas a treaty was concluded at Washington City on the 28th of April, A. D. 1866, by commissioners duly appointed on the part of the Chickasaws and Choctaws and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President of the United States, the Chickasaw legislature do hereby give their assent to and confirm the said treaty and amendments made by the United States Senate.

Be it further enacted, That the Chickasaw legislature do hereby give their assent to the sectionizing and allotment of the lands in severalty under the system of the United States as is provided for in the treaty of April, 1866, and the President of the United States be requested to cause the same to be done as soon as practicable.

Be it further enacted, That the provision contained in article 3rd of the treaty of

April 28th, 1866, giving the Chickasaw legislature the choice of receiving and appropriating the \$300,000 therein named for the use and benefit of the Chickasaws, or passing such laws, rules and regulations as will give to all persons of African descent certain rights and privileges, be, and it is hereby, declared the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of \$300,000 for the benefit of the said negroes, and the governor of the Chickasaw Nation be requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation for the Government to remove said negroes from within the limits of the Chickasaw Nation, according to said 3rd article of the treaty of April, 1866.

Be it further enacted, That the governor of the Chickasaw Nation be, and he is hereby, authorized and requested to appoint three commissioners to meet and confer with the Choctaw authorities and make known the wishes of the Chickasaw legislature in regard to the 3rd and 11th articles of the treaty of April, 1866, and to secure harmony and a union of action in the same. Said commissioners are hereby invested with powers to enter into all necessary preliminaries with said Choctaw authorities as will speedily settle the question in said 3rd and 11th articles harmoniously, and to report the same to the legislature of the Chickasaw Nation.

Be it further enacted, That the said commissioners shall be allowed three dollars per day while attending to said business and in going to and returning from the same meeting.

Passed both houses and approved November 9th, 1866.

CYRUS HARRIS,
Governor of the Chickasaw Nation.

EXECUTIVE DEPARTMENT,
Tishomingo City, C. N.

This is to certify that the within is a true and correct copy of an original act of the Chickasaw legislature, under date of the 9th of October, A. D. 1866, now on file in this office at Tishomingo City, C. N. Given under my hand and seal of office this the 27th day of December, A. D. 1866.

[SEAL.]

JOSIAH BROWN,
National Secretary, Chickasaw Nation.

EXHIBIT No. 3.

PICKENS COUNTY, CHICKASAW NATION,
December 8, 1866.

SIR: Owing to recent laws passed by the Chickasaw council in regard to the freedmen, we, the freedmen, to the number of 292, assembled in council for the purpose of taking into consideration our position and interests in the Chickasaw Nation.

After discussing the matter and having an interview with the Chickasaw chief, Cyrus Harris, the council determined to lay their views before you and request you to intercede with the Government in our behalf.

We, the undersigned, were appointed by our council to explain to you its wishes. The unfriendly and bitter feeling existing toward our people by the Chickasaws and their desire to get us off their lands make us wish to remove to any land that the Government may see fit to set apart for our abode, but we would prefer to remove to Cash Creek, on the leased lands, about 100 miles southwest from Fort Arbuckle, where with the assistance of the Government in the start we could found a settlement that would soon make us a happy, prosperous, and a self-sustaining people.

The Chickasaws are willing to give up their proportion of the \$300,000 provided for in the third article of their late treaty to enable us to emigrate from the Chickasaw Nation, and we on our part desire, for the sake of peace and quiet, to remove, and therefore ask of the Government (which many of us have served during the war) that it supply us with transportation for ourselves and families to our new homes, and such supplies as may be necessary to start us, and food until we can make a crop.

We desire to remove at as early a period as possible, as we wish to have permanent homes. We see that our removal is inevitable after the expiration of the two years referred to in the late treaty, and we all desire to go rather than remain and try to get along with people so hostile and bitter toward us.

We estimate our number at 1,500 men, women, and children, and as we are in a destitute condition, having no property of our own, we require all the aid that Government can furnish us.

Our race has always been loyal to the Government, and we wish to feel that it will always protect us. You, sir, who well understand the Indian character, know

how difficult it is for us, just emerging from the bonds of slavery, to live among our former oppressors without the right to hold or own lands, without a right acknowledged, except the right that nature gave us. Our position is much different from that occupied by the freedmen of the States, for their former masters are white men while ours are Indians, with all the hatred and vindictiveness of their race toward a weaker race, whom they formerly controlled and oppressed.

We understand that under the provisions of the late Choctaw and Chickasaw treaty we have the right to occupy sufficient unoccupied land to subsist ourselves and families, but we want homes that belong to us and land that we can call our own. And as the Chickasaws are willing to release their claim to the money for the leased district west 98° west longitude, to be used for our benefit, we therefore ask you to intercede with the Government to use it for the purpose of removing us to new homes.

Inclosed we send you a list of the names of the members of our council.

Hoping that you will aid us in this our struggle for existence, we subscribe ourselves,

Respectfully, your obedient servants,

CHARLEY (his x mark) COHE, *Chief*,
 SQUIRE (his x mark) HARREN,
 HENRY (his x mark) COB,
 ISAAC (his x mark) ALEXANDER,
 RICHARD (his x mark) MOBEL,
Delegates from Council of Chickasaw Freedmen.

Maj. M. W. CHOLLAR,

U. S. Indian Agent for Choctaws and Chickasaws, Skullyville, C. N.

(List referred to contains 292 names.)

EXHIBIT No. 4.

WASHINGTON, August 17, 1868.

SIR: The undersigned respectfully call your attention to the provisions contained in article 3 of the treaty made and concluded at the city of Washington on the 28th day of April, A. D. 1866, between the United States, the Choctaw and the Chickasaw Nation of Indians, and to notify you that the Choctaws and Chickasaws have not made within the two years prescribed such laws, rules, and regulations as are necessary to give all persons of African descent resident in the said nation 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, respectively, and the right to 40 acres of land each, to be selected and held on the same terms as the Choctaws and Chickasaws are to select and hold their lands. On the contrary, as appears by the files of your office, the legislative councils of both nations have expressed a desire that the Government of the United States shall, with the least possible delay, carry into effect the stipulations contained in said third article of said treaty in reference to the removal of said persons of African descent from the limits of the Choctaw and Chickasaw country.

We are, sir, respectfully, your obedient servants,

HOLMES COLBERT,
Chickasaw Commissioner.
 SAMPSON FOLSOM,
Attorney-General Choctaw Nation.

Hon. N. G. TAYLOR,
Commissioner of Indian Affairs.

EXHIBIT No. 5.

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

Letter of the Secretary of the Interior, communicating papers relating to the rights of freedmen under the third article of the treaty with the Choctaw and Chickasaw nations of Indians, concluded April 28, 1866.

DEPARTMENT OF THE INTERIOR,
 Washington, D. C., July 23, 1868.

SIR: I transmit, herewith, copy of a letter from the Commissioner of Indian Affairs to this Department, dated the 20th instant, together with copies of the papers referred to by him, all relating to the rights of freedmen under the third article of

the treaty with the Choctaw and Chickasaw nations of Indians, concluded April 28, 1866.

The said third article is as follows:

"The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the 98^o 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 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 nation respectively; and also to give to such persons who were residents as aforesaid, and their descendants, 40 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 regulations the said sum of \$300,000 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 \$100 per capita, as shall be sufficient to pay such persons of African descent, before referred to, as within 90 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 \$300,000 shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such 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 90 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 \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

The sum of \$300,000 referred to in this article has never been appropriated and invested, and is not, consequently, subject to the control of this Department.

Two years from the ratification of the treaty having expired, and the legislatures of the Choctaw and Chickasaw nations having failed to make such laws, rules, and regulations in regard to persons of African descent resident in said nations at the date of the treaty of Fort Smith as are contemplated by the foregoing article of the treaty of April 28, 1866, it becomes the duty of the United States, 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.

There is no designation of a place to which such persons shall be removed, nor is there any provision made, either by the treaty or by law, for the cost of removal.

Under these circumstances, the Department can take no action for carrying this article of the treaty into effect, and the whole matter is, therefore, submitted for the consideration of Congress, and its early attention earnestly invited to the subject.

Very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

HON. BENJAMIN F. WADE,
President pro tempore United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., July 20, 1868.

SIR: I have the honor to submit herewith, for your consideration and direction in the matter, a letter from Superintendent Wortham, dated 27th ultimo, transmitting a resolution passed by the freedmen among the Choctaws and Chickasaws in council, and a petition from them relative to their rights under the treaty with the Choctaws and Chickasaws, concluded April 28, 1866.

The petitioners refer to the third article of that treaty (Statutes at Large, vol. 14, p. 769), which stipulates that for the cession to the United States by the Choctaws and Chickasaws of the country known as the "leased district," \$300,000 shall be paid, and the amount invested and held by the United States, at interest, in trust for said nations, until their legislatures, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent,

resident among them at the date of the treaty of Fort Smith, and their descendants heretofore held in slavery, all the rights, privileges, and immunities, including the right of suffrage, of Choctaw and Chickasaw citizens, except in the annuities, moneys, and public domain claimed by or belonging to said nations; and also to give to such persons and their descendants 40 acres of land each, when the land of these nations shall have been surveyed and they and the Kansas Indians shall have made their selections as provided in the treaty, whereupon the \$300,000, less such sum, at the rate of \$100 per capita, as shall be sufficient to pay such persons of African descent referred to as shall, within ninety days after the passage of such laws, rules, and regulations, elect to remove, and actually remove, from said nations, shall be paid over to said nations. Should, however, their legislatures not make the required laws, etc., within two years from the ratification of the treaty, then the said sum of \$300,000 shall cease to be held in trust for them, but shall be held for the use and benefit of persons of African descent as may be willing to remove, and as the United States shall remove, from the country of the Choctaws and Chickasaws, in such manner as may be deemed proper; the removal to be made within ninety days after the expiration of the said two years, those remaining, or those returning after having been removed, to have no benefit in that fund. The petitioners then ask, inasmuch as the Chickasaws passed an act in November, 1866, refusing to grant them and their people the rights mentioned in said third article, as also did the Choctaws at the last session of their council, that they, the freedmen and free negroes, be removed from the Choctaw and Chickasaw nations, and that the \$300,000 alluded to be expended in such manner as the Government may deem best for their use and benefit; and, further, that a delegation from them be permitted to visit Washington to consult with this office in regard to their future.

This office has not been officially advised of the acts of the Choctaw and Chickasaw nations to which the petitioners refer, but it is believed that what they state is substantially true. The treaty in question was ratified on the 10th of July, 1866, and with the 10th of this month expired the time within which the Choctaws and Chickasaws could, by legislative acts, give to the freedmen and free negroes the rights, privileges, and immunities of citizens of said nations. Failing or declining to do so, and these now desiring to be removed, the obligation is with the Government to take action, within ninety days after the last-named date, to effect their removal, and to use for their benefit, in such manner as may be deemed most proper, the money provided therefor in the said third article of the treaty of 1866.

I therefore suggest that steps be taken at once to adopt measures for the fulfillment of that stipulation of the treaty, and I think it would be advisable that the request of the petitioners, to send a delegation of four of their number, with the Choctaw agent, to this city in reference to the matter be granted, and so recommend, as I have no doubt but that a better and more satisfactory understanding can be thus had in regard to their future location, wants, and interests than could be obtained by the ordinary way of communication through the superintendent or Indian agent.

Very respectfully, your obedient servant,

N. G. TAYLOR, *Commissioner.*

Hon. O. H. BROWNING,
Secretary of the Interior.

WASHINGTON, D. C., June 27, 1868.

SIR: I have the honor to transmit the action of council and petition of freedmen of the Choctaw and Chickasaw nations, and respectfully ask that the same receive the consideration that, in the opinion of the Honorable Commissioner, it may seem to be entitled to.

I have the honor to be, respectfully, your obedient servant,

JAMES WORTHAM,
Superintendent Indian Affairs, Southern Superintendency.

Hon. N. G. TAYLOR,
Commissioner Indian Affairs.

Resolved, By the Choctaw and Chickasaw freedmen, in council assembled, that James Squire Wolf, Squire Butler, Isaac Anderson, and Anderson Brown be, and are hereby, appointed delegates to confer with Major M. W. Chollar, United States Indian agent for the Choctaws and Chickasaws, the superintendent of Indian affairs, and the Commissioner of Indian Affairs in regard to the interest of our people; and the said delegates are hereby instructed to present the views set forth in our petition of this date, and respectfully urge the Government to take early action in all matters

affecting our interest; and we pledge the delegation herein appointed the earnest and hearty support of our people, satisfied that this delegation will be true to the trust reposed in them, having the interest of our race at heart.

Resolved further, That this resolution, with our petition, be presented by the delegation above mentioned to Major M. W. Chollar, United States Indian agent for the Choctaws and Chickasaws, with the request that he take the proper steps to lay these matters before the Government at the earliest day practicable.

Done at Boggy Depot this 10th day of June, 1868.

JAMES SQUIRE (his x mark) WOLF,
President of Council.

FLETCHER FRAZIER,
Secretary of Council.

We, the delegates of the Choctaw and Chickasaw freedmen in council assembled, respectfully present this our humble petition, praying that your honor will grant this our prayer.

We understand that in accordance with the last treaty made between the Government and the Choctaw and Chickasaw Indians that should the said Indians fail to give our people the right of suffrage and incorporate us into their tribes within two years from the ratification of the treaty, that the sum of \$300,000 (the purchase money of the leased district) should be used for our benefit.

Now, as the Chickasaws passed an act about November, 1866, refusing to grant us any of the rights mentioned in the 3d article of the treaty of 1866; and as the Choctaws, by an act passed at the last session of their council, known as the Sampson Folsom act, refused to grant us the rights above referred to, and as the disposition shown by the Choctaws and Chickasaws is so well known to our people; and as the two years mentioned in the 3d article of the treaty of 1866 has so nearly elapsed, and our people are so uneasy and restless, being in ignorance of their fate, and the country being full of rumors in regard to these matters, our people decided to call upon the Government, through their delegates, to relieve their minds of suspense. Trusting in the justice and humanity of the Government, towards which we feel the profoundest respect and gratitude, we present this our petition:

We respectfully pray that we be removed from the Choctaw and Chickasaw Nations at an early day, and that the sum of three hundred thousand dollars, before mentioned, be used by the Government, as the Government may deem fit, for our use and benefit; and as this matter is one of vital interest to our people, we humbly pray that your honor will authorize and order that a delegation of our people, selected by this council and herein named, composed of James Squire Wolf, Squire Butler, Isaac Alexander, and Anderson Brown, shall proceed to Washington, in company with Major M. W. Chollar, agent for the Choctaws and Chickasaws (who is the first friend and protector our people have ever known), to lay the views and wishes of our people before the Government, and to consult with yourself and the venerable superintendent of Indian affairs for this Territory, the Hon. Colonel Wortham (whose acts have shown us that he is our true friend in whom we can rely), in regard to the future of our people.

Done at Boggy Depot, C. N., June 10, 1868.

James Squire (his x mark) Wolf, Henry (his x mark) Kemp, Stephen (his x mark) Colbert, Emanuel (his x mark) Colbert, Downey (his x mark) Allen, Edmond (his x mark) Clarke, Jack (his x mark) Brown, Isaac (his x mark) Alexander, Henry (his x mark) Ro-shi-ka, Byington (his x mark) Colbert, Isam (his x mark) Love, Richard (his x mark) Love, Cesar (his x mark) Nelson, Richard (his x mark) Stevenson, Phillip (his x mark) Stevens; Fletcher Frazier, *Secretary*; Anderson (his x mark) Brown, Dick (his x mark) Brashears, Henry (his x mark) Johnson, Watson (his x mark) Brown, Smith (his x mark) Brown, John (his x mark) Scott, Francoisa (his x mark) Chako, Sampson (his x mark) Dick, Jack (his x mark) O'Dair, Squire (his x mark) Butler, Ben. (his x mark) James, Mose (his x mark) ———, King (his x mark) Blue, Bartlett (his x mark) Franklin, Nathan (his x mark) Cochran, Jack (his x mark) Blue, Isanu (his x mark) Flint, Joshua (his x mark) Love, Henry (his x mark) Harris, Nathan (his x mark) Madisor, Henry (his x mark) Crittendon, Sam (his x mark) Freency, Dan (his x mark) Colbert, Henry (his x mark) Garven, Joseph (his x mark) Morris, Ned (his x mark) Shoals, Solomon (his x mark) Rytchlyni. Elijah (his x mark) Harris, Anthony (his x mark) McKinney.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

EXHIBIT No. 6.

To the Senate and House of Representatives in Congress assembled:

Your memorialists most respectfully represent to you that by the advice and consent of the Senate of the United States expressed in its proceedings of June 28, 1866, a certain treaty between the United States and the Choctaw and Chickasaw Indians was ratified and confirmed. The third article of said treaty reads as follows:

"ARTICLE 3. The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the 98° 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 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 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 regulations the said sum of \$300,000 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."

Your memorialists who are of the persons described in said treaty, and who are the fully authorized representatives of that class of persons, most respectfully represent that the legislature of the Choctaw and Chickasaw nations have totally failed to make such rules and regulations as are contemplated in said treaty, and that, although more than six months have elapsed since the expiration of the two years mentioned in said third article of said treaty, the United States have not removed or proffered to remove said persons, as by the said treaty they were bound to do, but that they are now within the country of the Choctaw and Chickasaw Indians without the protection of law.

In view of these facts we most respectfully request that the said sum of \$300,000, held by the United States for the use and benefit of said persons of "African descent," be paid to said persons per capita, so that they may remove from said country, and that you enact a law properly carrying into effect the terms of said treaty.

We submit that this method would be much more to the advantage and satisfaction of the people we represent than any other mode that can be devised or adopted, because by thus paying the money they will be enabled thereby to remove and commence life in the country to which they may migrate, thus leaving them entirely free to elect their homes outside of said Choctaw and Chickasaw nations, as other freedmen are permitted to do. Justice and fair dealing demand, we very respectfully submit, that this, our prayer, should be granted at an early day.

We trust we may be pardoned for asking, in case Congress should grant our prayer, that said money be paid to our people per capita, as herein requested, by the United States agent for the Choctaw and Chickasaw Indians, under the direction and supervision of the Superintendent of Indian Affairs for the southern superintendency, inasmuch as the same can be done with more satisfaction to our people and with less delay than by any other mode, as these officers of the Government are known to our people and in them they have confidence; besides which, they have in their hands the correct enumeration or census of our people, upon which this payment can be made, thus saving to us or the Government considerable expense.

Your memorialists and those they represent are poor, and we have come at great expense near two thousand miles for the purpose of laying before you the situation and condition of our people, and implore immediate action in our behalf. No additional debt will be incurred by the Government in appropriating this money and directing its speedy payment as herein prayed for, because it will be simply carrying out in good faith the promise made to our suffering people by the Government and fulfilling treaty stipulations. And, as in duty bound, your memorialists will ever pray.

MAHARDY CULBERT,
JAMES SQUIRE BLOW,
ANDERSON BROWN,

Delegates from the Freedmen in the Choctaw and Chickasaw Agency.

(Copied from printed copy on file in Indian Office.)

EXHIBIT NO. 7.

[House Ex. Doc. No. 207. Forty-second Congress, third session.]

Letter from the Secretary of the Interior, transmitting an act passed by the legislature of the Chickasaw Nation entitled "An act to adopt the negroes of the Chickasaw Nation," etc.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 10, 1873.

SIR: I have the honor to transmit herewith copy of a communication from the Acting Commissioner of Indian Affairs, dated the 4th instant, inclosing a communication to him from Douglas H. Cooper, of the Chickasaw Nation, dated the 23d ultimo, together with a letter addressed to the President of the United States, by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature providing for the adoption of negroes in the Chickasaw country, referred to in the third article of the treaty with the Choctaws and Chickasaws, concluded April 28, 1866. (Statutes at Large, vol. 10, p. 769.)

A careful examination of these communications exhibits the fact that the third article of the treaty referred to remains unexecuted. Neither the Choctaws nor Chickasaws have made such rules and regulations as were contemplated in said article in regard to persons of African descent residing in their respective nations, within two years after the ratification of the aforesaid treaty. The Choctaw Nation has never, at any time, attempted the execution of this treaty in regard to said persons, and what has been done by the Chickasaw Nation was done after the expiration of the two years in which their action was limited by the treaty aforesaid.

Deeming it important that the provisions of said treaty be carried out, I have respectfully to recommend that such legislation be had during the present session of Congress, if possible, as will extend the time in all respects for the execution of the provisions of the third article of the treaty before referred to, for the term of two years from the 1st day of July, 1873.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

HON. JAS. G. BLAINE,
Speaker U. S. House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 4, 1873.

SIR: I have the honor to submit herewith a communication from Douglas H. Cooper, of the Chickasaw Nation, dated the 23d ultimo, together with a letter addressed to the President, by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature providing for the adoption of the negroes in the Chickasaw country, referred to in the third article of the treaty concluded with the Choctaw and Chickasaw Indians April 28, 1866. (Statutes at Large, vol. 14, p. 769.)

In view of the expiration of the term of two years from the ratification of the treaty, within which it is stipulated that the laws, rules, and regulations referred

to in the third article of the treaty aforesaid, shall be made by the Choctaw and Chickasaw Nations, and believing it to be for the best interests of the Indians, as well as of the negroes, that the latter should remain where they now are, and that the money referred to in said article should be paid to said nations, I respectfully recommend that Congress be asked to provide by legislation that the limit to the time mentioned in said third article be extended three years from the 1st of July, 1873, or until July 2, 1876.

Very respectfully, your obedient servant,

H. R. CLUM, *Acting Commissioner.*

THE SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *January 25, 1873.*

SIR: I have the honor herewith to hand you a letter from Cyrus Harris, governor of the Chickasaw Nation, dated at the executive office, Tishomingo, Chickasaw Nation, January 10, 1873, and directed to the President of the United States, inclosing an act of the legislature of the Chickasaw Nation, approved on the date of said letter, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and requesting "that the President will transmit the same to Congress for such action as that honorable body may deem proper;" and I respectfully request that you will transmit the said letter and act to the President, through the honorable Secretary of the Interior, at your earliest convenience.

I am, sir, your obedient servant,

DOUGLAS H. COOPER,
Of the Chickasaw Nation.

Hon. H. R. CLUM,

*Acting Commissioner, Office of Indian Affairs,
Department of the Interior.*

EXECUTIVE OFFICE,

Tishomingo City, Chickasaw Nation, January 10, 1873.

SIR: I have the honor to inclose a copy of an act passed by the legislature of the Chickasaw Nation, and approved this day, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and respectfully request that you will transmit the same to the Congress of the United States for such action as that honorable body may deem proper at the earliest day possible.

I am, sir, your obedient servant,

CYRUS HARRIS,
Governor of the Chickasaw Nation of Indians.

THE PRESIDENT OF THE UNITED STATES,
Washington, D. C.

AN ACT to adopt the negroes of the Chickasaw Nation, &c.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation,* That all the negroes belonging to Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866 between the Choctaws, Chickasaws, and the United States: *Provided, however,* That the proportional part of the \$300,000 specified in article third of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: *And provided further,* The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said \$300,000, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: *And provided further,* That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

SEC. 2. *And be it further enacted,* That this act shall be in full force and effect from

and after its approval by the proper authority of the United States. And all laws or parts of laws in conflict with this act are hereby repealed.

Approved, January 10, 1873.

CYRUS HARRIS, *Governor.*

Attest:

W. H. BOURLAND,
National Secretary Chickasaw Nation.

I do hereby certify that the above copy is a true and authenticated copy from the original now on file in my office this January 10, 1873.

W. H. BOURLAND,
National Secretary Chickasaw Nation.

EXHIBIT No. 8 (PART 1).

[House Ex. Doc. No. 212, Forty-third Congress, first session.]

Letter from the Acting Secretary of the Interior, in relation to a treaty made with the Choctaw and Chickasaw Indians, April 28, 1866.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 4, 1874.

SIR: I have the honor to invite your attention to articles second and third of a treaty made with the Choctaw and Chickasaw Indians April 28, 1866. (Stat. L., vol. 14, p. 769.)

The second article of said treaty provides for the abolition of slavery.

The third article of the treaty provides that, in consideration of the sum of \$300,000 to be paid to said Choctaw and Chickasaw Indians by the United States, the said Indians agreed to cede to the United States that territory west of the ninety-eighth degree of west longitude, known as the leased district, said sum of money to be invested and held by the United States at an interest of not less than 5 per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as might 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.

That treaty also provided to give to such persons who were residents as aforesaid, and their descendants, 40 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 said Indians and the Kansas Indians had made their selections, as elsewhere provided. Immediately upon the enactment of such laws, rules, and regulations by the legislative councils of the Choctaw and Chickasaw nations, the said sum of \$300,000 was to be paid to the said Choctaw and Chickasaw nations, in the proportion of three-fourths to the former and one-fourth to the latter, deducting therefrom such sum, at the rate of \$100 per capita, as should be sufficient to pay such persons of African descent, before referred to, who within ninety days after the passage of such laws, rules, and regulations should elect to remove, and actually remove, from said nations respectively.

Said article 3 furthermore provides that, should such laws, rules, and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of said treaty, then the said sum of \$300,000 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 agreed in said article, within ninety days from the expiration of the said two years after the enactment of said laws, to remove from the said nation all such persons of African descent as might be willing to remove.

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 then enjoying the privilege 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 Choctaws 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.

Very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary.*

Hon. JAS. G. BLAINE,
Speaker House of Representatives.

AN ACT for the relief of certain persons of African descent, resident in the Choctaw and Chickasaw nations, on the 28th day of April, A. D. 1866.

Whereas, by the treaty concluded April 28, 1866, and proclaimed July 10, 1866, between the United States and the Choctaw and Chickasaw Indians, it was provided that slavery and involuntary servitude should cease in said nations and that the said Indians should, and thereby did, cede to the United States certain territory west of the 98° west longitude, known as the leased district, and, in consideration thereof, the United States bound themselves to pay the sum of \$300,000, which sum was to be invested and held by the United States at interest, not less than five per cent interest, for the said nations, until the legislatures of the said Choctaw and Chickasaw nations should make such laws, rules, and regulations as might be necessary to give to all persons of African descent resident in the said nations at the date of the treaty of Fort Smith (September 10, 1865), and their descendants theretofore 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 should give to each of said persons, resident as aforesaid, and their descendants, forty acres of the land of said nations on the same terms as the Choctaws and Chickasaws held the same, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians had made their selections as provided in said treaty; and

Whereas it was further provided by the said treaty that immediately after the enactment of said laws, rules, and regulations the said sum of \$300,000 should 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 \$100 per capita, as should be sufficient to pay the said persons of African descent who, within ninety days after the passage of said laws, rules, and regulations, should elect to remove and should actually remove from said nations, respectively; and

Whereas it was further provided by the said treaty that, in the event that said laws, rules, and regulations should not be enacted by the legislatures of said nations, respectively, within two years from the ratification of said treaty, then the said sum of three hundred thousand dollars should cease to be held in trust for the said Choctaw and Chickasaw nations, and should thereafter be held in trust for the use and benefit of said persons of African descent as the United States should remove from the said territory; and

Whereas the United States did thereby agree, within ninety days from the expiration of the said two years, to remove from said nations all of said persons of African descent who were willing to remove therefrom; and

Whereas the said sum of \$300,000 has not been paid or invested in the manner above specified, or otherwise, and the said legislatures have not, nor has either of them, made the laws, rules, or regulations hereinbefore referred to, or any of them, and the United States have not removed any of said persons of African descent; and

Whereas the said persons of African descent are now anxious to remain in the territory of said Choctaw and Chickasaw nations and to become incorporated with the citizens thereof; Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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 annuities, 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.

SEC. 2. *Be it further enacted,* That the Secretary of the Treasury is hereby authorized and required to issue bonds of the United States, payable in twenty years from date, principal and interest in gold coin, bearing interest at five per cent per annum, payable semiannually, for the sum of \$300,000, each of said bonds to be for the sum of \$500, or some multiple of said sum, as the Secretary of the Treasury may deem best, and to deliver the same to the Secretary of the Interior, to be by him held in trust for the use and benefit of the Choctaw and Chickasaw nations in the following proportions, to wit: Three-fourths for the Choctaw and one-fourth for the Chickasaw Nation; and upon the same being done the said leased district, ceded by the said nations to the United States for the sum of \$300,000, shall be deemed to have been paid for, and the United States released from any further obligation for the same.

EXHIBIT NO. 8. [PART 2.]

[Senate Mis. Doc. No. 118. Forty-third Congress, first session.]

Letter from the Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs relative to Senate bill No. 680, for the relief of certain persons of African descent resident in the Choctaw and Chickasaw nations.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 2, 1874.

SIR: I have examined Senate bill No. 680, for the relief of certain persons of African descent resident in the Choctaw and Chickasaw nations on the 28th day of April, 1866, which you have been pleased to forward to me, with a remonstrance of the Choctaw delegates against the passage of said bill.

The present condition of the persons of African decent resident among the Choctaw and Chickasaw nations on the 10th of September, 1865, should be thoroughly understood in order to judge of the propriety of passing the bill, and in order to appreciate the force of the objections made against its passage by the remonstrance.

I proceed to state the condition of these people at the date aforesaid.

By the treaty of April 28, 1866, between the United States and the Choctaw and Chickasaw Indians, it was provided that slavery should cease in said nations, and that said Indians should cede to the United States certain territory west of the 98th degree west longitude, known as the leased district, and in consideration thereof the United States should pay the sum of \$300,000, to be invested in United States 5 per cent bonds until the legislatures of the Choctaw and Chickasaw nations should make such laws, rules, and regulations as might be necessary to give all persons of African descent resident therein on the 10th of September, 1865, and their descendants, theretofore held in slavery, all the rights, privileges, and immunities, including the right of suffrage, of the citizens of said nations, except in the money annuities and in the public domain belonging to said nations. Said nations were also to give each of said persons of African descent and their descendants forty acres of land on the same terms as the citizen Choctaws and Chickasaws held the same. It was further provided that said persons of African descent who, within ninety days after the passage of such laws, rules, and regulations, should elect to remove from said nations, should have \$100 each out of the \$300,000 before mentioned, and that the balance should be paid to the Choctaw and Chickasaw nations in the proportions mentioned in the treaty. It was further provided that if such laws and regulations should not be enacted by the legislatures of said nations, respectively, within two years from the ratification of the treaty aforesaid, then the said sum of \$300,000 should cease to be held in trust for the said Choctaw and Chickasaw nations, and should thereafter be

held in trust for the use and benefit of said persons of African descent, the United States agreeing within ninety days from the expiration of said two years to remove said persons of African descent from said nations as far as they were willing to be removed.

Now for the facts. Neither the Choctaw nor the Chickasaw Nation has 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 the said persons of African descent, because such persons are so identified by marriage and custom 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 to 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 one hundred dollars per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, one hundred dollars per capita, and this is about what the three hundred thousand dollars amounts to.

By the second section of the bill objected to, this three hundred thousand dollars 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 objection to this 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 nation 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 a larger proportion than by the labor of the 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 the native Choctaw and Chickasaw people.

A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the Africans 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 referred to, or some equivalent measure, 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 procure the passage of the measure referred to immediately.

I have the honor to be, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. WILLIAM A. BUCKINGHAM,

Chairman Committee on Indian Affairs, United States Senate.

EXHIBIT No. 9.

Resolutions in relation to the freedmen and their descendants in the Choctaw and Chickasaw nations.

Whereas the governor of the Chickasaw Nation has recommended to this legislature that commissioners be sent, on the part of the Chickasaw Nation, to confer with commissioners on the part of the Choctaw Nation in relation to the freedmen in said nations, and to agree with the Choctaws upon some plan for the final settlement of all questions relating to said freedmen;

And whereas it is understood that the governor is in favor of the removal of all freedmen, former slaves of the Choctaws and Chickasaws, from the limits of the Choctaw and Chickasaw country, is of the opinion that the same may be accomplished: Therefore,

SECTION 1. *Be it resolved by the legislature of the Chickasaw Nation,* That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation during the next regular session of the general council of said nation, with instructions to confer with commissioners on the part of the Choctaw Nation, and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

SEC. 2. *Be it further resolved,* That the commissioners provided for in the foregoing section shall receive the same pay, while actually engaged on the business of their mission, as members of the legislature, and may appoint a secretary, who shall receive the same pay as one of the commissioners; and said commissioners shall make a full report of all their official proceedings to the legislature at the next meeting thereof.

Approved, Oct. 18th, 1876.

B. F. OVERTON, *Governor.*

(See constitution, laws, and treaties of the Chickasaws, 1878, p. 148.)

EXHIBIT No. 10.

AN ACT confirming the treaty of 1866.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation,* That whereas a treaty was concluded at Washington City, on the 28th of April, 1866, by commissioners duly appointed on the part of the Chickasaws and Choctaws and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby give its assent and confirm the said treaty and amendments made by the Senate of the United States.

SEC. 2. *Be it further enacted,* That the Chickasaw legislature does hereby give its assent to the sectionizing and allotment of the lands in severalty, under the system of the United States as provided for in the treaty of April, 1866, and the President of the United States is hereby requested to cause the same to be done as soon as may be practicable.

SEC. 3. *Be it further enacted,* That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named for the use and benefit, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government

of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States 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.

Approved October 17, 1877.

B. F. OVERTON, *Governor*.

(Copied from printed laws Chickasaw Nation, 1890, page 121.)

EXHIBIT NO. 11.

AN ACT rejecting the adoption of the freedmen in the Chickasaw Nation.

Whereas the 3rd article of the treaty of 1866, between the United States and the Choctaw and Chickasaw nations, stipulates that the territory lying west of the 98th degree of west longitude, known as the leased district, be ceded to the United States Government for (\$300,000.00) the consideration of three hundred thousand dollars, which sum shall be held in trust by the United States for said nations at a certain rate of interest, until each respective nation elects, within two years after the ratification of said treaty, to make certain laws, rules, and regulations giving the freedmen, once held as slaves by said nations, the rights, privileges, and immunities of citizens of said nations, except in their annuities and public domain, etc.

And whereas it provides further that if said laws, rules, and regulations are not made within two years by said nations from the ratification of aforesaid treaty, then the United States Government promises to remove within 90 days from the expiration of the two years such of said freedmen as are willing to remove from said nations, using the aforesaid three hundred thousand dollars for the use and benefit of said freedmen in their removal, etc., and those choosing to remain, or who might return after removing, to receive no part or benefit from the said three hundred thousand dollars, and shall be upon the same footing as other citizens of the United States.

And whereas the United States has failed to remove said freedmen, agreeable to the stipulations of said treaty, and left them here among us for a long time, recognized by us as occupying the same status as other United States citizens;

And whereas the Chickasaw people, in justice to their posterity, have not made said laws, rules, and regulations, as provided for in the aforesaid article of said treaty for the following reasons, to wit:

1st. That the Chickasaw people can not see any reason or just cause why they should be required to do more for their freed slaves than the white people have done in the slaveholding States for theirs.

2d. That it was by the example and teaching of the white man that we purchased, at enormous prices, their slaves, and used their labor, and were forced, by the result of their war, to liberate our slaves at a great loss and sacrifice on our part, and we do not hold or consider our nation responsible in nowise for their present situation: Therefore,

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept or adopt the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

SEC. 2. *Be it further enacted*, That the governor is hereby authorized and directed to appoint two competent and discreet men, of good judgment and business qualifications, to visit Washington City, D. C., during the next session of Congress, and memorialize that body to provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Oklahoma, in the Indian Territory, or to make some suitable disposition of the freedmen question, so that they be not forced upon us as equal citizens of the Chickasaw Nation.

SEC. 3. *Be it further enacted*, That the delegation is further authorized to apply to the Indian department in Washington for an investigation and settlement of the orphan, incompetent, misapplied, and other claims of the Chickasaws against the United States Government, and any and all funds paid on account of said claims shall be received and receipted for the same as other monies coming into the treasurer's hands from the United States Government.

SEC. 4. *Be it further enacted*, That the delegation is also authorized to represent the Chickasaws in any and all measures that might be presented or come before any branch of Congress, or the Indian department, whereby the interest of our country and people may be involved, and use prudence and discretion in their deliberations upon such matters, and report the result of their mission at the next legislature.

SEC. 5. *Be it further enacted*, That for each delegate the sum of fifteen hundred dollars (\$1,500) be, and the same is hereby appropriated out of any monies in the treasury not otherwise appropriated as a full compensation for their services on this mission; and the auditor is hereby authorized to issue a warrant for the same; and this act take effect from and after its passage.

Approved, October 22, 1885.

JONAS WOLF, *Governor*.

Copied from printed laws Chickasaw Nation, 1890, page 171.

EXHIBIT No. 12.

Memorial to the Congress of the United States.

Your memorialist, the Chickasaw people, would most earnestly represent, that the Chickasaw tribe of Indians ceded their homes, east of the Mississippi River, to the United States. "Finding themselves oppressed, being ignorant of the language and laws of the white man, they could not understand or obey them; rather than submit to this great evil, they preferred to seek a home in the West, where they could be governed by their own laws. And believing that they could procure for themselves a country suited to their wants and conditions, provided they had the means to contract and pay for the same, they determined to sell their country and hunt a new home. The President heard the complaints of the Chickasaws and, like them, believed they could not be happy and prosperous as a nation in their situation and condition, and being desirous to relieve them from the great calamity that seemed to await them if they remained where they were, he sent his commissioner, General John Coffee, who met the whole Chickasaw people in council, and ceded their homes in the East under the treaty ratified March 1, 1833, sections 1, 2, 3, 4, and in July, 1834, a new treaty was made, making arrangements for the final removal of the Chickasaw people, west of the Mississippi River." The Chickasaws sold under provisions of said treaties and bought a home from the Choctaws, paying for the same \$530,000, and in 1837 the Chickasaw people emigrated west to their new homes, then a wilderness. Great many Chickasaws sold their homes, and reservations that were reserved to them under the treaties, for negroes, paid large prices for them, and emigrated west to their new homes with them, believing they were good property—they giving valuable considerations to the white men for them. The Chickasaw people never held in bondage any people prior to the time they purchased the negroes, and owned and possessed them until the year 1865, and upon the request of the United States commissioners liberated all their negroes, and in the treaty of 1866 reaffirmed said agreement, that involuntary slavery should not exist in the Chickasaw Nation—only for the commission and conviction of crime. The proclamation of President Lincoln liberating the freedmen of the Southern States did not apply to the territories and the Chickasaw people. The Chickasaws agreed and did liberate their former slaves, and did give them a home as good as their own and \$100 per capita that would emigrate to it; and those emigrating and returning, and those who refused to emigrate, should remain in the Chickasaw Nation as other citizens of the United States, as provided under the third and fourth articles of the treaty of 1866. The United States has failed to carry out the stipulations of said treaty, while the Chickasaws have continually asked their removal to the leased land, or to Oklahoma, that was purchased by the United States for the settlement of the Indians and freedmen. The Chickasaws have furnished the freedmen, their former slaves, for the past twenty years, a home, and treated them with uniform kindness, and want them to enjoy all the benefits of the treaty of 1866, except to share a home among them. The number of freedmen being so great, if adopted, will soon control our schools and government that we have been building and fostering for the past forty years. We love our homes, institutions, and government, and will not surrender them. The Chickasaws have done more for their freedmen than the Southern States—they liberated them, gave them suffrage. While the Indians who adopted their freedmen gave them a franchise and a home among them, we gave them a home as good as our own, and \$100 per capita for all those who will accept, to emigrate to it, where they can build their own government, schools, and churches, under the fostering care of the United States Government. It is a boon no other freedmen had had the opportunity to accept in the United States or in the world. The decision of the Commissioner of Indian Affairs, dated January 25, 1887, shows that \$55,000 has been paid to the Chickasaws, part of the \$75,000 of the \$300,000 that was set apart by the third and fourth articles of the treaty of 1866. The Chickasaws having continuously refused to accept the \$75,000, and confer citizenship on their former freedmen under the provision of the treaty of 1866, were under the impression said advance was

made under the forty-sixth article of the treaty of 1866, for the admission of the Kansas Indians, and not the freedmen.

And whereas the Chickasaw people having 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 fourth 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, the Choctaw and Chickasaw nations of Indians.

Be it further resolved, That a copy of this memorial and resolution be furnished each and every member of the Senate and House of Representatives of the United States Congress, and that this resolution take effect from and after its passage.

Approved October 4, 1887.

W. M. GUY,
Governor Chickasaw Nation.

(Copied from Senate Ex. Doc. No. 166, Fiftieth Congress, first session, pp. 9 and 10.)

EXHIBIT No. 13.

Memorial of the Chickasaw Nation to the President of the United States.

In the years 1837 and 1838 the Chickasaws emigrated from the States of Mississippi, Tennessee, and Alabama to the Indian Territory. At that time the Chickasaws numbered about 4,974, and their negro slaves about 1,096, as appears from the emigration rolls on file in the office of Indian Affairs. In the second article of the treaty concluded between the United States and the Choctaw and Chickasaw nations on the 28th of April, 1866, it was stipulated as follows:

"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 ever exist in said nation."

During the half century which has elapsed since the emigration of the Chickasaws the proportion of the colored people has been very greatly augmented in the Chickasaw Nation. This has been brought about by the following causes: In the first place, their natural increase has been much greater than that of the Indians. Then regiments of United States colored troops were stationed in the Chickasaw Nation after the war, and around them gathered a large number of colored people from the Choctaw Nation who had formerly been slaves of the Chickasaws and Choctaws. Furthermore, many of the soldiers were mustered out of service after the close of the war, and married and settled in the country. And, finally, many negroes who had been sold by the Chickasaws before the war have returned since the war, and now claim all the privileges secured to the negroes who were emancipated by the treaty of 1866. The result is that in two of the four counties of the Chickasaw Nation, viz, Pickens and Pontotoc, the negroes outnumber the Indians, and in the third county, Tishomingo, they would constitute nearly half of the voting population.

Article III of the treaty of April 28, 1866, contains the following provisions:

"(1) The Choctaws and Chickasaws agreed to sell and cede to the United States, for the sum of \$300,000, the territory west of the ninety-eighth meridian, known as the 'leased district.'"

(2) The United States agreed to hold the purchase money (\$300,000) in trust, at interest, for the Choctaws and Chickasaws (three-fourths for the former and one-fourth for the latter) until the Choctaw and Chickasaw legislatures, respectively, should make such laws, rules, and regulations as would secure to all persons of African descent, residing in said nations at the date of the treaty of Fort Smith, and their descendants, formerly held in slavery among said nations, all the rights, privileges, and immunities of citizens of said nations (including the right of suffrage), except the right to share in the annuities, moneys, and public domain of the nations, and also to secure to each of said freedmen 40 acres of land, upon the terms and in the manner prescribed.

(3) The United States agreed to pay over the sum of \$300,000 to the Choctaws and Chickasaws as soon as such laws, rules, and regulations should be made, less such part of the sum of \$300,000 as should be sufficient to pay \$100 per capita to such of

said freedmen as should, within ninety days after the laws, rules, and regulations were made, elect to remove and actually remove from the Territory.

(4) It was agreed that if such laws, rules, and regulations were not made by the Choctaw and Chickasaw nations, respectively, within two years after the ratification of the treaty of April 28, 1866, said sum of \$300,000 should be held in trust for such said freedmen as the United States should remove from the Territory.

(5) It was agreed that upon the failure of the Choctaws and Chickasaws to make such laws, rules, and regulations within two years after the ratification of the treaty, said sum of \$300,000 being thereupon held for the use and benefit of said freedmen, the United States should remove said freedmen from the Indian Territory within ninety days after the expiration of such period of two years.

The treaty stipulation is in the following words:

"ARTICLE III. The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the 98° 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 5 per cent, in trust for the said nations, until the legislatures 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, 40 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 said laws, rules, and regulations the said sum of \$300,000 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 \$100 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 \$300,000 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 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 \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

The third article of the Creek treaty of June 14, 1866, contained the following stipulation:

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south."

The fourth article of the Choctaw and Chickasaw treaty of 1866 contained the following stipulation on the part of the Choctaws and Chickasaws:

"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 40 acres aforesaid shall stand in the place of the land cultivated as last aforesaid."

The Chickasaws did not, within two years after the ratification of the treaty of April 28, 1866, make the laws, rules, and regulations necessary to give to the freedmen either the rights, privileges, and immunities, or the 40 acres of land mentioned above. On the contrary, they decided not to make such laws, rules, and regulations, and they surrendered all claim to said sum of \$300,000.

An act of the Chickasaw legislature, approved November 9, 1866, contains the following provisions:

SEC. 3. "Be it further enacted, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the \$300,000 therein named for the use and benefit of the Chickasaws, or passing

such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be and it is hereby declared to be the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of \$300,000 for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States 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."

The provisions of this act were affirmed by an act of the Chickasaw legislature approved October 22, 1885.

Upon the passage of the act of November 9, 1866, it became the duty of the United States, under the treaty, to remove the freedmen from the Chickasaw Nation. But the United States have wholly neglected to perform this duty, and have left all the freedmen within the Chickasaw Nation; and since 1868 those residing within the Chickasaw territory have enjoyed the free use of all the land they have seen fit to cultivate, and all the rights which the Chickasaws themselves have enjoyed, except the right to vote and the right to share in the annuities, moneys, and public domain of the nation.

Under the treaty the Chickasaws were free to adopt the freedmen as citizens, or to reject them, at their discretion. Their right to determine this question for themselves was not made conditional upon the approval by the United States of the reasons on which their decision should be based.

It will be observed that the stipulations of the treaty are only applicable to the emancipated slaves of the Choctaws and Chickasaws and to their descendants. Other negroes, whether immigrants from the States or from other Indian nations, or soldiers mustered out of the Army of the United States, were, and still are, legally on the same footing, in the Chickasaw Nation, as white citizens of the United States. They can not legally reside in the nation without the consent of the Chickasaws. But the difficulties of the situation are greatly increased by the presence in the Chickasaw Nation of large numbers of negroes who are not emancipated slaves of either the Choctaws or Chickasaws, as well as by the presence of many Choctaw freedmen and their descendants. It will be difficult, if not impossible, to separate these classes from each other. They have intermarried, and their relations have become so intimate that a rigorous enforcement of the right of the Chickasaws to exclude all except the freedmen and their descendants would work great hardship to the colored people. Heretofore the Chickasaws have made no discrimination between freedmen and their descendants, on the one hand, and those negroes, on the other hand, who have no interest in the treaty. They have furnished both classes with all the land they have seen fit to cultivate, and have treated both classes alike with uniform kindness and justice. Although residing in the Chickasaw Nation, mingled with the Indians, the negroes have never been subject to the civil or criminal jurisdiction of the Chickasaw Nation since the treaty of 1866 was made.

The Chickasaws are friendly to the freedmen and their descendants and wish them to enjoy the privileges secured to them by the treaty of 1866. But the addition of this multitude of immigrants to the body of Chickasaw freedmen seriously imperils the welfare of the Chickasaw Nation. The freedmen constituted an insignificant proportion of the Choctaw population, and the tendency of the Choctaw freedmen has been steadily toward the Chickasaw country. Their recent absorption into the body of the Choctaw citizens was, therefore, attended with no danger or inconvenience to the Choctaws; but the freedmen and colored immigrants constitute so large a part of the Chickasaw Nation and increase in number so rapidly that they must soon outnumber the Chickasaws, and, if invested with the elective franchise, will be able to take possession of the government and ultimately to deprive the Chickasaw people of their government and country. The Chickasaws have decided, after mature deliberation, that they can not, under any circumstances, consent to adopt the freedmen as citizens. The result of this threatening condition of things must soon be to disturb the friendly relations now existing between the colored people and the Chickasaws.

In view of the considerations above set forth, the Chickasaws earnestly ask the United States to fulfill the treaty of 1866 by removing, without delay, to the leased district west of the ninety-eighth meridian of longitude, or to the Oklahoma country, ceded by the Creek treaty of 1866, or elsewhere, all the freedmen who shall consent to such removal, and by placing all those who shall refuse to go on the same footing as other citizens of the United States in the Chickasaw Nation.

G. W. HARKINS,
H. F. MURRAY,
Chickasaw Delegates.

EXHIBIT No. 14.

Resolutions adopted by the Chickasaw freedmen in convention assembled.

At Dawes Academy, Chickasaw Nation, Ind. T., on this 29th day of May, 1897:

Whereas in the treaty of April 28, 1866, made by the United States with the Choctaw and Chickasaw nations of Indians, provisions are contained for the benefit of the persons of African descent, resident in said nations, at the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, among which provisions are the following:

"ARTICLE II. 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.

"ARTICLE 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 legislatures 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 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 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.

"ARTICLE 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.)

Whereas the persons of African descent provided for in said treaty are, so far as these resolutions are concerned, hereinafter designated as "Chickasaw freedmen;" and

Whereas the Chickasaw Nation failed and refused, within the two years specified in the said treaty, to make the laws, etc., for the benefit of said Chickasaw freedmen as in said treaty contemplated and provided for; and

Whereas the United States have also failed and neglected to perform the obligations in said treaty assumed and undertaken to be discharged upon failure of the Chickasaw Nation to make the laws, etc., for the benefit of the Chickasaw Freedmen; and

Whereas, nothing having been accomplished by the Chickasaw Nation or by the United States from the date of the said treaty until 1873, and the Chickasaw freedmen being yet in the Chickasaw country, without any establishment of their legal status and rights, the Chickasaw legislature passed an act, entitled "An act to adopt the negroes of the Chickasaw Nation, etc.," approved January 10, 1873, and submitted the same to the President of the United States, whereupon it was submitted to the Congress of the United States with recommendation for appropriate action, as shown in the Annual Report of the Indian Office for 1882, page LVII, and in H. R. Ex. Doc. No. 207, 42d Congress, 3d session, the full text of the said Chickasaw legislative act being set out in full in said Executive Document No. 207; and

Whereas no legislative action was had by the Congress of the United States on the subject until, by a clause in the Indian appropriation act of May 17, 1882, authority was given for the use of \$10,000.00 of the \$300,000.00 reserved by the third article of the treaty of 1866 with the Choctaws and Chickasaws for educating freedmen in said tribes, it is provided "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 unexpended balance of the three hundred thousand dollars due said tribe" (22 Statutes, 72); and

Whereas the Choctaw Nation of Indians, in pursuance of said law, did pass an act to adopt and provide for the Choctaw freedmen, which was approved by the Executive Department of the United States, and settlement was made with said Choctaw Nation accordingly; but the Chickasaw Nation did, subsequent to said act of Congress, fail and refuse to pass a law to adopt and provide for the Chickasaw freedmen, as in said act provided for, and has to this day failed and refused to adopt and provide for said Chickasaw freedmen, except by the aforesaid act of January 10, 1873, set out in said H. R. Ex. Doc. No. 207; and, consequently, no final settlement has been made by the United States with said Chickasaw Nation in the matter of the said three hundred thousand dollars reserved by the third article of the said treaty with the said Choctaw and Chickasaw Nations of Indians; and

Whereas the provisions of said treaty of 1866 with the Choctaws and Chickasaws for the benefit of the Chickasaw freedmen not having been performed or fulfilled on the part of the Chickasaw Nation or on the part of the United States, notwithstanding attention was repeatedly drawn thereto in the annual reports of the Commissioner of Indian Affairs and otherwise. The Commissioner of Indian Affairs, Hon. J. D. C. Atkins, in his annual report for 1887, pages LIX to LXIV, strongly presented the matter to the Secretary of the Interior, setting forth the deplorable condition of the Chickasaw freedmen; the denial of any rights to them by the Chickasaw Nation; the neglect of the United States to perform the treaty obligations assumed as to them; the desire of the Chickasaw freedmen to remain in the Chickasaw country if accorded their rights therein, but their willingness to submit to the decision of the United States whether they should remain in or be removed from the Chickasaw country and be provided for elsewhere; submitting it as his belief that "their removal from the nation is the only practicable method by which they can be afforded education and other privileges," and suggesting their removal to certain lands acquired from the Creeks and Seminole Indians, in Oklahoma Territory, lying on the Canadian River, west of what was then the Pottawatomie Reservation, and saying:

"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."

A special report with a draft of a bill and detailed information was submitted by him subsequently to the Secretary of the Interior, Hon. Wm. F. Vilas, and by him submitted to Congress for its consideration and action on May 9, 1888, as shown in Senate Executive Document No. 166, 50th Congress, 1st session; and

Whereas under a resolution of the Senate of the United States of March 29, 1894, the Committee on the Five Civilized Tribes of Indians, of which Hon. H. M. Teller was then 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," reported as to the Chickasaw freedmen, that

"We find in the Chickasaw country a freedmen 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."

Whereas the Congress of the United States did then, for the purpose of fixing and establishing the status and rights of the Chickasaw freedmen in the Chickasaw Nation and country, enact in the Indian appropriation act of July 15, 1894, the following:

"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." (28 Statutes, 336.)

Whereas, notwithstanding the foregoing provision of law enacted by Congress, the Commission authorized and appointed to negotiate with the Five Civilized Tribes, commonly known as the "Dawes Commission," did conclude on April 23, 1897, an agreement with commissioners representing the Choctaw and Chickasaw tribes or nations, subject to future ratification, which contains provisions for the allotment of lands to the Choctaw freedmen, but which contains no provisions for the allotment of lands to the Chickasaw freedmen, nor any provisions otherwise for the said Chickasaw freedmen, either in the Chickasaw country or elsewhere; and,

Whereas the United States have taken care that the freedmen of the Cherokee Indians, of the Creek Indians, and of the Seminole Indians are fully provided for under provisions of treaties made with those tribes or nations, and that the freedmen of the Choctaw Indians are provided for in the agreement negotiated by the said "Dawes Commission;" and it being the clear and evident intention of the treaty of 1866 with the Choctaw and Chickasaw nations that the Chickasaw freedmen shall be suitably provided for, and as the obligation clearly rests upon the United States, under the provisions of the said treaty, to see that the said Chickasaw freedmen are provided for within the full meaning and intent of the said treaty, and as the said Chickasaw freedmen have been and are yet wholly unprovided for as contemplated by said treaty, if said agreement negotiated by the said "Dawes Commission" shall be ratified and confirmed in the shape it has been presented to the Secretary of the Interior, the Chickasaw freedmen will be left in the Chickasaw country without a legal status and will be looked upon, held, and treated by the Chickasaw Nation and people as intruders, without any rights or privileges in that country that the Chickasaw Nation or people will be bound to respect; and the Chickasaw freedmen would be then divested of their homes and valuable improvements, made under many privations and with great toil during the past thirty years and more that they have waited, prayed, and hoped for the United States and the Chickasaw Nation to take the action necessary to establish their status and rights in accordance with the provisions of the said treaty of 1866; and

Whereas it is contrary to every principle of justice, right, and humanity for the Chickasaw freedmen to be thus discriminated against by the United States, or that they should be finally left homeless and robbed of the earnings of years of toil accumulated in the midst of sorrows, disappointments, and delays, under embarrassment which they were and have been helpless to relieve by any action of their own, but to which they have quietly and peaceably submitted, waiting for the strong arm of the Government to rescue them in accordance with the spirit and intent of the treaty of 1866, and fully believing that the Government of the United States will fulfill its treaty obligations to them, the Chickasaw freedmen, with adequate recompense for the damages they have suffered during the long delay of about thirty years: Therefore,

Be it resolved by the Chickasaw freedmen in convention assembled, That they do hereby petition the President and the Congress of the United States to have incorporated in the agreement negotiated by the "Dawes Commission" with the Choctaw and Chickasaw nations of Indians, before the same shall be ratified, suitable provisions for the allotment of lands to the Chickasaw freedmen in the Chickasaw country, and for otherwise providing for the rights and privileges of the Chickasaw freedmen in said Chickasaw country where they now reside and where their homes and improvements are, the fruits of labor bestowed during the past thirty years.

Resolved further, That if the incorporation of such beneficial provisions in said agreement can not be procured, then and in that event the ratification of the said agreement by the Congress of the United States be refused, and the said agreement be rejected.

Resolved further, That if neither the incorporation of said beneficial provisions in said agreement, nor the rejection of the said agreement can or will be procured by the Congress of the United States, in the interest of the rights of the Chickasaw freedmen under the said treaty of 1866, made with the Choctaw and Chickasaw nations by the United States, then that the ratification of the said agreement be made conditional upon the fulfillment of concurrent legislation by Congress that will provide:

1st. That the improvements of the Chickasaw freedmen in the Chickasaw country

shall be fairly and justly appraised, and the appraised value thereof be paid to the owners of said improvements in cash, less the fee agreed by the Chickasaw freedmen under contract duly entered into by authority of resolutions of their convention, with Robert V. Belt, of Washington, D. C., and Joseph P. Mullens, of Fort Smith, Arkansas, their attorneys retained and employed for the prosecution of their claims and rights under the said treaty of 1866, one copy of which contract is now on file in the Office of Indian Affairs at Washington, D. C.

2nd. That after the said cash payment of the appraised value of their said improvements, suitable and sufficient allotments of lands be made to the said Chickasaw freedmen in such portion of the tract of country known as the "Choctaw leased district" as is now within the Kiowa and Comanche Reservation, Oklahoma Territory, and not occupied by the Indians of that reservation; and that the said Chickasaw freedmen be removed, at the expense of the United States, to the lands so to be allotted to them.

3rd. That upon the removal of the Chickasaw freedmen by the United States to the lands so to be allotted to them, they be paid \$100 per capita, provided for in the treaty of 1866, to be paid to those freedmen removing from the Chickasaw country, less the fee to be paid to the aforesaid attorneys, according to the aforesaid contract.

4th. That such other and further measures of relief be afforded to the said Chickasaw freedmen as shall be required, in good conscience, to meet not only the full requirements of the provisions of the treaty of 1866, as to them, according to its true meaning and intent, but such also as will, in a just measure, compensate them for the great damage they have suffered by reason of the failure of those upon whom the just obligation has rested, to provide them with suitable and necessary educational facilities and advantages, security for their persons and property, and with such permanency of title to the land upon which they have resided as would have warranted them in building up better homes, providing more comforts for themselves and families, and improving their environments.

Resolved further, That a copy of these resolutions be furnished by the officers of this convention, through our said attorneys, Belt and Mullen, to the President of the United States, the Secretary of the Interior, the Speaker of the House of Representatives, and the President of the Senate of the Congress of the United States, and to the Commissioner of Indian Affairs.

Adopted in convention of the Chickasaw freedmen, assembled at Dawes Academy, Pickens County, Chickasaw Nation, Indian Territory, this 29th day of May, 1897.

CHARLES COHEE,
*President of Chickasaw Freedmen's Association,
and Chairman of Convention.*

HA. STEPHENSON,
Secretary of Convention.

Claim of the Chickasaw Nation with reference to the freedmen, submitted by a member of the nation.

In 1866 the Choctaws and Chickasaws entered into a treaty with the United States, by the third article of which the said tribes took for themselves the option of adopting their freedmen within two years from ratification of treaty, conferring upon them certain privileges and benefits and giving them each 40 acres of land. (14 Stat., p. 769).

On the 9th of November, 1866, the Chickasaw legislature passed an act declining to avail themselves of the option to adopt their freedmen, and called upon the United States to perform its obligation assumed under said treaty and remove the freedmen from the Chickasaw Nation and take the Chickasaw share of the \$300,000 provided in said treaty.

In December, 1866, the freedmen of the Chickasaw Nation memorialized the United States to transport them from the Chickasaw Nation, settle them upon any land that might be designated by the Government, and furnish them with sufficient supplies to enable them to make a start in their new homes. No action appears to have been taken by the Government on this memorial.

On June 27, 1868, the Chickasaw freedmen again petitioned the United States Government to the same effect, but no action was taken thereon.

Later in that same year (1868) the Choctaw and Chickasaw nations both urged the United States to carry out its pledges in the third article of said treaty, and remove the freedmen from the nations.

In February, 1869, a delegation of freedmen came to Washington, at the expense of the Government, and submitted a memorial urging the fulfillment on the part of the Government of their treaty stipulations in regard to the said freedmen, but nothing resulted from this.

On January 10, 1873, there appears to have been passed by the Chickasaw legislature an act adopting the Chickasaw freedmen in conformity with the terms of the third article of the said treaty of 1866, providing, however, expressly that the act should only have full force and effect from and after the approval by the proper authority of the United States.

The option of the Chickasaws to adopt their freedmen under the treaty of 1866 had expired on July 10, 1868, and the said act of January 10, 1873, was a new venture and as such required the sanction of the United States. Said act was sent to Washington and was duly submitted to Congress on February 10, 1873. (House Ex. Doc. No. 207, Forty-third Congress, third session, Exhibit A.) The matter was referred to the Committee on Freedmen Privileges February 13, 1873, and ordered to be printed. No further action appears to have been taken on that.

In March, 1875, Hon. J. P. C. Shanks, of Indiana, was appointed a commissioner to investigate and report upon the status of the freedmen among the Choctaws and Chickasaws, and on December 30, 1875, he submitted his report, in which he strenuously opposed the removal of the freedmen and recommended that the United States take measures to secure their recognition as citizens of the nations in which they were resident.

On the 18th of October, 1876, the Chickasaw legislature passed an act providing for four commissioners to go to the capital of the Choctaw Nation and confer with like commissioners of that nation, and agree upon some plan for the removal of the freedmen from the limits of the two nations. Nothing resulted from that.

On October 17, 1877, the Chickasaw legislature passed another act, the particular provision of which is as follows:

"And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government should 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."

In 1879, another commission was provided for by the Chickasaw legislature, to meet a like commission from the Choctaws to confer on the freedmen question, and report in writing to the legislature. This was done, but nothing came of it.

In pursuance of a memorial of the general council of the Choctaw Nation, a clause was inserted in the Indian appropriation act of May 17, 1882, providing that either the Choctaw or Chickasaw Nations might adopt and provide for their freedmen in accordance with the terms of the third article of the treaty of 1866. The Choctaws acted upon that authority and adopted their freedmen.

On May 6, 1882, the Chickasaw legislature passed an act protesting to the Congress of the United States against the action of the Choctaws adopting their freedmen without conferring with the Chickasaws or obtaining their consent to said adoption.

On October 22, 1885, the Chickasaw legislature passed an act requesting the governor of the nation to notify the Department at Washington that the Chickasaw people refuse to accept their freedmen as citizens of the nation upon any terms or conditions whatever.

On October 4, 1887, the Chickasaw legislature passed a memorial and resolution that the nation should refund to the United States the sum of \$55,000 to be used in removing the Chickasaw freedmen to new homes, as provided in the treaty of 1866.

In that same year (1887), the Chickasaw delegates addressed a memorial to the President, earnestly requesting that the United States fulfill the stipulations of the third article of the treaty of 1866 by removing without delay, to the leased district west of the ninety-eighth meridian of west longitude, or to the Oklahoma country ceded by the Creek treaty of 1866, or elsewhere, the freedmen who would consent to such removal, and by placing all those who would refuse to go upon the same footing as other citizens of the United States in the Chickasaw Nation.

On May 8, 1888, a report was made by the Indian Office to the Secretary of the Interior, giving a history of the transactions had in connection with the Chickasaw freedmen and transmitting a form of legislation providing for the removal of said freedmen into the then unoccupied lands in Oklahoma. These papers were transmitted by the Secretary of the Interior, in a letter dated May 9, 1888, to the president pro tempore of the Senate, and are published in Senate Ex. Doc. No. 166, Fiftieth Congress, first session, Exhibit B.

On February 12, 1890, the Indian agent for the Five Tribes of Indian Territory Union Agency, Muskogee, Ind. T., made a report to the Indian Office on the condition of the Chickasaw freedmen, and, after drawing a deplorable picture of their condition, states that it was not practical for the United States to move those freedmen at that time.

On January 25, 1892, at a convention of Chickasaw freedmen held at Wynnewood, in the Chickasaw Nation, two Chickasaw freedmen were selected to visit Washington City to try to secure action by the Interior Department, or by Congress, tending

to relieve their people from their condition. They submitted a memorial praying that the United States take action looking to the incorporation of the colored people into, and their recognition as citizens of, the Chickasaw Nation.

In 1892, Senator Dawes introduced in the Senate a bill (S. No. 2023) for the relief of the Chickasaw freedmen. This bill was of the same import as the bill a form of which was sent by the Secretary of the Interior in 1888 to the President of the Senate, which provided for the removal of the said freedmen of the Chickasaw Nation to lands west of the Five Tribes.

On August 15, 1894, Congress passed an act ratifying or validating the act of the Chickasaw legislature of January 10, 1873, providing for the adoption of their freedmen in accordance with the terms of the third article of the treaty of 1866.

The Chickasaw legislature never in express terms repealed the said act of January 10, 1873, but the action on this subject by the authorities of the Chickasaw Nation since the passage of said act have looked to the removal of the freedmen, and shows that the failure of the United States to accept the proposition in said act, and the refusal of the Choctaw authorities to cooperate with them, had caused them to change their minds. The Chickasaws went so far in their purpose of removal of their freedmen as to pass a law requiring all freedmen to take out permits to live there, the same as is required of all other citizens of the United States. Without the cooperation of the United States, this law could not be, and was not, enforced.

The forceful contention of the Chickasaws against adopting their freedmen is, that on account of their numbers it would amount to turning their government over to the freedmen to control their schools, their funds, their lands, and all other matters, all of which they regard as so contrary to the spirit and letter of the third article of the said treaty of 1866 that they do not think the United States will ever try to enforce such a construction and execution of the said treaty.

The above statement is made up of facts obtained in the Indian Office.

A recapitulation of it shows that the Chickasaws were at first opposed to adopting their freedmen, but after seven years' waiting on the United States to remove them, they concluded to adopt them if the United States will assent, to get jurisdiction of them. Failing in that, the Chickasaws return to their first policy of removal of the freedmen, and have maintained it until now.

The freedmen for the first three years after the treaty were in favor of removal from the Chickasaw Nation. Failing to get any encouragement or assistance from the United States, they abandoned the project and settled down on the policy of remaining where they are.

The United States allowed all of its rights and duties under the third article of the treaty of 1866 to the freedmen to lapse and expire by limitation, and have manifested little interest in the subject since.

EXHIBIT A.

[House Ex. Doc. No. 207, Forty-second Congress, third session.]

Letter from the Secretary of the Interior, transmitting an act passed by the legislature of Chickasaw Nation entitled "An act to adopt the negroes of the Chickasaw Nation," etc.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 10, 1873.

SIR: I have the honor to transmit herewith copy of a communication from the Acting Commissioner of Indian Affairs, dated the 4th instant, inclosing a communication to him from Douglas H. Cooper, of the Chickasaw Nation, dated the 23d ultimo, together with a letter addressed to the President of the United States, by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature providing for the adoption of negroes in the Chickasaw country, referred to in the third article of the treaty with the Choctaws and Chickasaws, concluded April 28, 1866. (Statutes at Large, vol. 10, p. 769.)

A careful examination of these communications exhibits the fact that the third article of the treaty referred to remains unexecuted. Neither the Choctaws nor Chickasaws have made such rules and regulations as were contemplated in said article in regard to persons of African descent residing in their respective nations, within two years after the ratification of the aforesaid treaty. The Choctaw Nation has never, at any time, attempted the execution of this treaty in regard to said persons, and what has been done by the Chickasaw Nation was done after the expiration of the two years in which their action was limited by the treaty aforesaid.

Deeming it important that the provisions of said treaty be carried out, I have respectfully to recommend that such legislation be had during the present session of Congress, if possible, as will extend the time in all respects for the execution of the provisions of the third article of the treaty before referred to, for the term of two years from the 1st day of July, 1873.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. JAS. G. BLAINE,

Speaker U. S. House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 4, 1873.

SIR: I have the honor to submit herewith a communication from Douglas H. Cooper, of the Chickasaw Nation, dated the 23d ultimo, together with a letter addressed to the President, by Cyrus Harris, governor of said nation, dated the 10th ultimo, transmitting an act of the Chickasaw legislature providing for the adoption of the negroes in the Chickasaw country, referred to in the third article of the treaty concluded with the Choctaw and Chickasaw Indians April 28, 1866. (Statutes at Large, vol. 14, p. 769.)

In view of the expiration of the term of two years from the ratification of the treaty, within which it is stipulated that the laws, rules, and regulations referred to in the third article of the treaty aforesaid, shall be made by the Choctaw and Chickasaw nations, and believing it to be for the best interests of the Indians, as well as of the negroes, that the latter should remain where they now are, and that the money referred to in said article should be paid to said nations, I respectfully recommend that Congress be asked to provide by legislation that the limit to the time mentioned in said third article be extended three years from the 1st of July, 1873, or until July 2, 1876.

Very respectfully, your obedient servant,

II. R. CLUM, *Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *January 25, 1873.*

SIR: I have the honor herewith to hand you a letter from Cyrus Harris, governor of the Chickasaw Nation, dated at the executive office, Tishomingo, Chickasaw Nation, January 10, 1873, and directed to the President of the United States, inclosing an act of the legislature of the Chickasaw Nation, approved on the date of said letter, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and requesting "that the President will transmit the same to Congress for such action as that honorable body may deem proper;" and I respectfully request that you will transmit the said letter and act to the President, through the honorable Secretary of the Interior, at your earliest convenience.

I am, sir, your obedient servant,

DOUGLAS H. COOPER,
Of the Chickasaw Nation.

Hon. H. R. CLUM,

Acting Commissioner, Office of Indian Affairs Department of the Interior.

EXECUTIVE OFFICE,
Tishomingo City, Chickasaw Nation, January 10, 1873.

SIR: I have the honor to inclose a copy of an act passed by the legislature of the Chickasaw Nation, and approved this day, entitled "An act to adopt the negroes of the Chickasaw Nation," etc., and respectfully request that you will transmit the same to the Congress of the United States for such action as that honorable body may deem proper at the earliest day possible.

I am, sir, your obedient servant,

CYRUS HARRIS,
Governor of the Chickasaw Nation of Indians.

The PRESIDENT OF THE UNITED STATES,

Washington, D. C.

AN ACT to adopt the negroes of the Chickasaw Nation, &c.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That all the negroes belonging to Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: *Provided, however*, That the proportional part of the \$300,000 specified in article third of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: *And provided further*, The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said \$300,000, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: *And provided further*, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

SEC. 2. *And be it further enacted*, That this act shall be in full force and effect from and after its approval by the proper authority of the United States. And all laws or parts of laws in conflict with this act are hereby repealed.

Approved January 10, 1873.

CYRUS HARRIS, *Governor*.

Attest:

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

I do hereby certify that the above copy is a true and authenticated copy from the original now on file in my office this January 10, 1873.

W. H. BOURLAND,
National Secretary, Chickasaw Nation.

EXHIBIT B.

[Senate Ex. Doc. No. 166, Fiftieth Congress, first session.]

Letter from the Secretary of the Interior, transmitting a letter from the Commissioner of Indian Affairs relative to the freedmen in the Chickasaw Nation.

DEPARTMENT OF THE INTERIOR,
Washington, May 9, 1888.

SIR: I have the honor to transmit herewith a communication of the 8th instant from the Commissioner of Indian Affairs, reporting as to the present status and condition of the freedmen in the Chickasaw Nation, in the Indian Territory, and submitting, with other papers on the subject, a draft of proposed legislation prepared under his direction for their relief, which he states is understood to be acceptable both to the Chickasaws and to the freedmen.

The subject is respectfully presented for the consideration and action of Congress.

Very respectfully,

WM. F. VILAS, *Secretary*.

THE PRESIDENT PRO TEMPORE OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 8, 1888.

SIR: In the last annual report of this office it was indicated that a special report upon the subject of the freedmen in the Chickasaw Nation, with a draft of the necessary legislation for their relief, would be prepared and submitted for your consideration before the meeting of Congress.

Pressure of other important matters has prevented earlier action upon this subject, which is referred to at length in said report (p. 59).

By the third article of the treaty of April 23, 1866 (14 Stat., 769), the Choctaws and Chickasaws, in consideration of the sum of \$300,000, ceded to the United States the territory west of the ninety-eighth degree of west longitude, known as the "leased district," with the provision that said sum of \$300,000 should be invested

and held by the United States, at an interest not less than 5 per cent, in trust for said nations until the legislatures of such nations should, respectively, make such laws as might 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 residents as aforesaid and their descendants 40 acres each of the land of said nations on the same terms as the Choctaws and Chickasaws. * * * And immediately on the enactment of such laws, rules, and regulations the said sum of \$300,000 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 \$100 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 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 \$300,000 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 removal to be on the same footing as other citizens of the United States.

The fourth article contained certain stipulations relative to the treatment of the negroes in the respective nations.

The forty-sixth article provided that "of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district and the admission of the Kansas Indians among them" (provided for in article 30) the sum of \$150,000 shall be advanced and paid to the Choctaws and \$50,000 to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nation in the hands of the United States.

By the act of July 26, 1866 (14 Stats., 259), the sum of \$50,000 was appropriated "to be advanced the Chickasaws for the cession of the leased district and the admission of the Kansas Indians," as per the forty-sixth article of the treaty of April 28, 1866, which amount was paid the treasurer of the Chickasaw Nation February 8, 1867.

Said act also appropriated the sum of \$15,000 for interest, at 5 per cent per annum, upon the amount paid for certain lands ceded by the Choctaws and Chickasaws to the United States, and due them under the third and forty-sixth articles of said treaty, and the sum of \$3,750 (the proportionate share of the Chickasaws) was paid to the treasurer of said nation July 27, 1867.

By the act of April 10, 1869 (16 Stats., 39), the sum of \$15,000 was appropriated for "interest due the Choctaws and Chickasaws, August 8, 1868, on \$300,000, held in trust for said Indians under the third article" of said treaty.

The share of the Chickasaws in the above appropriation (\$3,750) was paid to Holmes Colbert, Chickasaw commissioner, May 28, 1869.

Meantime, on November 9, 1866, the Chickasaw legislature passed an act declaring it to be the unanimous desire of the legislature that the United States keep and hold the Chickasaw share of the \$300,000 for the benefit of the negroes, and requesting the governor "to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation for the Government to remove said negroes from the limits of the Chickasaw Nation, according to said third article of the treaty of April, 1866."

The following month the freedmen also memorialized the Government, stating that the bitter feeling of the Chickasaws toward them, and the willingness of the Chickasaws to give up their proportion of the \$300,000, rendered them anxious to leave that nation and to settle on any land designated by the Government, and asked that transportation be provided for themselves and families, and supplies sufficient to enable them to make a start in their new homes.

No attention was paid to this petition. Nearly two years passed, and on June 27, 1868, the freedmen again sent in a petition to the same effect, which was laid before Congress, but no action was taken. August 17, 1868, both the Choctaw and Chickasaw Nations urged the Government to fulfill its pledges and remove the freedmen. In February, 1869, a delegation of the latter came to Washington, at the expense of the Government, to submit a memorial urging the fulfillment, on the part of the Government, of that treaty stipulation in regard to their people. From this nothing

resulted. About this time the suggestion came from various sources that a tract west of the Seminole Nation would be suitable land on which to locate the freedmen.

In 1873 an act was passed by the Chickasaw legislature, approved January 10, 1873, entitled "An act to adopt the negroes of the Chickasaw Nation," which declared all negroes belonging to Chickasaws at the time of the adoption of the treaty at Fort Smith, and resident in the nation at the date thereof, and their descendants, to be adopted, in conformity with the third article of the treaty of 1866; provided, that the proportional part of the \$300,000 specified in said article, with the accrued interest thereon, should be paid to the Chickasaw Nation for its sole use and benefit; provided further, that the said adopted negroes should not be entitled to any part of the said \$300,000, nor to any benefit from the principal and interest of invested funds, nor to any share in the common domain except the 40 acres provided in the treaty, nor to any privileges or rights not conferred by the treaty; and provided further, that said adopted negroes should be subject to the jurisdiction and laws of the Chickasaw Nation just as if said negroes were Chickasaws.

This act was to have full force and effect from and after its approval by the proper authority of the United States.

This act was transmitted to Congress by Secretary Delano February 10, 1873, who recommended that such legislation be had by Congress as would extend the time in all respects for the execution of the provisions of the third article of the treaty of 1866 for the term of two years from the 1st of July, 1873.

The subject was referred to the Committee on Freedmen Affairs February 13, 1873, and ordered to be printed. No further action appears to have been taken. (See annual report of this office for 1882, page LVII and H. R. Ex. Doc. No. 207, Forty-second Congress, second session.)

By this failure of Congress to take action the one favorable opportunity for the adoption by the Chickasaws of their freedmen was lost. Since then all Chickasaw action has looked toward the removal of the freedmen.

December 30, 1875, Hon. J. P. C. Shanks, who had been appointed in March previous to investigate and report upon the status of the freedmen among the Choctaws and Chickasaws, submitted his report, in which he opposed the removal of the freedmen, and recommended that the United States take measures to secure their recognition as full citizens in the nations. Upon this report no action seems to have been taken.

In 1876 the legislature of the Chickasaw Nation adopted resolutions (approved October 18, 1876) directing the election of commissioners to confer with the commissioners from the Choctaw Nation to agree upon some plan whereby the freedmen and their descendants should be removed from, and kept out of, the Choctaw and Chickasaw country. (See Chickasaw Laws, page 148, edition of 1878.)

In 1879 the legislature passed an act (approved March 17, 1879) authorizing the appointment of commissioners to meet like commissioners from the Choctaws, to confer on the freedmen question, and report in writing to the legislature. (See page 6 of pamphlet laws, 1878-1881.)

During much of this time the Choctaws had manifested a willingness to adopt their freedmen, but it had been held that under the treaty the joint or concurrent action of both nations was required in order to make valid the action of either.

On November 2, 1880, the Choctaw legislature memorialized Congress, expressing their willingness to accept their freedmen as citizens, and asking for legislation that would enable them to do so. A Senate bill, which was never reported, was the sole result of this effort.

In 1882, in order to give the freedmen of these two nations some school facilities, the following clause was inserted in the Indian appropriation act, approved May 17, 1882 (22 Stats., 72):

"That the sum of \$10,000 is hereby appropriated out of the \$300,000 reserved by the third article of the treaty with the Choctaws and Chickasaws, concluded April 8, 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 \$10,000 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 tribes 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 \$300,000 due said tribe."

Under this legislation the Choctaws adopted their freedmen, and the balance of the share of the Choctaw Nation in the \$300,000 (\$52,125), was placed to the credit of the Choctaws on the books of the United States Treasury, by the act of March 3, 1885 (23 Stats., 366).

In January, 1887, the delegates of the Chickasaw Nation addressed a memorial to the President, in which, after reciting the provisions of the treaty of April 28, 1866,

with the Choctaws and Chickasaws relative to the freedmen in those nations, and the action of the Chickasaws thereunder, they earnestly asked—

“The United States to fulfill the treaty of 1866 by removing without delay to the leased district west of the ninety-eighth meridian of longitude, or to the Oklahoma country, ceded by the Creek treaty of 1866, or elsewhere, all the freedmen who shall consent to such removal, and by placing all those who shall refuse to go on the same footing as other citizens of the United States in the Chickasaw Nation.”

During that year, and the present, 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 outvote 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.

October 4, 1887, the Chickasaw legislature passed a memorial, in which they recite the facts concerning their freedmen, and say:

“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.”

The principal reason for the persistent refusal of the Chickasaws to adopt the freedmen, as before indicated, appears to be the fact that their numbers are nearly equal to, if not in excess of, the Chickasaws; hence they fear that the freedmen may be able to control their schools and government.

With this state of affairs existing it is useless to expect that the Chickasaws will accord these freedmen any rights in the nation.

Under these circumstances I believe their removal is the only practicable method by which they can be afforded educational 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 the 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 Pottawatomio 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 those 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 accordingly prepared, and have the honor to submit herewith, the draft of a bill providing for the removal of such as are willing to emigrate to the Creek and Seminole ceded lands within the tract known as Oklahoma.

It provides for ascertaining who of those covered by the terms of the treaty are willing to remove, and for the appraisement of the improvements of such persons.

These facts are to be ascertained by a special agent or employee of this Department, to be designated by the Secretary, and a commissioner appointed for the purpose by the Chickasaw authorities. In case of the failure of these persons to agree, they are to select an umpire.

By this method it is believed that justice will be done all parties. It also provides that no persons shall be removed until they have disposed of their improvements or the Chickasaw Nation has paid them the appraised value of the same.

The per capita payment of \$100, as provided for in the treaty, is to be made to those electing to remove after they have disposed of their improvements.

Those who do not elect to remove are to be placed upon the same footing as other noncitizens of the nation.

It also provides that the lands upon which they may settle, and which were ceded to the United States “to locate other Indians and freedmen thereon,” may be allotted

to them in quantity as provided in the general allotment act, and secured to them by the same title.

In the estimate upon which the appropriation made by the act of March 3, 1885, was based, the account of the two nations was stated as follows:

From the \$300,000 should be deducted not only the \$200,000 appropriated and paid over immediately upon the proclamation of the treaty, but also the two years' interest on that \$200,000, which, for some unknown reason, was also appropriated.

Residue of \$300,000, unappropriated.....	\$100,000
Amount appropriated as interest on \$300,000 for year ending June 10, 1867.....	\$15,000
Deduct amount of appropriation of interest for said year on \$100,000.....	5,000
	10,000
Leaving.....	90,000
Amount appropriated as interest on \$300,000 for year ending June 10, 1868.....	15,000
Deduct amount of appropriation of interest for said year on \$90,000.....	4,500
	10,500
Leaving.....	79,500
From this amount should be deducted the sum appropriated by act approved May 17, 1882.....	10,000
	69,500

to be paid the Choctaws and Chickasaws in case they adopted their freedmen. Of this their three-fourth share, amounting to \$52,125, was appropriated and placed to the credit of the Choctaws.

The \$10,000 appropriated by the act of May 17, 1882, is not, however, chargeable to the Chickasaws, as they were paid nothing under it; on the contrary, the sum of \$2,500 theretofore paid them was recouped.

The Chickasaws are therefore entitled to—

One-fourth of \$200,000, awarded under the treaty.....	\$50,000
One-fourth of \$9,500, two years' interest justly due.....	2,375
One-fourth of \$100,000 (balance of \$300,000).....	25,000
	77,375

Or, following the figures of the estimates—

Balance due both nations prior to the passage of the act of May 17, 1882...	79,500
Share of Chickasaws (one-fourth).....	19,875
To which should be added amount previously paid.....	57,500
	77,375

As before stated, the amount actually retained by the Chickasaws is \$55,000.

I have therefore inserted in the proposed bill an appropriation of \$77,375, of which the sum of \$55,000 is required to be refunded by the Chickasaws, the whole amount being the sum appropriated by the third article of the treaty of 1866, to be held in trust for the benefit of the freedmen in case the Indians refused to adopt them.

The number of freedmen in the Chickasaw Nation is estimated at from 3,000 to 4,000, but undoubtedly a large number of those resident with the Chickasaws are Choctaw freedmen, and citizens of that nation.

It is not probable that the above amount will be sufficient to remove all the Chickasaw freedmen from that nation, but it will be enough for the present, and to test the practicability of this effort for their relief.

The legislation proposed is understood to be acceptable both to the Chickasaws and the freedmen, although the latter would doubtless prefer to remain, if they could be accorded the rights of citizenship and school facilities.

The matter is of pressing importance, and I have the honor to recommend that it be submitted to Congress with request for early and favorable consideration.

Very respectfully, your obedient servant,

J. D. C. ATKINS, *Commissioner.*

The SECRETARY OF THE INTERIOR.

A BILL For the relief of the freedmen in the Chickasaw Nation, Indian Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to remove from the Chickasaw Nation in the Indian Territory, to the lands ceded

to the United States by the third article of the treaty with the Seminole Indians, concluded March twenty-first, eighteen hundred and sixty-six, and the third article of the treaty with the Creek Indians, concluded June fourteenth, eighteen hundred and sixty-six, such persons of African descent resident in the Choctaw or Chickasaw nations at the date of the treaty of Fort Smith (September thirteenth, eighteen hundred and sixty-five) and their descendants, formerly held in slavery among said nations, as are now resident in said Chickasaw Nation, not being citizens of the Choctaw Nation, and as may consent to such removal.

SEC. 2. That the Secretary of the Interior shall, as soon as practicable after the passage of this act, designate a special agent or employé of his Department, whose duty it shall be, in connection with a commissioner appointed by the Chickasaw authorities for the purpose, to ascertain and determine what persons of African descent, as described in the first section of this act, will consent to remove to said ceded lands, and to appraise the value of all improvements of all such persons so consenting to remove. In case said person designated by the Secretary of the Interior and commissioner are unable to agree as to whether any person electing to remove is of the class described in the first section of this act, or as to the value of the improvements of any such person, they shall select an umpire, whose decision shall be final and conclusive.

SEC. 3. All persons whose improvements may be appraised under the provisions of this act shall not be required to remove from the Chickasaw Nation until they shall have disposed of their improvements: *Provided*, That the Chickasaw Nation may pay to any person within the provisions of this act the appraised value of his improvements, in which case such person shall be required to remove from the nation, with his family, within sixty days from such payment.

SEC. 4. That each of the persons electing to remove from the Chickasaw Nation under the provisions of this act shall be paid the sum of one hundred dollars, as provided in the third article of the treaty with the Choctaw and Chickasaw nations, concluded April twenty-eight, eighteen hundred and sixty-six, provided that said sum shall not be paid to any person until he, or the head of the family to which he belongs, has disposed of or been paid for his improvements, as provided in section three of this act.

SEC. 5. That the sum of seventy-seven thousand three hundred and seventy-five dollars, being the Chickasaw proportion of the sum of three hundred thousand dollars, and the interest due thereon, which, by the provisions of the third article of said treaty of April twenty-eighth, eighteen hundred and sixty-six, was to "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," be and the same is hereby appropriated for the per capita payments provided for in section four of this act: *Provided*, That the Chickasaw Nation shall be required to refund to the United States for the purposes of this act the sum of fifty-five thousand dollars, heretofore advanced to said nation, under the provisions of the third and forty-sixth articles of said treaty of eighteen hundred and sixty-six.

SEC. 6. That all of said persons of African descent as aforesaid, resident in said Chickasaw Nation, who do not elect to permanently remove from said nation, shall be placed upon the same footing as other citizens of the United States resident in said nation, and shall be subject to removal therefrom for similar causes.

SEC. 7. That allotments of lands in severalty within said Creek and Seminole ceded lands shall be made to such persons of African descent as may remove thereto from the Chickasaw Nation under the provision of this act, under the direction of the Secretary of the Interior, in quantity as provided in the first section of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes;" and for the lands so allotted patents shall issue in the same manner and of the same legal effect as provided in the fifth section of said act of February eighth, eighteen hundred and eighty-seven.

UNION AGENCY, IND. T.,
Muscogee, September 17, 1887.

SIR: I have the honor to report that on the 14th of September, 1887, according to previous arrangements, I met representatives of the Chickasaw freedmen as follows, to wit:

W. N. Jackson, Tishomingo County, Wash Taylor, Tishomingo County, Sam Cheadle, Tishomingo County, they having been chosen as a committee to represent the freedmen of that county; Philip Stephenson, Mack Stephenson, Dick Roberts, a committee representing the settlements of Pickens County; Isham Love, Caleb Love, Abram Eastman, a committee representing the settlements of Panola County; Jack Alexander, Wilson Chico, Lee Kemp, representatives of the settlements of Pontotoc County.

Besides these were present a number of other colored men, including Henry Kemp,

representative of the Stringtown settlement of Chickasaw negroes in the Choctaw Nation, and T. J. Humphries, representing a similar community from Caddo, in the Choctaw Nation. I learned from these men, as nearly as they could tell, that there were between two and three thousand of the Chickasaw negroes; that they were getting along tolerably well with their farms and stock. The representatives who were present were decently and well clad, and seemed in a fairly prosperous condition. I invited them to free expression of their opinions and feelings. They were uniform in declaring that the Chickasaws had treated them well; that they were without school privileges, however; that they would like to be adopted by the Chickasaws and live with them always; that they would not like to leave, because they had made their farms and had become attached to the country; that they were quite willing in 1866 to leave, but were not willing to move now unless the Government thought it best.

I informed them of the memorial of the Chickasaw Nation, and read to them the status of the case, as shown in your report of January 25, 1887. I told them I would be glad to report their feelings relative to the matter as well as their condition, and hoped to be of some common service to them and the Chickasaw people. They had a private consultation relative to the matter and their chairman wrote out the decision herewith inclosed, which I transmit as I received it from them. They each declared that presented their feelings.

In this connection, for the information of your office, I recite here the names and post-office addresses of their leading men, as given me by this committee.

Panola County, Isham Love, Colbert, Ind. T.; Tishomingo County, Washita Settlement, W. N. Jackson; Mill Creek Settlement, Isham Flint; Pontotoc County, Cherokee Town, Cap. H. Harper, Cherokee Town, Ind. T.; Canadian, Isham Alexander, Johnsonville, Ind. T.; Stonewall, King Blue, Stonewall, Ind. T.; Blue Settlement, Wilson Chico and Lee Kemp, Tishomingo, Ind. T.; Pickets County, Wild Horse Settlement, Jim Williams, Fort Arbuckle, Ind. T.; Caddo or Spring Creek, Mack Stephenson, Woodward, Ind. T.; Red River, Si Love, Burneyville, Ind. T.; Lower Washita, Charles Cohee, Dresden, Ind. T.

Choctaw Nation, Henry Kemp, Stringtown, and T. J. Humphries, Caddo, Ind. T. The settlements average from 200 to 250, according to their statements.

On Wednesday evening I met a committee of eight of the Chickasaw legislature, to wit, Senators Lem Reynolds, Sam Paul, Tandy Walker, Scott Hawkins, and Representatives Eli Perry, Bud Randolph, N. G. Frazier, and Edward Johnson. I represented to them the condition of these freedmen, and urged them to take such action in the matter as was just and right. They replied to me that while they were previously apprised of the Chickasaws having received \$55,000 on account of these freedmen, that the treaty provided that the United States might reimburse itself under the forty-eighth article of the treaty of 1866, out of any money of the Chickasaw Nation in the hands of the United States. They declare they entertain no unfriendly feelings to their emancipated slaves, but that they were firmly resolved that they would never under any circumstances adopt them; that they had rapidly increased since the war by births, by intermarriages with United States citizens of the colored race, and it was very difficult, after a lapse of so great a time, in the absence of authenticated rolls, to know positively who belonged to this class of Chickasaw negroes under the treaty; that they believed that there were nearly 4,000 of these people, and that they are afraid to adopt them for fear that they might with their votes succeed in controlling their government; that they were willing to agree to any liberal terms for the removal of these persons from their domain in accordance with their previous requests under the treaty. They insist upon it that the United States should carry out the treaty of 1866, as expressed in the third article, and remove from the nation all such persons as are willing to remove, and declare the others on the footing of United States citizens. They positively refuse to agree to extend to the negroes any school privileges or any further rights than prescribed by treaty.

I believe they would be willing to consent to any reasonable terms looking to the removal of these people, but I found no variation, either in the private conversation or public interview, in the wish of the Chickasaw people upon this subject.

It seems a great pity that these poor negroes should be without schools, and I have the honor to recommend that the matter should be laid before Congress, if necessary, for proper action in the premises.

I respectfully recommend that the fourth article of the treaty of 1866 should be carried out as soon as suitable legislation can be had on that subject.

There is a fertile country immediately adjacent to the Chickasaw Nation, and on the north and west of the Pottawatomic country, on the Canadian River, which might be occupied by these people under the treaty with the Creeks, to which your attention is respectfully called.

Your obedient servant,

ROBT. L. OWEN,
United States Indian Agent.

Hon. J. D. C. ATKINS,
Commissioner Indian Affairs, Washington, D. C.

[Inclosure to report of R. L. Owen, United States Indian agent, dated September 17, 1887.]

The hole Number of men has A Greed to be left in the hands of the united State if the Chickasaw do Not take us.

MEMORIAL.

To the Congress of the United States:

Your memorialist, the Chickasaw people, would most earnestly represent that the Chickasaw tribe of Indians ceded their homes, east of the Mississippi River, to the United States. "Finding themselves oppressed, being ignorant of the language and laws of the white man, they could not understand or obey them; rather than submit to this great evil, they preferred to seek a home in the West, where they could be governed by their own laws. And believing that they could procure for themselves a country suited to their wants and conditions, provided they had the means to contract and pay for the same, they determined to sell their country and hunt a new home. The President heard the complaints of the Chickasaws and, like them, believed they could not be happy and prosperous as a nation in their situation and condition, and being desirous to relieve them from the great calamity that seemed to await them if they remained where they were, he sent his commissioner, General John Coffee, who met the whole Chickasaw people in council and ceded their homes in the East under the treaty ratified March 1, 1833, sections 1, 2, 3, 4, and in July, 1834, a new treaty was made, making arrangements for the final removal of the Chickasaw people west of the Mississippi River." The Chickasaws sold under provisions of said treaties and bought a home from the Choctaws, paying for the same \$530,000, and in 1837 the Chickasaw people emigrated west to their new homes, then a wilderness. Great many Chickasaws sold their homes and reservations that were reserved to them under the treaties, for negroes, paid large prices for them, and emigrated west to their new homes with them, believing they were good property—they giving valuable considerations to the white men for them. The Chickasaw people never held in bondage any people prior to the time they purchased the negroes, and owned and possessed them until the year 1865, and upon the request of the United States commissioners liberated all their negroes, and in the treaty of 1866 reaffirmed said agreement, that involuntary slavery should not exist in the Chickasaw Nation—only for the commission and conviction of crime. The proclamation of President Lincoln, liberating the freedmen of the Southern States did not apply to the Territories and the Chickasaw people. The Chickasaws agreed and did liberate their former slaves, and did give them a home as good as their own and \$100 per capita that would emigrate to it; and those emigrating and returning, and those who refused to emigrate, should remain in the Chickasaw Nation as other citizens of the United States, as provided under the third and fourth articles of the treaty of 1866. The United States has failed to carry out the stipulations of said treaty, while the Chickasaws have continually asked their removal to the leased land, or to Oklahoma, that was purchased by the United States for the settlement of the Indians and freedmen. The Chickasaws have furnished the freedmen, their former slaves, for the past twenty years, a home, and treated them with uniform kindness, and want them to enjoy all the benefits of the treaty of 1866, except to share a home among them. The number of freedmen being so great, if adopted will soon control our schools and government that we have been building and fostering for the past forty years. We love our homes, institutions, and government, and will not surrender them. The Chickasaws have done more for their freedmen than the Southern States—they liberated them, gave them suffrage—while the Indians who adopted their freedmen gave them a franchise and a home among them, we gave them a home as good as our own, and \$100 per capita for all those who will accept, to emigrate to it, where they can build their own government, schools, and churches, under the fostering care of the United States Government. It is a boon no other freedmen had had the opportunity to accept in the United States or in the world. The decision of the Commissioner of Indian Affairs, dated January 25, 1887, shows that \$55,000 has been paid to the Chickasaws, part of the \$75,000 of the \$300,000 that was set apart by the third and fourth articles of the treaty of 1866. The Chickasaws having continuously refused to accept the \$75,000, and confer citizenship on their former freedmen under the provision of the treaty of 1866, were under the impression said advance was made under the forty-sixth article of the treaty of 1866, for the admission of the Kansas Indians, and not the freedmen.

And whereas the Chickasaw people having 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 fourth 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, the Choctaw and Chickasaw Nations of Indians.

Be it further resolved, That a copy of this memorial and resolution be furnished each and every Member of the Senate and House of Representatives of the United States Congress, and that this resolution take effect from and after its passage.

Approved October 4, 1887.

W. M. GUY,
Governor Chickasaw Nation.

MEMORIAL OF THE CHICKASAW NATION TO THE PRESIDENT OF THE UNITED STATES.

In the years 1837 and 1838 the Chickasaws emigrated from the States of Mississippi, Tennessee, and Alabama to the Indian Territory. At that time the Chickasaws numbered about 4,974, and their negro slaves about 1,096, as appears from the emmigration rolls on file in the office of Indian Affairs. In the second article of the treaty concluded between the United States and the Choctaw and Chickasaw Nations on the 28th of April, 1866, it was stipulated as follows:

"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 ever exist in said nation."

During the half century which has elapsed since the emigration of the Chickasaws the proportion of the colored people has been very greatly augmented in the Chickasaw Nation. This has been brought about by the following causes: In the first place, their natural increase has been much greater than that of the Indians. Then, regiments of United States colored troops were stationed in the Chickasaw Nation after the war, and around them gathered a large number of colored people from the Choctaw Nation who had formerly been slaves of the Chickasaws and Choctaws. Furthermore, many of the soldiers were mustered out of service after the close of the war, and married and settled in the country. And, finally, many negroes who had been sold by the Chickasaws before the war have returned since the war, and now claim all the privileges secured to the negroes who were emancipated by the treaty of 1866. The result is that in two of the four counties of the Chickasaw Nation, viz, Pickens and Pontotoc, the negroes outnumber the Indians, and in the third county, Tishomingo, they would constitute nearly half of the voting population.

Article III of the treaty of April 28, 1866, contains the following provisions:

(1) The Choctaws and Chickasaws agreed to sell and cede to the United States, for the sum of \$300,000, the territory west of the ninety-eighth meridian, known as the "leased district."

(2) The United States agreed to hold the purchase money (\$300,000) in trust, at interest, for the Choctaws and Chickasaws (three-fourths for the former and one-fourth for the latter) until the Choctaw and Chickasaw legislatures, respectively, should make such laws, rules, and regulations as would secure to all persons of African descent, residing in said nations at the date of the treaty of Fort Smith, and their descendants, formerly held in slavery among said nations, all the rights, privileges, and immunities of citizens of said nations (including the right of suffrage), except the right to share in the annuities, moneys, and public domain of the nations, and also to secure to each of said freedmen 40 acres of land, upon the terms and in the manner prescribed.

(3) The United States agreed to pay over the sum of \$300,000 to the Choctaws and Chickasaws as soon as such laws, rules, and regulations should be made, less such part of the sum of \$300,000 as should be sufficient to pay \$100 per capita to such of said freedmen as should, within ninety days after the laws, rules, and regulations were made, elect to remove and actually remove from the Territory.

(4) It was agreed that if such laws, rules, and regulations were not made by the Choctaw and Chickasaw nations, respectively, within two years after the ratification of the treaty of April 28, 1866, said sum of \$300,000 should be held in trust for such of said freedmen as the United States should remove from the Territory.

(5) It was agreed that upon the failure of the Choctaws and Chickasaws to make such laws, rules, and regulations within two years after the ratification of the treaty, said sum of \$300,000 being thereupon held for the use and benefit of said freedmen, the United States should remove said freedmen from the Indian Territory within ninety days after the expiration of such period of two years.

The treaty stipulation is in the following words:

"ARTICLE III. The Choctaws and Chickasaws, in consideration of the sum of

\$300,000, hereby cede to the United States the territory west of the 98° 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 5 per cent, in trust for the said nations, until the legislatures 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, 40 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 said laws, rules, and regulations the said sum of \$300,000 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 \$100 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 \$300,000 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 \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

The third article of the Creek treaty of June 14, 1866, contained the following stipulation:

"In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south."

The fourth article of the Choctaw and Chickasaw treaty of 1866 contained the following stipulation on the part of the Choctaws and Chickasaws:

"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 40 acres aforesaid shall stand in the place of the land cultivated as last aforesaid."

The Chickasaws did not, within two years after the ratification of the treaty of April 28, 1866, make the laws, rules, and regulations necessary to give to the freedmen either the rights, privileges, and immunities, or the 40 acres of land mentioned above. On the contrary, they decided not to make such laws, rules, and regulations; and they surrendered all claim to said sum of \$300,000.

An act of the Chickasaw legislature, approved November 9, 1866, contains the following provisions:

SEC. 3. "Be it further enacted, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the \$300,000 therein named, for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of \$300,000 for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States 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."

The provisions of this act were affirmed by an act of the Chickasaw legislature approved October 22, 1885.

Upon the passage of the act of November 9, 1866, it became the duty of the United States, under the treaty, to remove the freedmen from the Chickasaw Nation. But the United States have wholly neglected to perform this duty, and have left all the

freedmen within the Chickasaw Nation; and since 1868 those residing within the Chickasaw territory have enjoyed the free use of all the land they have seen fit to cultivate, and all the rights which the Chickasaws themselves have enjoyed, except the right to vote and the right to share in the annuities, moneys, and public domain of the nation.

Under the treaty the Chickasaws were free to adopt the freedmen as citizens, or to reject them, at their discretion. Their right to determine this question for themselves was not made conditional upon the approval by the United States of the reasons on which their decision should be based.

It will be observed that the stipulations of the treaty are only applicable to the emancipated slaves of the Choctaws and Chickasaws and to their descendants. Other negroes, whether immigrants from the States or from other Indian nations, or soldiers mustered out of the Army of the United States, were, and still are, legally on the same footing, in the Chickasaw Nation, as white citizens of the United States. They can not legally reside in the nation without the consent of the Chickasaws. But the difficulties of the situation are greatly increased by the presence in the Chickasaw Nation of large numbers of negroes who are not emancipated slaves of either the Choctaws or Chickasaws, as well as by the presence of many Choctaw freedmen and their descendants. It will be difficult, if not impossible, to separate these classes from each other. They have intermarried, and their relations have become so intimate that a rigorous enforcement of the right of the Chickasaws to exclude all except the freedmen and their descendants would work great hardship to the colored people. Heretofore the Chickasaws have made no discrimination between freedmen and their descendants, on the one hand, and those negroes, on the other hand, who have no interest in the treaty. They have furnished both classes with all the land they have seen fit to cultivate, and have treated both classes alike with uniform kindness and justice. Although residing in the Chickasaw Nation, mingled with the Indians, the negroes have never been subject to the civil or criminal jurisdiction of the Chickasaw Nation since the treaty of 1866 was made.

The Chickasaws are friendly to the freedmen and their descendants and wish them to enjoy the privileges secured to them by the treaty of 1866. But the addition of this multitude of immigrants to the body of Chickasaw freedmen seriously imperils the welfare of the Chickasaw Nation. The freedmen constituted an insignificant proportion of the Choctaw population. And the tendency of the Choctaw freedmen has been steadily towards the Chickasaw country. Their recent absorption into the body of the Choctaw citizens was, therefore, attended with no danger or inconvenience to the Choctaws. But the freedmen and colored immigrants constitute so large a part of the Chickasaw Nation and increase in number so rapidly, that they must soon outnumber the Chickasaws, and, if invested with the elective franchise, will be able to take possession of the government, and ultimately to deprive the Chickasaw people of their government and country. The Chickasaws have decided, after mature deliberation, that they can not, under any circumstances, consent to adopt the freedmen as citizens. The result of this threatening condition of things must soon be to disturb the friendly relations now existing between the colored people and the Chickasaws.

In view of the considerations above set forth, the Chickasaws earnestly ask the United States to fulfill the treaty of 1866 by removing, without delay, to the leased district west of the 98th meridian of longitude, or to the Oklahoma country, ceded by the Creek treaty of 1866, or elsewhere, all the freedmen who shall consent to such removal, and by placing all those who shall refuse to go on the same footing as other citizens of the United States in the Chickasaw Nation.

G. W. HARKINS,
H. F. MURRAY,
Chickasaw Delegates.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., January 25, 1887.

THE SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge the receipt, through the Department, of a communication from the President, dated January 15, 1887, inclosing a memorial of the Chickasaw Nation relative to the freedmen in said nation, and requesting information in regard to the matter.

The memorial is referred for early report of such facts as will enable this Department, as required by letter herewith from the President, to inform him of the condition of the matter referred to in the statement made by the Chickasaw delegates.

The memorial recites the provisions of the treaty of April 23, 1866, with the Choctaws and Chickasaws (14 Stats., 769), relative to the freedmen in those nations and the action of the Chickasaws thereunder, and "earnestly ask the United States to

fulfill the treaty of 1866 by removing without delay, to the leased district west of the 98th meridian longitude, or to the Oklahoma country ceded by the Creeks' treaty of 1866, or elsewhere, all the freedmen who shall consent to such removal, and by placing all those who shall refuse to go on the same footing as other citizens of the United States in the Chickasaw Nation."

The provisions of the said treaty 1866, relating to freedmen and the action taken thereunder with respect to the Chickasaw Nation, so far as the same is disclosed by the records of this office, are as follows:

"By the third article of said treaty the Choctaws and Chickasaws, in consideration of the sum of \$300,000, ceded to the United States the territory west of the 93th degree of west longitude, known as the 'Leased district,' with the provision that said sum of \$300,000 should be invested and held by the United States, at an interest not less than 5 per cent, in trust for said nations, until the legislatures of said nations should respectively make such laws as might 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 residents as aforesaid, and their descendants, 40 acres each of the land of said nations on the same terms as the Choctaws and Chickasaws. * * * And immediately on the enactment of such laws, rules, and regulations, the said sum of \$300,000 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 \$100 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 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 of the ratification of this treaty, then the said sum of \$300,000 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 removal to be on the same footing as other citizens of the United States."

The fourth article contained certain stipulations relative to the treatment of the negroes in the respective nations.

The forty-sixth article provided that "of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them" (provided for in article 30) the sum of \$150,000 shall be advanced and paid to the Choctaws and \$50,000 to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States.

By the act of July 26, 1866, making appropriations for the Indian service for the year ending June 30, 1867 (14 Statutes, 259), the sum of \$15,000 was appropriated for interest at 5 per cent per annum upon the amount paid for certain lands ceded by the Choctaws and Chickasaws to the United States, and due them under the third and forty-sixth articles of the treaty of April 28, 1866.

By the same act the sum of \$15,000 was appropriated to be advanced to the Choctaws, and the sum of \$50,000 to be advanced to the Chickasaws, for the cession of the leased district and the admission of the Kansas Indians, as per the forty-sixth article of the treaty of April 28, 1866.

By the act of April 10, 1869 (16 Statutes, 39), the sum of \$15,000 was appropriated for interest due the Choctaws and Chickasaws, August 8, 1868, on \$300,000 held in trust for said Indians under the third article, treaty of April 28, 1866.

No Kansas Indians ever removed to the Chickasaw Nation under the provision of the thirtieth article of the treaty, so no money was due the Chickasaws on account of the admission of the Kansas Indians.

The sum of \$50,000, appropriated by the act of July 26, 1866, was transmitted to William Byers, superintendent of Indian affairs for the southern superintendency, November 9, 1866, and by him paid to Joel Kemp, treasurer of the Chickasaw Nation, February 8, 1867, as evidenced by his receipt on file in this office with Superintendent Byers's accounts for the first quarter of 1867.

The amount appropriated for interest by the above act was sent to James Wortham, superintendent, May 23, 1867, and the sum of \$3,750 (the appropriated share of the Chickasaws) by him paid to Joel Kemp, treasurer of the Chickasaw Nation, July 27, 1867, as evidenced by his receipt on file in this office with Superintendent Wortham's accounts for the third quarter of 1867.

The share of the Chickasaws in the interest appropriated for in the act of April 10, 1869 (\$3,750), was paid to Holmes Colbert, Chickasaw commissioner, May 28, 1869, with Treasury warrant No. 620, of that date.

Under date of January 19, 1867, Superintendent Byers submitted, for the consideration of this office, the following papers:

(1) Certified copy of an act passed by the Chickasaw legislature, and approved by the governor November 9, 1866, giving the assent of the legislature to the treaty of 1866, as amended by the Senate, declaring the unanimous consent of the legislature that the United States shall keep and hold the sum of \$300,000, appropriated by the third article of the treaty, for the benefit of the negroes, and requesting the governor "to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation for the Government to remove said negroes from within the limits of the Chickasaw Nation," according to said third article of the treaty of April, 1866.

This act also gave the assent of the legislature to the provisions of the treaty for sectionizing the lands of the nation and allotting the same in severalty, and requesting the President to cause the same to be done as soon as practicable.

(2) A letter dated December 8, 1866, addressed to Agent Chollar by a committee appointed at a council of freedmen, which letter sets forth that the unfriendly and bitter feeling held by the Indians toward the freedmen rendered them anxious to remove to any land designated by the Government; that the Chickasaws were willing to give up their proportion of the \$300,000; asked that the Government provide transportation for themselves and families, and necessary supplies to enable them to start in their new location, and expressed their desire to remove at the earliest day possible.

(3) A copy of a letter dated December 25, 1866, addressed by Agent Chollar to Governor Harris, of the Chickasaws, asking his views on the matter.

(4) The reply of Governor Harris, in which he approved the course of the freedmen, and, although not claiming the interference of the United States to remove them until two years from the ratification of the treaty, acknowledged the advantages to be gained by early action.

Attached to this letter was a certified copy of an act of the Chickasaw legislature, approved November 10, 1866, authorizing and requesting the governor to "issue forthwith a general order, requiring all intruders, refugees (negroes not embraced within the treaty of 1866), to forthwith leave the Chickasaw Nation and forever stay out of the same, or procure, by the recommendation of good citizens, a permit to remain."

Governor Harris also sent a copy of the proclamation issued by him under this act. It does not appear that any action was taken in this office with reference to the matters presented in the foregoing papers.

Under date of June 27, 1868, Superintendent Wortham forwarded to this office a resolution passed by the freedmen and a second petition.

This petition set forth the provisions of the third article of the treaty of 1866, and the refusal of the Indians to grant to the freedmen the rights mentioned in said third article, in view of which the petitioners desired to be removed from the Choctaw and Chickasaw nations and to have the \$300,000, provided in the treaty expended for their benefit and use; and further, that a delegation from their number might be permitted to visit this city to represent their wishes and consult with the authorities regarding their future.

This petition was laid before the Department upon the 20th of July, 1868, with the recommendation that the visit of the delegation of the freedmen be authorized, and that measures be immediately adopted by the Government for the fulfillment of its treaty stipulations upon the subject of the removal of these freedmen.

In compliance with a request from this office, made August 18, 1868, to be informed as to the action taken by the Department upon the foregoing letter of July 20, the Secretary of the Interior stated that he had laid the whole matter before Congress on the 22d of July, 1868, asking that body to take early action for the removal of these freedmen, by designating a place to which they should be removed, and making an appropriation for the expenses of their removal, but that as Congress had failed to pass the measure indicated the Department was powerless in the premises.

Copies of this communication were furnished to Holmes Colbert, Chickasaw commissioner, and Sampson Folsom, attorney-general of the Choctaw Nation, as the basis of letters sent to those gentlemen in reply to one addressed by them jointly to this office August 17, 1868, in which letter they officially called the attention of the office to article third of the treaty of 1866, and stated that the legislative council of neither tribe had passed such laws, rules, and regulations as were necessary to give the freedmen the rights there enumerated, but that, on the contrary, each of these councils had expressed the desire that the Government of the United States should with the least possible delay, carry into effect those stipulations of the treaty which looked to their removal.

In his annual report for 1868, Agent Chollar stated that the failure of the Government to remove the freedmen, as provided in the treaty, had caused much trouble, in which a number of them had been killed, and that, in his judgment, nothing but prompt action on the part of the Government would prevent more serious difficulties and complications, as the negroes were uneasy and dissatisfied. He recommended the land west of the Seminole Reservation as suitable for their use, and asked the speedy action of the Department.

In February, 1869, the delegation appointed by the freedmen to further the necessary action by Congress arrived in this city and submitted a copy of their memorial to Congress, in support of which they asked such assistance as the Department might rightfully furnish.

February 18, 1869, J. H. Leorenwoth, claiming to represent Governor Harris, of the Chickasaw Nation, addressed a communication to this office, suggesting that the lands purchased from the Seminoles should be set apart exclusively for the benefit of the freedmen.

This communication was referred to the Department on the 2d of March, 1869, but as the subject had been laid before Congress for its action, the Secretary did not deem it advisable to issue any further instructions regarding it, and so informed this office March 16, 1869.

Under date of April 26, 1869, Mr. J. B. Luce transmitted to this office a letter addressed by the delegation to the freedmen asking for definite information regarding the purposes of the Department in their case.

In referring this letter to the Secretary, the Commissioner stated that he could furnish the delegation with no satisfactory information on the subject, and that he knew of nothing that could be done toward removing the freedmen without an appropriation from Congress for that purpose.

The expenses of this delegation were paid by the Government. During 1869 and 1870 considerable correspondence was had with Acting Agent Olmstead regarding the condition and status of the freedmen and the provision to be made for them.

In his annual report for 1870 (Annual Report of Commissioner of Indian Affairs for 1870, p. 291) he recommended that as the Chickasaws had refused them the rights of citizenship, and the Choctaws had taken no action in the matter, the Government should remove them or make other provisions as soon as possible, as the Indians were evidently determined to await action by the United States authorities.

In 1873 an act was passed by the Chickasaw legislature, approved January 10, 1873, entitled "An act to adopt the negroes of the Chickasaw Nation," which declared all negroes belonging to Chickasaws at the time of the adoption of the treaty at Fort Smith, and resident in the nation at the date thereof, and their descendants, to be adopted in conformity with the third article of the treaty of 1836: *Provided*, That the proportional part of the \$300,000 specified in said article, with the accrued interest thereon, should be paid to the Chickasaw Nation for its sole use and benefit: *Provided further*, That the said adopted negroes should not be entitled to any part of the said \$300,000, nor to any benefit from the principal and interest of invested funds, nor to any share in the common domain except the 40 acres provided in the treaty, nor to any privileges or rights not conferred by the treaty: *And provided further*, That said adopted negroes should be subject to the jurisdiction and laws of the Chickasaw Nation, just as if said negroes were Chickasaws.

This act was to have full force and effect from and after its approval by the authority of the United States.

This act was transmitted to Congress by Secretary Delano, February 10, 1873, who recommended that such legislation be had by Congress as would extend the time in all respects for the execution of the provisions of the third article of the treaty of 1836, for the term of two years from the 1st of July, 1873.

The subject was referred to the Committee on Freedmen Affairs February 13, 1873, and ordered to be printed. No further action appears to have been taken. (See annual report of this office for 1882, p. lvii, and House Ex. Doc. No. 207, Forty-second Congress, second session.)

On the 17th of March, 1885, Hon. J. P. C. Shanks was appointed by the Secretary of the Interior a special commissioner to investigate and report an adjustment of the status of persons of African descent resident in the Choctaw and Chickasaw countries.

On the 30th of December, 1875, he submitted his report, in which he opposed the removal of the freedmen from those nations, and recommended that the United States take measures to secure their recognition as full citizens of those nations.

No action appears to have been taken upon this report, except that a copy of it was subsequently (September 17, 1880), transmitted to the Secretary of the Interior, in connection with other papers.

In 1876 the legislature of the Chickasaw Nation adopted resolutions (approved October 18, 1876), directing the election of commissioners to confer with the commissioners from the Choctaw Nation to agree upon some plan whereby the freedmen

and their descendants should be removed from, and kept out of, the Choctaw and Chickasaw country. (See Chickasaw Laws, p. 148. Edition of 1878.)

In 1879 the legislature passed an act (approved March 17, 1879), authorizing the appointment of commissioners to meet like commissioners from the Choctaws to confer on the freedmen question, and report in writing to the legislature. (See p. 6 of pamphlet laws, 1878-1881.)

By the Indian appropriation act of May 17, 1882 (22 Stats., 72), the sum of \$10,000 was appropriated for the education of freedmen in the Choctaw and Chickasaw Nations, as follows:

"That the sum of \$10,000 is hereby appropriated out of the \$300,000 reserved by the third article of the treaty with the Choctaws and Chickasaws, concluded April 8, 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 \$10,000 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 tribes 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 \$300,000 due said tribe."

Before the enactment of this provision, concurrent action on the part of the two nations had been necessary.

Under this act the Choctaws adopted their freedmen by act of legislature, approved May 21, 1883, which act was held by the Department to be a substantial compliance with the requirements of the treaty, and by the act of Congress approved March 3, 1885 (23 Stats., 366), the balance of the Choctaw share of the \$300,000 was placed to the credit of the Choctaws on the books of United States Treasury.

The Chickasaws, however, took no action looking to the adoption of the freedmen under the act of May 17, 1882. It will be observed that of the sum of \$82,500, the Chickasaw's share of the \$300,000, and two years' interest, provided to be paid upon the adoption of the freedmen, the Chickasaws have actually been paid the sum of \$57,500, of which amount \$2,500 was recouped by the act of May 17, 1882.

They have, therefore, been paid the net sum of \$55,000, to no part of which were they entitled. It is presumed that this sum was advanced to the Chickasaws before they had complied with the requirements of the treaty, and most of it before the expiration of the two years' limit, in the hope and expectation that they would eventually take the action desired, notwithstanding their request that the freedmen be removed.

After the payment had been made and the time had expired, various efforts were made by this office and the Department to secure favorable action by the Chickasaws, and the necessary authority from Congress to extend the time but without avail, in either direction, until the passage, by Congress, of the act of May 17, 1882, which the Chickasaws refused to accept.

I do not think that any authority now exists to remove the freedmen from the Chickasaw Nation, either with or without their consent.

By the failure of the Government to remove such freedmen as were willing to go within ninety days after the expiration of the two years, as stipulated in the treaty, the complications have increased from year to year.

I have no recent information as to the desires of the freedmen in the premises, nor do I see that anything can be done to better their condition, or to carry out the wishes of the Chickasaws, as expressed in their memorial, without legislation by Congress.

Neither the letter of the President nor your reference calls for any recommendation in the matter, and in its present status, without further information, I am not prepared to make any, but would suggest that in the event of any legislation looking to the removal of the freedmen, the Chickasaws should be required to refund the \$55,000 advanced them, and that said sum should be appropriated for the benefit of the freedmen as contemplated by the treaty. I return the papers and inclose a copy of this report.

Very respectfully, your obedient servant,

J. D. C. ATKINS, *Commissioner*.

To the honorable Committee on Indian Affairs, House of Representatives:

In the absence of the Chickasaw delegates it becomes the duty of the undersigned, attorney of the Chickasaw Nation, to submit to the committee the following state-

ment relating to H. R. 6545, entitled "A bill for the relief of the freedmen of the Chickasaw Nation of Indians," introduced April 14, 1884.

Since the introduction of this bill there has been, of course, no opportunity for either the executive or legislative authorities of the Chickasaw Nation to consider its provisions. It will be obvious, from the facts hereinafter set forth, that it would be unjust for Congress to enact the bill into a law before the Chickasaws had had an opportunity, upon full deliberation, to communicate to Congress their views as to the effect of the proposed legislation upon their national rights and interests, and upon the rights and interests of the freedmen concerned.

Article III of the treaty of April 28, 1866, contains the following provisions:

(1) The Choctaws and Chickasaws agreed to sell and cede to the United States, for the sum of \$300,000, the territory west of the 98th meridian, known as the "leased district."

(2) The United States agreed to hold the purchase money (\$300,000) in trust, at interest, for the Choctaws and Chickasaws (three-fourths for the former and one-fourth for the latter) until the Choctaw and Chickasaw legislatures, respectively, should make such laws, rules, and regulations as would secure to all persons of African descent, residing in said nations at the date of the treaty of Fort Smith, and their descendants, formerly held in slavery among said nations, all the rights, privileges, and immunities of citizens of said nations (including the right of suffrage), except the right to share in the annuities, moneys, and public domain of the nations, and also to secure to each of said freedmen 40 acres of land, upon the terms and in the manner prescribed.

(3) The United States agreed to pay over the sum of \$300,000 to the Choctaws and Chickasaws as soon as such laws, rules, and regulations should be made—less such part of the sum of \$300,000 as should be sufficient to pay \$100 per capita to such of said freedmen as should, within ninety days after the laws, rules, and regulations were made, elect to remove and actually remove from the Territory.

(4) It was agreed that if such laws, rules, and regulations were not made by the Choctaw and Chickasaw nations, respectively, within two years after the ratification of the treaty of April 28, 1866, said sum of \$300,000 should be held in trust for such of said freedmen as the United States should remove from the Territory.

(5) It was agreed that, upon the failure of the Choctaws and Chickasaws to make such laws, rules, and regulations within two years after the ratification of the treaty, said sum of \$300,000, being thereupon held for the use and benefit of said freedmen, the United States should remove said freedmen from the Indian Territory within ninety days after the expiration of such period of two years.

The Chickasaws, as the undersigned is informed, did not, within two years after the ratification of the treaty of April 28, 1866, make the laws, regulations, and rules necessary to give to the freedmen either the rights, privileges, and immunities or the 40 acres of land mentioned above. On the contrary, they decided not to make such laws, rules, and regulations, and they surrendered all claim to said sum of \$300,000. It then became the duty of the United States, under the treaty, to remove the freedmen from the Indian Territory. But the United States have wholly neglected to perform this duty, and have left all the freedmen within the Indian Territory; and since 1868 those residing within the Chickasaw territory have enjoyed the free use of all the land they have seen fit to cultivate, and all the rights which the Chickasaws themselves have enjoyed, except the right to vote and the right to share in the annuities, moneys, and public domain of the nation.

Under the treaty the Chickasaws were free to adopt the freedmen as citizens or to reject them, at their discretion. Their right to determine this question for themselves was not made conditional upon the approval by the United States of the reasons on which their decisions should be based. The undersigned has not had time, since the introduction of the bill, to ascertain from the Chickasaw authorities the reasons why the Chickasaw Nation did not, like the Choctaws, confer citizenship upon the freedmen. But he has been informed by the delegates of the Choctaw Nation in Washington that, while the freedmen constitute a very small part of the Choctaw Nation, they constitute so large a part of the Chickasaw Nation, and their numbers increase so rapidly, that they must soon outnumber the Chickasaws, and, invested with the elective franchise, will be able to take possession of the Chickasaw government, and ultimately to deprive the Chickasaw people of their country.

The undersigned respectfully asks that no further action be taken by the committee on this measure until the Chickasaw authorities shall have had an opportunity to inform the committee as to its bearings upon the rights and interests of their nation, and as to the present condition of the freedmen residing within their country.

HALBERT E. PAINE,
Attorney, Chickasaw Nation.

APRIL 22, 1884.

EXHIBIT C.

Chapter of a brief of Gen. H. E. Paine, filed in United States court, southern district, Indian Territory, in citizenship cases, appealed from the decision of the Daves Commission.

CHICKASAW FREEDMEN.

The Choctaws could not, without the concurrence of the Chickasaws, confer upon the Choctaw freedmen undivided interests, equal to those of the Choctaws and Chickasaws, in the lands held in common by the citizens of the two nations. If an act of the Choctaw council, purporting to confer such ownership upon the Choctaw freedmen, would have any effect it could, at the utmost, only make those freedmen equal owners of the Choctaws' share of the lands held in common by the members of the two tribes.

1. This would be true even if there were no treaty stipulations in force expressly interdicting such a grant. The treaty of 1855 contains the following paragraph:

"And, pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guaranty the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however*, No part thereof shall be sold without the consent of both tribes; and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

These lands as, we have shown, were originally ceded not to the members of the Choctaw tribe, but to the Choctaw Nation. By that cession, which was made in the treaty of 1820, the lands were constituted the public property of the Choctaw Nation. Thereupon the Choctaw Nation, in its corporate capacity, owned and held the lands as public property. But by the treaty of 1855 the public property of the nation in these lands was transformed into the private property of the members of the Choctaw and Chickasaw tribes. And such is now the status of the title.

Every Chickasaw has an equal undivided interest in every foot of land in both nations. So has every Choctaw. It is obviously not competent for the Choctaw council, by a statute, or for the Choctaw people by an ordinance, to effectuate such a transfer of the land, or of an interest thereof, as will diminish or change the undivided property of the Chickasaws in the land held in common by the members of the two tribes.

If it will be competent for the Choctaw government, in the exercise of its power of eminent domain, to alienate the interests of the Choctaws in these lands in such a way as not to affect those of the Chickasaws, it would manifestly be out of the power of that Government to divest or impair the property rights of the Chickasaws therein. The furthest possible scope of the Choctaw legislature would be to make the Choctaw freedmen equal sharers with the Choctaws themselves in their undivided three-fourths of the aggregate territory held in common by the two nations. It would not diminish or affect the undivided interests of the Chickasaws in the whole.

2. The first article of the treaty of 1855 expressly prohibits the transfer of any part of these lands by one of the nations without the consent of the other. It contains the proviso that—

"No part thereof shall ever be sold without the consent of both tribes."

The investiture of the Choctaw freedmen with the right to share equally with the Choctaws and Chickasaws in the ownership of the lands held in common by the two nations would be in effect the grant to the freedmen of a part of the property of both the Choctaws and Chickasaws in these lands. Such a grant, if not made by the treaty wholly ineffectual and absolutely void, would certainly be a nullity, so far as it impaired or affected the property rights of the Chickasaws.

3. But there is a proviso in the first article of the treaty of 1855, which interdicts the alienation of any interest in these lands without the concurrence, not only of the Choctaws and Chickasaws, but also of the United States. It appears in the last clause of that article as follows:

"Said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

If the Choctaws could, with the concurrence of the Chickasaws, but without the consent of the United States, effectively transfer to their freedmen shares in the aggregate territory of the two nations equal to those of the Choctaws and Chickasaws and should afterwards abandon the land, the part so granted to their freedmen could not revert to the United States. But if the Choctaws could, with the consent of the Chickasaws and without the consent of the United States, so grant to their freedmen a part of the territory held by the citizens of the two nations, they could grant the whole, and thus absolutely nullify the reversion of the United States.

4. The stipulations of the third article of the treaty of 1866 relating to the freedmen, although never in fact executed, manifestly negative the theory that either or both of the two nations can convey their land to the freedmen without the consent of the United States. That article empowered the Choctaw and Chickasaw nations to make—

“Such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation 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 40 acres each of the land of said nations.”

5. Not only is it incompetent for the Choctaws, without the consent of the Chickasaws and of the United States, to make their freedmen sharers in the lands held in common by the members of the Choctaw and Chickasaw nations by admitting them to citizenship or otherwise, but it is also for the same reasons incompetent for the Choctaws, without the concurrence of the Chickasaws and the United States, to grant to each Choctaw freedman 40 acres of land held in common by the citizens of the Choctaw and Chickasaw nations. An attempt on the part of the Choctaws to make such grant without the concurrence of the Chickasaws and the United States, whether out of the common stock, thereby reducing the interest held by the citizens of each nation, or out of the undivided three-fourths held by the Choctaws, without reducing the interest held by the citizens of the Chickasaw Nation, could no warrant in the treaties or in the laws or constitution, but would necessarily prove an absolute failure.

Such an attempt to grant land to the Choctaw freedmen out of the common stock would fail for the reason already stated. Such an attempt to grant 40 acres to each Choctaw freedman out of the Choctaw share, without reducing the interest held by the Chickasaws, would be ineffectual for the following reasons:

(1) Every citizen of the Chickasaw Nation is the owner, in fee simple, of an undivided share of every part, every foot, every inch of the entire territory of both nations. The Choctaw government can not, by the exercise of its treaty powers, or by the exercise of its right of eminent domain, or in any other way, transfer the land of Chickasaw citizens to Choctaw freedmen, or to anybody else.

(2) The treaty of 1855 forbids any alienation whatever of these lands without the consent of both the Choctaw and Chickasaw nations. And, inasmuch as the Government of the United States was a party to the treaty, it has a right to insist upon the observance of this stipulation of the treaty. While, then, it may be true that the United States, in the third article of the treaty of 1866, consented to such grant, if made within two years after the date of the treaty of 1866, and have ever since been ready to consent to such grant, although made after the expiration of the two years limited in the treaty, it is not that the Chickasaws have ever consented either by the adoption of the third article of the treaty of 1866, or otherwise, that the Choctaws should, either before or after the expiration of the two years, grant to the Choctaw freedmen, each, forty acres of the land held in common by the citizens of the Choctaw and Chickasaw nations.

By the third article of the treaty of 1866, the Choctaws and Chickasaws were authorized, within two years after the date of the treaty, to elect either or not to make such grants; but in that treaty neither nation made such elections, or authorized the other to make it without the concurrence of both. On the contrary, express provision was made, in the third article of the treaty, for the case of the failure of the Choctaws and Chickasaws to make elections within the period of two years fixed by the treaty.

(3) No statute of the United States can validate a grant of “common” land, made by the Choctaws, without the concurrence of the Chickasaws, whether enacted before the grant, to authorize it, or after the grant, to confirm it, unless such statute embraces a provision for compensation to the Chickasaws for the interest conveyed. It is true that the Government of the United States may, in the exercise of the right of eminent domain, by appropriate proceedings, transfer the property of the citizen of the United States to another. But this can not be done without due compensation to the owner who is deprived of his property. Moreover, it is possible that a mere act of Congress may so transfer private property (due compensation being made therefor) without proceedings for its condemnation. But it can not be true that an act of Congress, which provides no compensation for the owner, can transfer the property of the citizens of the Chickasaw Nation to the Choctaw freedmen, or can validate, either by antecedent authorization or by subsequent confirmation, a transfer of property of citizens of the Chickasaw Nation to Choctaw freedmen by the Choctaw government without the concurrence of the Chickasaws.

As shown by the documentary proofs filed with the Commission, the rights, privileges, and immunities of citizens, referred to in the third article of the treaty of

1866, have never been conferred upon the Chickasaw freedmen; nor have any grants of 40 acres of land ever been made to them by the Chickasaw Nation.

The treaty of 1866 was ratified on the 10th of July of that year. It authorized the Choctaws and Chickasaws, within the period of two years from that date, ending June 10, 1868, to elect to confer upon, or withhold from, their freedmen certain "rights, privileges, and immunities of citizenship." During that period, so limited, the Chickasaws elected to withhold from their freedmen the "rights, privileges, and immunities of citizenship" specified in the treaty. On the 9th of November, 1866, an act of the Chickasaw legislature was approved containing the following paragraph:

"And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States 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."

Neither of the two nations, during the period limited by the treaty, conferred upon the freedmen the "rights, privileges, and immunities of citizenship" specified in the treaty, or reversed its own action withholding the same. So far as this option of the Choctaws and Chickasaws was concerned, the treaty expired on the 10th of July, 1868. Any law thereafter enacted by the Chickasaw legislature or Choctaw council proffering to the freedmen the specified "rights, privileges, and immunities," or any other, would not have resulted from an exercise of the option secured by the treaty, but would have constituted a new proposition of the legislative body enacting the law, to be accepted or rejected by the other parties concerned. An act of the Chickasaw legislature, approved January 10, 1873, contained the following provisions:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted, in conformity with the third article of the treaty of 1866, between the Choctaws and Chickasaws and the United States: *Provided, however*, That the proportional part of \$300,000, specified in article third of said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: *And provided further*, That said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of said \$300,000, nor be entitled to any benefit from the principal and interest on our invested funds, or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of 1866), nor to any privileges or rights not authorized by treaty stipulations: *And provided further*, That the said negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation and to trial and punishment for offences against them in every case just as if the said negroes were Chickasaws.

"SEC. 2. *And be it further enacted*, That this act shall be in full force and effect from and after its approval by the authority of the United States. And all laws or parts of laws in conflict with this act are hereby repealed."

This act was not passed within the period of two years limited by the treaty. It was not passed in the exercise of any option granted by the treaty. It was a new proposition. If not concurred in by the Choctaws and by the United States within a reasonable time it must necessarily fall to the ground as a rejected proposition. The Choctaws did not respond to this action of the Chickasaws until the expiration of a period of more than eight years—until long after the proposition had been withdrawn by the Chickasaw legislature. The United States delayed action for twenty-one years.

On the 15th of August, 1894, the Congress of the United States enacted the following statutory provision:

"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 tenth, eighteen hundred and seventy-three, particularly 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."

But on the 17th of October, 1877, an act of the Chickasaw legislature had been approved containing the following provision:

"And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government should 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."

On the 18th of October, 1876, an act of the Chickasaw legislature was passed containing the following provisions:

"SECTION 1. *Be it resolved by the legislature of the Chickasaw Nation*, That four

commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation during the next regular session of the general council of said nation, with instructions to confer with the commissioners on the part of the Choctaw Nation, and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country."

On the 6th of May, 1882, an act of the Chickasaw legislature was approved, containing the following provision:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That Wm. L. Byrd and B. F. Overton, delegates of the Chickasaw Nation, are hereby fully authorized and directed to enter their protest in behalf of the Chickasaw Nation against the ratifying by Congress of the United States of an act passed by the general council of the Choctaw Nation adopting and granting to the freedmen of the Choctaw Nation full rights of citizenship without conferring with the Chickasaws, or obtaining their consent to said adoption; and said delegates are hereby fully authorized and directed to present before the Department and Congress of the United States affecting the interest of our people and country."

On the 22d of October, 1885, an act of the Chickasaw legislature was approved, containing the following:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises."

By these four successive acts of the Chickasaw legislature the conditional proposition embraced in the Chickasaw statute of January 10, 1873, was withdrawn from the cognizance of the United States, with or without the cooperation of the Choctaw Nation, to galvanize into life the dead Chickasaw statute of January 10, 1873.

We respectfully submit, therefore, that the act of Congress approved August 15, 1894, did not ratify or confirm anything. There was nothing in existence for it to ratify or confirm.