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CLAIMS OF CHOCTAW AND CHICKASAW INDIANS

MAY 15, 1930.—Ordered to be printed, with an illustration

Mr. PINE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 3165]

The Committee on Indian Affairs, to whom was referred the bill (S. 3165) conferring jurisdiction upon the Court of Claims to hear, consider, and report upon a claim on the Choctaw and Chickasaw Indian Nations or Tribes for fair and just compensation for the remainder of the leased district lands, having considered the same, report favorably thereon with a recommendation that the bill do pass with the following amendment:

On page 1, strike out all after the enacting clause, and, on page 2, strike out lines 1 to 8, inclusive, this language composing section 1, and insert the following language:

That the Court of Claims is hereby authorized and directed to hear and inquire into the claims of the Choctaw and Chickasaw Indian Nations that they have never received fair and just compensation for the remainder of their "leased district" land acquired by the United States under article 3 of the treaty of 1866 (14 Statutes at Large, page 769) not including the Cheyenne and Arapahoe lands for which compensation was made to the Choctaw and Chickasaw Nations by the act of Congress approved March 3, 1891 (26 Statutes at Large, page 989), and to report its findings to Congress notwithstanding the lapse of time or the statute of limitations and irrespective of any former adjudication upon title and ownership, as to whether the consideration paid or agreed to be paid for said remainder of said lands was fair and just, and if not, whether the United States should pay to the Choctaw and Chickasaw Nations additional compensation therefor, and if so, what amount should be so paid, taking into consideration the circumstances and conditions under which said lands were acquired, the purposes for which they were used, and the final disposition thereof.

This amendment will make the bill conform to the suggestion made by the Secretary of the Interior in his report of May 2, 1930.

The Secretary also stated that the bill had been considered by the Bureau of the Budget, which advised that the expenditure contemplated by the bill would not be in accord with the financial program of the President.

The purpose of the bill in substance is to authorize the Court of Claims to inquire into and report to Congress whether or not the consideration paid for the lands involved was fair and just to the tribes, and if not, whether the United States should pay additional compensation therefor, and if so, what amount should be paid.

The claim is one which the Choctaw and Chickasaw Indians have been urging against the Government for many years, and grows out of article 3 of the 1866 treaty, hereinafter referred to. It is called the leased district claim because in 1855 they leased the lands in question to the Government for the settlement of certain other tribes of Indians. It was originally for about 7,700,000 acres, but in 1893 the United States paid the tribes for the Cheyenne and Arapahoe Reservation, containing about 2,300,000 acres.

The lands referred to in the bill are located in the southwestern portion of the State of Oklahoma, lie between the 98th and 100th degrees of west longitude and the Canadian and Red Rivers, and form seven counties, namely, Comanche, Cotton, Tillman, Kiowa, Jackson, Harmon, and Greer, the southern part of Beckham County, and parts of Jefferson, Stephens, Grady, and Caddo Counties. The lands are partly within what was formerly the reservations of the Kiowa, Comanche, and Apache Indians, the Wichita and Affiliated Bands of Indians, and what was formerly Greer County, Okla. T. A map sufficiently accurate to assist in understanding the matter at hand is attached in the back of this report.

THE 1820 TREATY

To properly understand the claim it is necessary to briefly review the treaties and dealings between the tribes and the Government. The Choctaws originally lived in Mississippi. Desiring their lands for public entry the United States made a treaty with them in 1820 whereby they ceded to the Government about 4,150,000 acres of their lands in that State in exchange for lands in the then Indian Territory, described in article 2 of that treaty, as follows:

> ART. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red Rivers, and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokee strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River, 3 miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning. (2 Kappler, Indian Affairs, Laws and Treaties, 2d Ed. 12.)

The lands of the Choctaws in Mississippi were fine agricultural lands, and inasmuch as they ceded about 4,150,000 acres in exchange for lands in the West they paid a valuable consideration for the latter lands. They adjoined the State of Arkansas on the west and extended westerly across the southern part of the then Indian Territory and beyond the Texas Panhandle to the source of the Canadian River in the northeastern part of New Mexico and to the source of the Red River in west Texas. This domain consisted of approximately 25,000,000 acres. The western portion was semiarid plains, over which roamed the buffalo and wild Indians. The eastern portion was a wilderness. In the 1820 treaty the Choctaws agreed to move

west at once, but being intensely attached to their ancient homes, instead of doing so, they moved on other lands which they owned in Mississippi.

1830 TREATY

Whereupon the Government, determined to effectuate their removal, negotiated the treaty of 1830, article 2 thereof being as follows:

> ART. II. The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and l've on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeable to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified. (75 Stat. 333.)
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> ART. III: In consideration of the provisions contained in the several articles of this treaty the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi River, and they agree to move beyond the Mississippi River as early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of the whole number, shall depart during the falls of 1831 and 1832, the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes. (Ib.)

By the latter treaty the Choctaws, without additional consideration, were induced to surrender to the Government the balance of their lands in Mississippi, amounting to 10,425,139 acres (Choctaw Nation *v.* U. S., 119 U. S. 1, 38), and to move to their western lands.

The treaty of 1830 also reduced the acreage of the lands ceded to them in the 1820 treaty by changing the description of the western boundary thereof to read as follows: "to the source of the Canadian, if in the limits of the United States, or to those limits." The 1820 treaty described the western boundary of their cession thus: "extending up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River." The source of the Canadian River is at the one hundred and fifth meridian west (U. S. *v.* Choctaw Nation, 179 U. S. 494, 506). The source of the Red River is in west Texas at about the one hundred and third meridian west (Ib.). The southwestern limits of the United States in 1830 ran along the one hundredth and not the one hundred and fifth meridian, for the reason that by treaty with Spain in February, 1819, those limits were established along the former meridian. In other words, by the 1819 treaty with Spain the Government had already ceded to Spain the lands between the one hundredth and one hundred and fifth meridians, which in the 1820 treaty, is ceded to the Choctaws. Hence, the necessity of the 1830 treaty modifying the description of the western boundary of the Choctaw cession of 1820. The change in description took from the Choctaws all lands between the one hundredth and one hundred and fifth meridians west, amounting to about 8,000,000 acres. (Choctaw Nation et al. *v.* U. S. 34 Ct. Cls. 17, 98.) However, the description of the western limits of the Choctaw cession in the 1820 treaty serve to show that it was the intention of the Government

in 1820 to cede to the Choctaws lands extending as far west as the source of the Canadian and Red Rivers. So that by the 1830 treaty the Choctaws, without additional consideration, not only ceded over 11,000,000 acres of valuable land in Mississippi, but also lost 8,000,000 acres off their cession in the West.

1837 TREATY

By the treaty of 1837 the Chickasaw Nation, for a valuable consideration, purchased an undivided interest in the western lands of the Choctaws. (11 Stat. 573.)

CHOCTAW PATENT

March 23, 1842, the Government issued a patent to the Choctaws for their western lands as described in the 1830 treaty. The lands so patented included among others the lands which are referred to in this bill as the leased district lands.

1855 TREATY

In 1855 the Government made a joint treaty with the Choctaws and Chickasaws, wherein it did "forever secure and guarantee the lands embraced within the said lines to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common," their lands being described as they were in the Choctaw patent. (11 Stat. 611.)

By the latter treaty the Government got from the Choctaws a relinquishment of their interest in the lands west of the one hundredth meridian, which it had ceded to Spain in 1819 and afterwards ceded to the Choctaws in 1820. From 1830 to the time of the 1855 treaty the Choctaws had continuously claimed the latter lands or compensation therefor. By getting a relinquishment therefor the Government admitted that it had ceded them to the Choctaws by the 1820 treaty and that the Choctaws then had an interest therein. By the 1855 treaty the Government also got from the Choctaws and Chickasaws a permanent lease on the lands between the ninety-eighth and one hundredth meridians for the settlement of particular Indians, namely, the Wichitas and other bands of wild Indians. Thereafter said lands became known as the leased district lands. By article 10 of the latter treaty the Government paid the Choctaws and Chicaksaws $800,000 for the relinquishment and lease, said article being as follows:

> In consideration of the foregoing relinquishment and lease and as soon as practicable after the ratification of this convention the United States will pay to the Choctaws the sum of $600,000, and to the Chickasaws the sum of $200,000, in such manner as their general councils shall, respectively direct.

In other words, the Government obtained from the Choctaws the relinquishment of their interest in approximately 8,000,000 acres of land and from the Choctaws and Chickasaws a permanent lease on about 7,700,000 acres of land for $800,000. The treaty does not indicate how much of the sum was for the relinquishment and how much for the lease. Recalling, however, that the lease was a permanent one, $800,000 for the lease alone on 7,700,000 acres of land was an unconscionably small consideration, amounting to a little over 10 cents an acre. It should be remembered that the parties to the treaty were the Government and the Choctaw and Chickasaw Indians, the former the guardian and the latter its wards. It is apparent that the Governments overreached its wards.

Concerning said relinquishment and lease the Senate Committee on Indian Affairs, in its report of April 13, 1892, on the message of President Harrison relative to the act of Congress appropriating funds to pay the Choctaw and Chickasaw Indians for the Cheyenne and Arapahoe Reservation, said:

> Your committee therefore believe that when the Choctaws relinquished their interest in the lands between the Red and the Canadian Rivers west of the one hundredth meridian of west longitude, on the 22d day of June, 1855, they were entitled to receive in compensation for that relinquishment the just value of those lands. What, then, was the just value of those lands in 1855? The territory of the Choctaws west of the one hundredth meridian of west longitude contained 286 full townships, excluding fractional townships, amounting to 10,296 square miles, or 6,589,440 acres of land. At the price of 12½ cents per acre this land amounted in value to $823,680. But in the treaty of June 22, 1855, the sum of $800,000 was constituted the entire pecuniary consideration, not only for their relinquishment by the Choctaws of their interests west of the one hundredth meridian, but also for the lease by the Choctaws and Chickasaws to the United States of the land between the ninety-eighth and the one hundredth meridians. The sum of $800,000 was not more than sufficient to compensate the Choctaws for the relinquishment of the land west of the one hundredth meridian. Nothing remained, then, to apply on the lease of the land between the ninety-eighth and one hundredth meridians, which amounted to 7,713,239 acres. The rent of the 7,713,239 acres of land between these meridians was, therefore, altogether nominal—it did not amount to $1. For less than $1, then, the United States have held 7,713,239 acres of land from June, 1855, down to March, 1892, a period of more than 36 years. (S. Rept. No. 552, 52d Cong. 1st sess. 5.)

WILD INDIANS TO BE LOCATED ON "LEASED DISTRICT"

Inasmuch as it will have a bearing on the treaty of 1866, hereinafter referred to, attention is called to the kind of Indians who might be settled on the leased district domain under article 9 of the 1855 treaty, the pertinent portions thereof being as follows:

> * * * for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate thereon; excluding however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian, or between it and the Arkansas; which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their government: *Provided, however,* That the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore. (2 Kappler, Laws and Treaties, 708.)

ACT ABROGATING INDIAN TREATIES

By the act of July 5, 1862 (12 Stat. 612, 728), the President was authorized to abrogate treaties with hostile Indian tribes, but no action was taken thereunder.

STATUS OF LEASED DISTRICT UNCHANGED

The Government held the leased district lands under its 1855 lease until the treaty of 1866, but located no Indian tribes thereon prior to the latter treaty.

In the Civil War most of the Choctaws and Chickasaws, along with the other three of the Five Civilized Tribes, allied themselves with

the Confederacy (1 Confed. Stat., 311–331), although many Choctaws and Chickasaws remained loyal to the Federal Government. Reasons for the course of the Choctaws and Chickasaws may be readily found. Some of them owned slaves. Two adjoining States, Arkansas and Texas, were also slave States. At the beginning of the war the Government was compelled to abandon its forts in the Choctaw-Chickasaw country and to remove its soldiers therefrom. Therefore, the Government was unable to give proper protection to these two tribes. Moreover, the United States Indian agent for those tribes, D. H. Cooper, quit the Federal and joined the Confederate government, and urged the Indians under his charge to do the same thing. (Misc. Doc. No. 40, 44th Cong., 1st sess.)

FORT SMITH CONFERENCE

After the Civil War the Government desired locations not only for the western Indians named in the treaty of 1855 but for all western Indians of the plains. Accordingly, a commission of the Government and representatives of all the Indian tribes of the Southwest including the Choctaws and Chickasaws, met at Fort Smith, Ark., in September, 1865, to negotiate new treaties. The Government commission was headed by Mr. D. N. Cooley, then Commissioner of Indian Affairs. In his address to the Indian delegates Mr. Cooley advised them that they had "rightfully forfeited all annuities and interest in the lands in the Indian Territory" by reason of their having joined the Confederacy, and that it was necessary to make new treaties with all such Indians. (Report of Committee on Indian Affairs, 1865, p. 297.) On account of the unfriendly surroundings the delegates of the Choctaws and Chickasaws were compelled to agree to whatever the Government representatives wanted embodied in the new treaty. The chairman of the Government commission submitted to the various tribes seven propositions, which he said must be embodied in the new treaties. The Choctaws and Chickasaws acceded to them all. The third and fifth propositions have a direct bearing on the pending claim. The third proposition was as follows:

> The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for. (Report of Committee on Indian Affairs, 1865, pp. 298, 299.)

The language of the fifth proposition was:

> A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes in Kansas and elsewhere, on such terms as may be agreed upon by the parties and approved by Government, or such as may be fixed by the Government. (Ib.)

THE UNSIGNED TREATY

The Government commission submitted to the Choctaw and Chickasaw delegates the draft of a proposed treaty, based on the seven propositions. (Choctaw Nation et al. *v.* U. S., 34 Ct. Cls. 17, 110.) Among other things it authorized the Government to locate other Indian tribes on the leased district in addition to those named in the 1855 treaty. The treaty was approved by the tribal councils,

and Commissioner Cooley recognized its existence in his annual report for 1865, wherein he said:

> With the Choctaws and Chickasaws a treaty was agreed upon, upon the basis of the seven propositions heretofore stated, and in addition to which those tribes agreed to a thorough and friendly union among their own people, and forgetfulness of past differences; to the opening of the "leased lands" to the settlement of any tribes whom the Government of the United States may desire to place thereon; and to the cession of one-third of their remaining area for the same purpose; the United States to restore these tribes to their rights forfeited by the rebellion. This treaty, after its approval by the councils of the Choctaws and Chickasaws, is to be signed in this city by three delegates from each nation sent here for that purpose. (Report of Committee on Indian Affairs, 1865, p. 36.)

The treaty became known in the literature of the Choctaw and Chickasaw litigation over the leased district as the "unsigned treaty." (Choctaw Nation et al. *v.* U. S., 34 Ct. Cls. 17, 110–112.) Article 5 thereof enlarged article 9 of the 1855 treaty so as to provide that the "leased district lands might be used for the settlement of "such other tribes or bands of Indians as the Government might desire to locate thereon, without exception or restriction as to the character of the tribes." Said article 5 is as follows:

> The Choctaw and Chickasaw tribes agree to a modification of the ninth article of the treaty concluded at the city of Washington, the 22d day of June, A. D. 1855, by which they agree that all that portion of their common territory west of the ninety-eighth degree west longitude, leased to the United States, may be used for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate thereon, without exception or restriction as to the character of the tribes. (Ib. 110–112.)

In 1866 the unsigned treaty was taken by authorized Choctaw and Chickasaw delegates to Washington, with the understanding that it would be there executed by them and the Government officials, but it was not accepted by the Government. It is true that it was not signed by representatives of the Government and the delegates of the Choctaws and Chickasaws at the Fort Smith conference, but it contained what the representatives of the Government demanded at that conference.

TREATY OF 1866

Following the Fort Smith conference, the Choctaw and Chickasaw delegates went to Washington in January, 1866, to complete the negotiations begun at Fort Smith in 1865. They carried the "unsigned treaty," which was referred to by Commissioner Cooley in his report for 1865, as follows:

> This treaty, after it is approved by the councils of the Choctaws and Chickasaws, was to be signed in the city of Washington by three delegates from each nation, sent for that purpose. (Report of Commission on Indian Affairs, 1865, p. 36.)

The 1866 treaty was executed by representatives of the Choctaws and Chickasaws and the Government on April 28, 1866, at Washington. Article 3, by which the Government insists that the Choctaws and Chickasaws parted with all their right, title, and interest in the leased district, 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° of 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 of 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 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 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 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. (2 Kappler, supra, 919.)

CONTENTION OF CHOCTAWS AND CHICKASAWS

The Choctaws and Chickasaws contend that said article 3 so modified article 9 of the 1855 treaty that the Government by the former article acquired the leased district lands in trust for the purpose of settling thereon not only the Indians named in said article 9 but any other Indian tribe. The latter right was a valuable one to the Government. The Choctaws and Chickasaws also contend that when those lands ceased to be so used the trust terminated and the lands reverted to them. Their further contention is that the lands ceased to be so used when the Government allotted portions of them to the western Indians and opened the remainder to public entry.

THE $300,000 CONSIDERATION

Under said article 3 the Choctaws and Chickasaws were to receive $300,000 only on condition that their respective legislatures should within two years from the ratification of the treaty pass laws giving to each of their former slaves 40 acres of land and conferring upon them full rights of citizenship, excepting an interest in the tribal annuities. The article further provided that, if the legislatures should not pass such laws within two years, the $300,000 would cease to be held in trust for the tribes and would be held for the use and benefit of the freedmen, if they should remove from the nations, and that, if any slave should elect within 90 days after the passage of said laws to remove from the nations, he should be allowed $100 out of the $300,000. If the tribes should not admit their freedmen to citizenship and the freedmen should decline to remove from the nations, the $300,000 was to remain the property of the United States.

There were in 1866 about 8,200 slaves among the Choctaws and Chickasaws. (Choctaw Nation et al. *v.* U. S. 34 Ct. Cls. 17, 117.) If the slaves had elected to remove the tribes would have received nothing for the cession of the leased district lands, amounting then to about 7,700,000 acres, because payment of $100 to each former slave would have more than exhausted the $300,000. Moreover, if all the slaves had been adopted and had elected to remain they were to receive approximately 328,000 acres of land, which at a low valuation of $1 an acre would have amounted to more than the $300,000. Furthermore, the Government in demanding that the Choctaws and Chickasaws give their former slaves 40 acres of land made greater exactions from the Indians as a penalty for having joined the Confederacy than it made from the white people of the South.

FREEDMEN ALLOTMENTS

Practically all of the freedmen remained in the two nations and they or their descendants each received land equal in value to 40 acres of average allotable land when the Choctaws and Chickasaws allotted their lands under the Atoka and supplementary agreements. Furthermore, the lands which the negros allotted were not in the leased district domain, but in the Choctaw and Chickasaw Nations, east of the ninety-eighth meridian. In other words, the freedmen or their descendants received the same kind of lands which the Choctaws and Chickasaws received.

The approved tribal rolls show that 10,691 freedmen received allotments. A freedman allotment was worth, for allotment purposes, $120. Therefore, the freedmen received allotments worth about $1,282,000.

It should be said that the Chickasaws never adopted their freedmen and that the two tribes recovered about $606,000 as the value of lands allotted to the Chickasaw freedmen. Deducting this amount from the $1,282,000, the net value of lands allotted to the Choctaw and Chickasaw freedmen amounted to about $676,000.

TRIBES RECEIVED NOTHING FOR LEASED DISTRICT LAND

The first clause of said article 3, taken alone, imports a cession of the leased district for a consideration of $300,000, but when the entire article is analyzed, it is clear that the $300,000 did not enter into the consideration for the cession, but was to be paid the tribes for the granting of 40 acres of land and of citizenship to their freedmen. In the final analysis, the Choctaws and Chickasaws received nothing for the leased district lands, because the value of the lands finally allotted to their former slaves exceeded the $300,000 by approximately $376,000, but it should be remembered that the United States by said article 3 acquired title to those lands. However, assuming that the Choctaws and Chickasaws received the entire $300,000, the Government acquired title to approximately 7,700,000 acres of land for the $300,000, or not quite 4 cents an acre. It is impossible to believe that the Choctaws and Chickasaws could have intended to part with title to that vast tract of land for less than 4 cents per acre. The Government can not afford to seriously contend that it, as guardian, deliberately took these lands from the Indians, its wards, and paid them not quite 4 cents an acre.

The contention of the tribes is more reasonable, namely, that both parties intended to so modify the lease of 1855 as to permit the Government to further hold such lands in trust for colonizing wild Indians until the Government should allot them to such Indians and sell the residue, whereupon the Choctaws and Chickasaws became entitled to the amount received for such residue, deducting the expenses of survey and sale.

WILD INDIANS ACTUALLY SETTLED

Carrying out the purpose of the lease of 1855, as modified by the treaty of 1866, the Government located western Indians on the leased district area as follows: In 1867, the Kiowas, Comanches, and Apaches; in 1868, the Wichitas and affiliated bands; and in 1869, the Cheyennes and Arapahoes. (S. Doc. No. 146, 56th Cong., 1st sess.) No Indians were located in Greer County, because at that time its ownership was in dispute between the State of Texas and the United States.

TREATIES WITH CHEROKEES, CREEKS, AND SEMINOLES

Beginning with its first treaties with the Five Civilized Tribes before they came to Indian Territory the Government's dealings with them have been practically the same. After ceding their lands east of the Mississippi River to the United States they moved to the Indian Territory.

1866 TREATY WITH FIVE TRIBES

In 1866 the Government made another series of treaties with them, having the same purpose, namely, the cession of portions of their western lands to the Government for colonizing wild Indians thereon. (S. Doc. 146, 56th Cong., 1st sess.) In his report for 1866 Commissioner Cooley said that, in the Fort Smith negotiations with the Five Civilized Tribes it was agreed that in the new treaties there should be "cessions of lands by the several tribes, to be used for the settlement thereon of Indians whom it is in contemplation to remove from Kansas." (Report of Committee on Indian Affairs, 1865, p. 8.) The language of the several treaties, making these cessions, is practically identical.

CHOCTAW AND CHICKASAW TREATIES CONTRASTED WITH CREEK, SEMINOLE, AND CHEROKEE TREATIES

Article 3 of the Choctaw and Chickasaw treaty of 1866 uses the word "cede." Article 3 of the 1866 treaties with the Creeks and Seminoles uses the words: "In compliance with the desire of the United States to locate other Indians and freedmen thereon," the Creeks and Seminoles "hereby cede and convey to the United States." (2 Kappler, Laws and Treaties, 933.)

By article 16 of the 1866 Cherokee treaty the Government agreed to purchase from the Cherokees for the settlement of friendly Indians portions of their western lands west of the ninety-sixth meridian at such price as might be agreed upon between the friendly Indians and the Cherokees. If the Indians could not agree, the price was to be fixed by the President.

AMOUNTS PAID CREEKS, SEMINOLES, AND CHEROKEES

For the privilege of settling other Indians on their western lands the Government paid the Seminoles $325,362 for their 2,169,080 acres of land, or 15 cents an acre (14 Stat. 755), and the Creeks $975,168 for their 3,250,560 acres, or 30 cents an acre (14 Stat. 785). When the Government opened to public entry the western lands of the Creeks, Congress, under the act of March 1, 1889, paid them $2,280,857.10 additional (25 Stat. 757), making their total compensation $3,256,025.10, or $1.25 an acre. March 2, 1889, Congress authorized the payment of $1,912,942 additional to the Seminoles for their western lands (25 Stat. 1004–1005), when opened for public entry, making a total of $2,238,304 paid them, or a total of $1.25 an acre. In their 1866 treaty the Cherokees did not cede and convey their western lands outright as did the Creeks and the Seminoles, but by act of March 3, 1893, Congress authorized the payment to the Cherokees of the following sums: $295,736 for the privilege of settling friendly Indian tribes on a portion of their unassigned lands west of the ninety-sixth meridian, and $8,300,000 for the privilege of opening to public entry the residue of such lands, commonly called the Cherokee outlet, making the total amount paid the Cherokees for their western lands $8,595,736, or $1.42 an acre. (27 Stat. 649.)

CHOCTAWS AND CHICKASAWS NOT PAID FOR THEIR WESTERN LANDS

The treatment which the Government accorded the Creeks, Seminoles, and Cherokees presents a sharp contrast to its treatment of the Choctaws and Chickasaws. When the Government opened to public entry the lands in Greer County and allotted and sold the lands in the Kiowa, Comanche, and Apache Reservations and those in the reservation of the Wichitas and affiliated bands, all located in the leased district area covered by this bill, the Choctaws and Chickasaws received no payment therefor. They did, however, receive compensation for the Cheyenne and Arapahoe Reservations.

CHOCTAWS AND CHICKASAWS ENTITLED TO SAME TREATMENT AS OTHER TRIBES

Since the purpose of the Government in negotiating all of the 1866 treaties with the Five Civilized Tribes was to procure the cession of their western lands for the location of other Indians (Report of Committee on Indian Affairs, 1865, p. 34), and since the language of cession in the several treaties is practically the same, equity and fair dealing require that the Government give to the word "cede" in the third article of the 1866 treaty with the Choctaws and Chickasaws the same construction that it gave to the words "cede and convey" in the third article of the Seminole and Creek treaties, and pay the Choctaws and Chickasaws for the residue of their western lands. The obligation to accord the Choctaws and Chickasaws the same treatment that it gave the other three tribes is incumbent upon the Government, since the relation existing between it and these two tribes is that of guardian and wards.

EXECUTIVE CONSTRUCTION

The Choctaws and Chickasaws assert that their understanding of article 3 of the 1866 treaty was concurred in by the executive branch of the Government from the date of said treaty until about 1891. One of the cardinal rules of statutory construction is that the construction placed upon a statute by the officers charged with its execution is entitled to great consideration. (36 Cyc. 1140.) Within a few years after the execution of the 1866 treaties, white settlers, claiming that the western lands ceded by the Five Civilized Tribes to the Government were public lands, attempted to settle upon portions of them, including the Leased District area. Whereupon the executive department of the Government, in a series of public warnings and statements, extending from 1879 to 1890, and consisting of proclamations of the President and statements of the Secretary of the Interior and Commissioner of Indian Affairs, declared that these lands, including the Leased District domain, had been set apart by the Government in trust for the settlement of Indians and could not be used for any other purpose. (Choctaw Nation *v.* United States, 34 Ct. Cls. 141–146.) Excerpts from statements of two Secretaries of the Interior and one Acting Commissioner of Indian Affairs are sufficient to show the position of the Government during that period.

May 1, 1879, Hon. Carl Schurz, Secretary of the Interior, in a letter to the Secretary of War, with reference to said lands, declared

> The title acquired by the Government by the treaties of 1866 was secured in pursuance and furtherance of the same purpose of Indian settlement, which was the foundation of the original scheme. * * *
>
> That purpose is expressly declared in the said treaties. The cessions of the Creeks and Seminoles are stated to have been made "in compliance with the desire of the United States to locate other Indians and freedmen thereon." These words may be held to create a trust equivalent to what would have been imposed had the language been "for the purpose of locating Indians and freedmen therein."
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> The lands ceded by the Choctaws and Chickasaws were by article 9 of treaty of June 22, 1855, "leased to the United States * * * for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate therein." The treaty of 1866 substitutes a direct purchase for the lease, but did not extinguish or alter the trust. In 1867 the Kiowas, Comanches, and Apaches were settled upon these lands. In 1869 the Cheyennes and Arapahoes were located by Executive order, the Wichitas being already upon a portion of the same prior to the purchase. * * * (S. Doc. No. 146, 46th Cong., 1st sess.; 34 Ct. Cls., supra, 144.)

February 17, 1882, Hon. Samuel J. Kirkwood, another Secretary of the Interior, answering a resolution of the Senate as to the status of these lands, forwarded a statement of the Land Office, wherein it was said:

> The treaties by which the United States acquired title to any of the lands in the Indian Territory or obtained the conditional right to control the disposal of any of said lands were the treaties with the Seminoles of March 21, 1866, with the Choctaws and Chickasaws of April 28, 1866, with the Creeks of June 14, 1866, and with the Cherokees of July 19, 1866. (S. Doc. 146, 56th Cong., 1st sess.)
>
> The Choctaw and Chickasaw cession of April 28, 1866 (14 Stats. 769), was by the tenth section thereof made subject to the conditions of the compact of June 22, 1855 (11 Stats. 613), and by the ninth article of which it was stipulated that the lands should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. (Ib.)
>
> The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the Government to annihilate such trusts or to avoid the obligation arising thereunder. Such trusts are for the benefit of Indian tribes and Indian freedmen. (Ib.)

September 16, 1890, George Chandler, Acting Secretary of the Interior, transmitted to the chairman of the House Committee on Indian Affairs an exhaustive report by Mr. R. V. Belt, Acting Commissioner of Indian Affairs, in which the latter analyzes the claim of the Choctaws and Chickasaws. Among other things, the report contains the following:

> It is possible that the commission, when it came to negotiate with the Choctaws and Chickasaws, may have omitted from the treaty with these Indians a similar condition and reservation regarding the purposes for which the lands were to be used, because of the fact that the United States had secured by a prior treaty a lease, which amounted to a permanent lease, of the lands in question for Indian purposes, for which, together with other considerations, it had paid the sum of $800,000. Considering this fact, the commission negotiating the treaty may have considered the payment of the $300,000 additional, as provided for in the treaty of 1866, a sufficient compensation for an absolute cession of all right, title, and interest that the Choctaws and Chickasaws had in and to the said leased district. This conclusion, however, can not be fairly reached when the record of the negotiations is fully considered; for we have already seen that these Indians accepted the terms proposed by the commission, upon which the treaties would be negotiated; and these very terms indicate the purpose for which the ceded lands were to be used. And it shows quite clearly that the Indians understood that they were parting with whatever right, title, and interest remained to them in the "leased district" to the United States, to be used for the location and settlement of other Indians thereon. The negotiations made about that time by the United States with Indian tribes show very conclusively that a policy had been carefully mapped out for the acquisition by the United States of the right to locate other Indians upon portions of the lands owned and occupied by the Five Civilized Tribes in the Indian Territory. I am inclined, therefore, to the opinion that the Choctaw and Chickasaw Indians have good ground for the claim that the United States took the land ceded by them upon the trust to settle other Indians and freedmen thereon, as the policy upon which the negotiations were made clearly indicated its desire and purpose to do. While there are clearly no words of limitation in the treaty of 1866 as to the use to which the ceded lands should be put by the United States, the history of the negotiations preceding and resulting in that treaty and the subsequent treatment of the subject quite clearly indicate that the Choctaws and Chickasaws have good grounds for claiming that they understood that the lands were to be used for the location of other Indians and freedmen thereon. (Files of Indian Office.)

The foregoing statements are interpretations which the Government placed upon its own treaties and are of special importance because they were made at a time not far removed from the execution of the treaties and are practically its contemporaneous interpretations of those treaties. It is also a rule of statutory construction that the construction placed upon a statute at or shortly after its enactment is entitled to great weight. (36 Cyc. 1139.)

CONGRESSIONAL CONSTRUCTION

The construction placed by a subsequent Congress upon an act of a former Congress is also entitled to the highest consideration. (Ib. 1142, 1143.) Immediately after the 1866 Choctaw and Chickasaw treaty was executed, a treaty was made with the Delaware Indians (14 Stat. 793), the preamble of which is:

> Whereas the United States have, by treaties negotiated with the Choctaws and Chickasaws, with the Creeks, and with the Seminoles, Indian tribes residing in said Indian country, acquired the right to locate other Indian tribes within the limits of the same.

The above language shows that at the time of making the 1866 treaties with the Five Civilized Tribes and other western Indians, the purpose of the Government was to acquire portions of their lands for Indian occupancy only.

Congress construed article 3 of the 1866 treaty of the Choctaws and Chickasaws when it had under consideration the act appropriating money to pay the Choctaws and Chickasaws for the Cheyenne and Arapahoe Reservation. In that act it said that the Cheyenne and Arapahoe lands had been ceded in trust to the Government by article 3 of that treaty, the pertinent part of the act being:

> And the sum of $2,991,450 be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to pay the Choctaw and Chickasaw Nations of Indians for all the right, title, interest, and claim which said nations of Indians may have in and to certain lands now occupied by the Cheyenne and Arapahoe Indians under Executive order; said lands lying south of the Canadian River, and now occupied by the said Cheyenne and Arapahoe Indians, said lands have been ceded in trust by article 3 of the treaty between the United States and said Choctaw and Chickasaw Nations of Indians, which was concluded April 28, 1866, and proclaimed on the 10th day of August, the same year, and whereof there remains, after deducting allotments as provided by said agreement, a residue ascertained by survey to contain 2,393,160 acres * * *. (Sec. 15, Indian appropriation act, approved March 3, 1891, 26 Stat. L. 989, 1025, ch. 543.)

In paying the Choctaws and Chickasaws for the Cheyenne and Arapahoe Reservation the Government thereby admitted that the lands in that reservation were a part of the leased district domain and belonged to the Choctaws and Chickasaws. The status of the lands referred to in this bill is identically the same as that of the lands in the Cheyenne and Arapahoe Reservation. If the Government was liable to the Choctaws and Chickasaws for those lands, it is equally liable to them for the remainder of the leased district lands.

It should be remembered that at the time of the passage of the act authorizing payment for the Cheyenne and Arapahoe Reservation only 25 years had passed since the 1866 treaty. Members of Congress were then undoubtedly familiar with the understanding of the Choctaws and Chickasaws and the Government toward the 1866 treaty, namely, that the leased district lands had been ceded in trust.

After passage of the act for payment for the Cheyenne and Arapahoe Reservation, President Harrison, on February 18, 1892, sent a special message to Congress advising against payment of the appropriation. His message was referred to the Committees on Indian Affairs of the Senate and House. The Senate Indian Committee, on April 11, 1892, submitted its report, the following being an excerpt therefrom:

> Your committee thinks that if an attempt shall be made to convert the trust estate of the United States into an absolute estate, without compensation to the Choctaws and Chickasaws for their interest in said lands, and to transfer the lands to citizens of the United States, the Choctaws and Chickasaws will have the right to regard such action on the part of the United States as a forfeiture of the trust estate now held by the United States therein, and to assert the right of the Choctaws and Chickasaws to resume the full ownership and actual possession of said lands, and also to resort to such measures as shall be proper to test the validity of any transfers of said lands to white men made or attempted by the executive department of the Government. Your committee, therefore, recommends the adoption of the following resolution of the Senate:
>
> *Resolved*, That for reasons set forth in the report of the Committee on Indian Affairs upon the President's message of February 18, 1892, upon the appropriation of March 3, 1891, for payment to the Choctaw and Chickasaw Nations for their interest in the Cheyenne and Arapahoe Reservation, in the Indian Territory, submitted with this resolution, that it is the opinion of the Senate that there is no sufficient reason for interference in the due execution of the law referred to. (S. Rept. 552, 52d Cong., 1st sess.)

The House Indian Committee also made substantially the same report and recommended adoption of the same resolution. So strongly convinced was the Congress of the equity of the claim that it disregarded the recommendation of the President and by solemn resolution, after extended debate, adhered to its former act and directed payment for those lands to the Choctaws and Chickasaws, thereby on two separate occasions giving legislative approval of the trust character of the leased district lands.

WICHITA AND AFFILIATED BANDS TREATY

While the Congress had under consideration the treaty with the Wichita and affiliated bands of Indians to allot portions of their lands and to open the remainder to public entry, the Choctaws and Chickasaws asked compensation for those lands, because they were part of the leased district. Congress referred their claim to the Court of Claims, authorizing them to sue the Government for their interest in such lands. March 21, 1899, that court decided in favor of the Choctaws and Chickasaws. (Choctaws et al. *v.* U. S., 34 Ct. Cls. 17.) Paragraphs 24 and 49 of the syllabus of the opinion are as follows:

> XXIV. Although the language of article 3 of the treaty of 1866 transferred the legal title of the leased district to the United States, the situation and statements of the parties, the extent and value of the grant, the consideration, the benefits conferred, and the beneficiaries designated may be considered in determining whether the cession was attended with an underlying trust.
>
> XLIX. The cession in the treaty of 1866 was not intended to divest the Choctaws and Chickasaws of all their interest in the leased district, but was intended to enlarge the scope of the ninth article of the treaty of 1855 by authorizing the settlement of certain Indians who were excluded by that article. Hence a trust must be implied in their favor under the terms of the grant.

The Court of Claims held in substance that the United States held the leased district lands in trust for Indian occupation only, and that when the lands were abandoned for that purpose they should be held in trust by the Government for the Choctaws and Chickasaws, or if sold, the proceeds belonged to the tribes. (U. S. *v.* Choctaw Nation, 179 U. S. 494, 501, 502.) The Supreme Court, on December 10, 1900, reversed the Court of Claims, dismissing the petition of the Choctaws and Chickasaws. It held that:

> It is thus clear that the Court of Claims was without authority to determine the rights of parties upon the ground of mere justice or fairness, much less under the guise of interpretation, to depart from the plain import of the words of the treaty. Its duty was to ascertain the intent of the parties according to the established rules for the interpretation of treaties. Those rules, it is true, permit the relations between Indians and the United States to be taken into consideration. But if the words used in the treaty of 1866, reasonably interpreted, import beyond question an absolute, unconditional cession of the lands in question to the United States free from any trust, then the court can not amend the treaty or refuse to carry out the intent of the parties, as gathered from the words used, merely because one party to it held the relation of an inferior and was politically dependent upon the other, or because in the judgment of the court the Indians may have been overreached. (Ib. 535.)

It further held that the cession of the leased district lands by article 3 of the 1866 treaty was absolute and not in trust, and that by the word "cede" in that treaty the Choctaws and Chickasaws conveyed

to the Government all their right, title, and interest in the leased district lands. (Ib. 494, 536.) However, the court suggested that if the treaty of 1866 did an injustice to the Choctaws and Chickasaws the remedy was with the Congress and not with the courts. The language of the court on this particular point is as follows:

> * * * If the treaty of 1866, according to its tenor and obvious import, did injustice to the Choctaws and Chickasaws, the remedy is with the political department of the Government. As there is no ground to contend in this case that the treaty if interpreted according to the views of the Government, was one beyond the power of the parties to make, it is clear that even if the United States did not deal generously with the Choctaws and Chickasaws in respect of the lands in dispute, and we do not mean to say that there is any ground whatever for so contending, the wrong done must be repaired by Congress and can not be remedied by the courts without usurping authority that does not belong to them. (Ib. 535).

Again, on page 538, the court said:

> We may repeat, that if wrong was done to the Indians by the treaty of 1866, interpreted as we have indicated, and we are not to be understood as expressing the opinion that they were not under all the circumstances fairly dealt with, the wrong can be repaired by that branch of the Government having full power over the subject.

Accordingly, the purpose of the present bill is to follow the remedy suggested by the Supreme Court, and as a preliminary step the bill would authorize the Court of Claims to investigate and advise the Congress whether or not the tribes are entitled to additional compensation for the remainder of the leased district lands.

REPORT OF THE BUREAU OF THE BUDGET

As stated, the Bureau of the Budget held that the expenditures contemplated by the proposed legislation would not be in accord with the financial program of the President. If the court under this bill should find that the tribes have not been sufficiently paid for the leased district lands, it is authorized to report what additional compensation would be adequate. When that report reaches Congress, it would then become necessary for it to consider whether or not it would appropriate out of the Federal Treasury the money ascertained by the court to be due, if the court should make such a finding. The holding of the Bureau of the Budget that the passage of this bill would be contrary to the economic program of the President would be to prevent the tribes from availing themselves of the remedy repeatedly suggested by the Supreme Court. It should always be possible for any just claim against the Government to be considered and for the claimants to have an opportunity to present their claims to Congress. In this case the claimants are only pursuing the course indicated by the Supreme Court. The defeat of the claim by the refusal of the Bureau of the Budget to permit it to be presented to Congress on its merit is clothing that bureau with power not contemplated when the Budget system was inaugurated.

FINDINGS

Your committee finds that the Choctaw and Chickasaw Tribes understood the cession of the leased district under the treaty of 1866, to be a cession in trust for the settlement of other Indians thereon; that the executive branch of the Government so understood and treated it without question until about 1891; that Congress recognized the trust character of the cession until 1891, when it made an appropriation to pay the Choctaws and Chickasaws for the Cheyenne and Arapahoe portion of said lands; that the $300,000 consideration mentioned in the 1866 treaty was not a consideration for the cession of the leased district, but was for granting the freedmen land and citizenship; that when the leased district lands ceased to be used for Indian occupancy the trust therein terminated and the lands reverted to the Choctaws and Chickasaws; and that when the Government disposed of them to white settlers it was acting as trustee for the Choctaws and Chickasaws, who were and are entitled to the amount for which the lands were sold, less the lands allotted to wild Indians, and less the cost of sale.

RECOMMENDATION

Since the bill follows the mode of redress available to the Choctaw and Chickasaw Indians as pointed out by the Supreme Court, we recommend its passage.

Copies of the report of the Secretary of the Interior and the memorandum of the Commissioner of Indian Affairs are appended hereto and made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, May 2, 1930.

Hon. LYNN J. FRAZIER,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for report on S. 3165, which would confer jurisdiction upon the Court of Claims to hear, consider, and report upon a claim of the Choctaw and Chickasaw Tribes in Oklahoma for compensation covering the remainder of the leased district lands.

There is inclosed herewith memorandum prepared by the Commissioner of Indian Affairs setting forth the facts in connection with this claim. The matter has been considered by the Bureau of the Budget and we have been advised that the expenditures contemplated by the proposed legislation would not be in accord with the financial program of the President.

Very truly yours,

RAY LYMAN WILBUR, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 11, 1930.

Memorandum for the Secretary.

Reference is made herein to S. 3165, entitled "A bill conferring jurisdiction upon the Court of Claims to hear, consider, and report upon a claim of the Choctaw and Chickasaw Indian Nations or Tribes for fair and just compensation for the remainder of the leased district lands," and to the request of Hon. Lynn J. Frazier, chairman of the Committee on Indian Affairs, United States Senate, for your opinion thereon for the benefit of the committee.

The purpose of S. 3165 is to authorize and direct the United States Court of Claims to hear and consider a claim of the Choctaw and Chickasaw Indian Nations or Tribes that they have never received fair and just compensation for the remainder of their "leased district lands acquired by the United States under the treaty of 1866" (14 Stat. L. 769), "and to report its findings to Congress, notwithstanding the lapse of time or the statutes of limitation and irrespective of any former adjudication upon title and ownership, as to what amount, in fairness and justice, the United States should pay the Choctaws and Chickasaws for said lands, taking into consideration the circumstances and conditions under which they were acquired, the purposes for which they were used, and the final disposition thereof." The bill contains an admission to the effect that it appears "that said claim is well founded."

The bill provides for the employment of attorneys to represent said Indian nations in the prosecution of the above-mentioned claim, the attorneys' contracts to be executed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, respectively, and to be approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and that the attorneys so employed may be assisted by the regular tribal attorneys employed under existing law under the direction of the Secretary of the Interior.

The bill further provides that the Court of Claims shall include in its report to Congress a finding as to what compensation should be paid the attorneys so employed, other than the regular tribal attorneys employed under existing law, and that such compensation shall not exceed 5 per cent of any amount which may be received by the Choctaw and Chickasaw Nations or Tribes in payment of such claim. The bill also authorizes the expenditure from the Choctaw and Chickasaw tribal funds of the sum of not exceeding $5,000 to be paid in the discretion of the Secretary of the Interior for the reimbursement of said attorneys for all proper and necessary expenses incurred by them in the investigation of records and in the preparation, institution, and prosecution of the tribal claim, the attorneys' accounts for such expenses to be subject to approval by the Secretary of the Interior, and provided that any sum allowed and paid said special attorneys for expenses shall be reimbursable to the credit of the Choctaw and Chickasaw Indian Nations or Tribes out of any sum of money that may be paid to said attorneys for legal services rendered in connection with said tribal claim.

The Choctaw and Chickasaw claim to compensation for certain lands included in what is known as the leased district and the matters involved appear to have been fully discussed at hearings on May 27 and 28, 1924, before the Committee on Indian Affairs, House of Representatives (68th Cong., 1st sess.), on H. R. 9017 (68th Cong.), relating to the subject, In connection therewith, reference is herein made to the brief filed by Mr. E. O. Clark, then Choctaw tribal attorney (p. 42 et seq., of the printed copy of said hearings).

In the matter of the claim of the Choctaw and Chickasaw Nations, reference is also made herein to the recent brief submitted by Mr. G. G. McVay, Chickasaw tribal attorney, and received in the Indian Office on January 21, 1930. Mr. McVay has informally advised the Indian Office that he has furnished Hon. Lynn J. Frazier, chairman of the Senate Committee on Indian Affairs, and Hon. Scott Leavitt, chairman of the House Committee on Indian Affairs, with copies of his above-mentioned brief in support of the Choctaw and Chickasaw claim.

Under article 2 of the treaty of September 27, 1830, of the United States with the Choctaw Nation (7 Stat. L. 333), the United States granted to the Choctaw Nation a tract of country in what is now Oklahoma. In consideration thereof and of the other provisions of the treaty, the Choctaw Nation ceded to the United States the entire country it then owned and possessed east of the Mississippi River. (Article 3 of said treaty of 1830.)

Under the provisions of an agreement of January 17, 1837, by and between the Choctaw Nation and the Chickasaw Nation, approved by the United States Senate on February 25, 1837, and by the President on March 24, 1837 (11 Stat. L. 573), the Chickasaw Nation acquired, by purchase, an interest in the Choctaw country in what is now Oklahoma.

By article 9 of the treaty of June 22, 1855, of the United States with the Choctaw Nation (11 Stat. L. 611–613), the Choctaws quitclaimed and relinquished to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude; and the Choctaws and Chickasaws leased to the United States "all that portion of their common territory west of the ninety-eighth degree of west longitude" for the "permanent settlement," by the United States, of the Wichita and other Indians thereon.

By article 10 of said treaty of 1855, it was provided that, "in consideration of the foregoing relinquishment and lease," the United States would pay to the Choctaws the sum of $600,000 and to the Chickasaws the sum of $200,000.

The Choctaw and Chickasaw country between the ninety-eighth and one hundredth degrees of west longitude, and leased by the above-mentioned treaty of 1855 to the United States, is that which came to be commonly known and described as the "leased district" and aggregated approximately 7,713,239 acres.

By article 3 of the treaty of April 28, 1866, of the United States with the Choctaw and Chickasaw Indian Nations (14 Stat. L. 769), the Choctaws and Chickasaws, in consideration of the sum of $300,000, ceded to the United States "the territory west of the 98° west longitude, known as the leased district." Said

article 3 further provided that the $300,000 should be invested and held by the United States, at an interest of not less than 5 per cent, in trust for the Choctaw and Chickasaw Nations until said Indian nations, by appropriate legislation, gave to all persons of African descent who were formerly slaves of the Choctaws and Chickasaws, and residing as of a certain date in said Indian 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 of said nations respectively, and also provided for a 40-acre allotment of land to be made to each of said freedmen and their descendants. It was further provided that, if, within a limited time, the Choctaw and Chickasaw Nations adopted their freedmen as citizens of said nations and provided for them as indicated, then the $300,000, less a certain sum to be used in payment to such freedmen as might remove from the Choctaw and Chickasaw Nations, would be paid to said Choctaw and Chickasaw Nations in the proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation. It was further provided, however, that, should the Choctaw and Chickasaw Nations fail, within a certain time, to give citizenship to the former freedmen and provide for their allotment of land, the $300,000 should cease to be held in trust for the Choctaw and Chickasaw Nations and should be held for the use and benefit of such freedmen as the United States should remove from said Choctaw and Chickasaw country, the United States agreeing to remove, within a certain limited time, all said freedmen as might be willing to remove from said Indian country.

The Choctaw and Chickasaw Nations contend that the $300,000 consideration was not for the cession of the leased district to the United States but was to be paid said Indian nations as a consideration for the granting of 40 acres of land and of citizenship to the freedmen. The Choctaw Nation granted to its freedmen citizenship rights and the right to 40-acre allotments of land. The Chickasaw Nation declined or failed to confer on its freedmen any citizenship or allotment rights.

In the matter of the payments to the Choctaw and Chickasaw Nations out of the $300,000 and interest, reference is herein made to the statement appearing in the opinion of January 9, 1899, of the United States Court of Claims in the case of the Choctaw and Chickasaw Nations *v.* the United States et al. (34 Ct. Cls. 17–117, 118).

A part of the leased district was granted by the Government to the Cheyenne and Arapahoe Indians and, by act of March 3, 1891 (26 Stat. L. 989–1025), an appropriation of $2,991,450 was made by Congress to pay the Choctaw and Chickasaw Nations for that part of the leased district granted to the Cheyenne and Arapahoe Indians, the area involved being approximately 2,488,893 acres. The Wichita and affiliated bands of Indians were settled upon another portion of the leased district. Relative thereto, reference is herein made to the act of March 2, 1885 (28 Stat. L. 876–895).

The Choctaw and Chickasaw Nations claim that, with the exception of the lands occupied by the Cheyenne and Arapahoe Indians, they have received no compensation for the cession of the leased district. Said portion of the leased district for which the Choctaw and Chickasaw Nations claim they have received no compensation contains approximately 5,224,346 acres.

The question of the title of the Choctaw and Chickasaw Nations to the leased district was raised under the act of March 2, 1895 (28 Stat. L. 895), which act conferred jurisdiction upon the United States Court of Claims to hear and determine the matter, subject to appeal to the Supreme Court of the United States. The Court of Claims, in its decision of January 9, 1899, in the case of the Choctaw and Chickasaw Nations *v.* the United States and the Wichita and affiliated bands of Indians (34 Ct. Cls. 17), found in favor of the Choctaw and Chickasaw Nations; but, upon appeal, the Supreme Court, in its decision of December 10, 1900 (179 U. S. 494), reversed the Court of Claims and held that, under the treaty of 1866 with the Choctaw and Chickasaw Nations, the United States acquired absolute title to the leased district. Under this decision of the Supreme Court, the Choctaw and Chickasaw Nations appear to be barred from any legal claim to further compensation for the land within the leased district.

The Supreme Court, referring to the treaty of 1855 and the lands relinquished and leased, stated that: "The consideration for the 'relinquishment and lease' was $800,000. It is immaterial to inquire as to the value placed by the Indians or by the United States upon the relinquishment and lease, respectively. The Indians accepted for both the aggregate amount named."

The Supreme Court further stated that:

"After the treaty of 1855 it was not possible for the Choctaws to assert any claim to lands west of the one hundredth degree of west longitude, and as to the

lands between that and the ninety-eighth degree of west longitude, the United States held them under a permanent lease given in 1855, which practically divested the Choctaws of all interest in the territory constituting the leased district, except that they could settle in it if they so desired."

As hereinbefore mentioned, the Choctaws and Chickasaws, by article 3 of the treaty of 1866, ceded the leased district to the United States in consideration of the sum of $300,000 and other provisions of said treaty. The Supreme Court, in its above-mentioned opinion, in referring to the treaty of 1866, stated that:

"It is to be taken as beyond dispute that when the parties entered upon the negotiations resulting in that treaty, neither overlooked the fact that the Choctaws, by the treaty of 1855, had forever quitclaimed any claim they had to territory west of the one hundredth degree of west longitude. Nor could either have forgotten that the United States had, by the same treaty, acquired the control of the leased district, without limit as to time, for the permanent settlement of certain Indians, excluding other Indians."

As hereinbefore stated, the Supreme Court held that, by the treaty of 1866, the United States acquired an absolute title to the leased district. The Supreme Court further stated:

"It is said in the present case that the interpretation of the treaty in accordance with the views of the United States would put the Government in the attitude of having acquired lands from the Indians at a price far below their real value. Even if this were true it would not authorize the court in determining the legal rights of the parties to proceed otherwise than according to the established principles of interpretation, and out of a supposed wrong to one party evolve a construction not consistent with the clear import of the words of the treaty. If the treaty of 1866, according to its tenor and obvious import, did injustice to the Choctaws and Chickasaws, the remedy is with the political department of the Government. As there is no ground to contend in this case that that treaty, if interpreted according to the views of the Government, was one beyond the power of the parties to make, it is clear that even if the United States did not deal generously with the Choctaws and Chickasaws in respect of the lands in dispute, and we do not mean to say that there is any ground whatever for so contending, the wrong one must be repaired by Congress, and can not be remedied by the courts without usurping authority that does not belong to them."

And again:

"* * * We may repeat, that if wrong was done to the Indians by the treaty of 1866, interpreted as we have indicated, and we are not to be understood as expressing the opinion that they were not under all the circumstances fairly dealt with, the wrong can be repaired by that branch of the Government having full power over the subject."

Referring to the above-mentioned payment to the Choctaw and Chickasaw Nations for the lands occupied by the Cheyenne and Arapahoe Indians, it appears that, by joint resolution of January 18, 1893 (27 Stat. L. 753), to correct an error in the amount appropriated for said payment, it was provided:

"That neither the passage of the original act of appropriation to pay the Choctaw and Chickasaw Tribes of Indians for their interest in the lands of the Cheyenne and Arapahoe Reservation dated March 3, 1891, nor of this resolution, shall be held in any way to commit the Government to the payment of any further sum to the Choctaw and Chickasaw Indians for any alleged interest in the remainder of the lands situated in what is commonly known and called the leased district."

Relative to said subject, reference is made herein to the discussion thereof in the United States Senate on January 5, 1893 (Cong. Rec. of January 5, 1893, pp. 329–330).

The act of March 2, 1895 (28 Stat. L. 876–898), under which the above-mentioned suit of the Choctaw and Chickasaw Nations against the United States et al. was instituted, provided: "That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw Nations have any claim to or interest in said lands or any part thereof."

For the leased district, the Choctaw and Chickasaw Nations have been paid, in the aggregate, approximately $4,091,450.

It is being claimed by the Choctaw and Chickasaw Nations that, aside from their lands upon which the Cheyenne and Arapahoe Indians were settled, they have never received fair and just compensation for the leased district acquired by the United States under the treaty of 1866. The portion of the leased district for which further compensation is claimed aggregates approximately 5,224,346 acres.

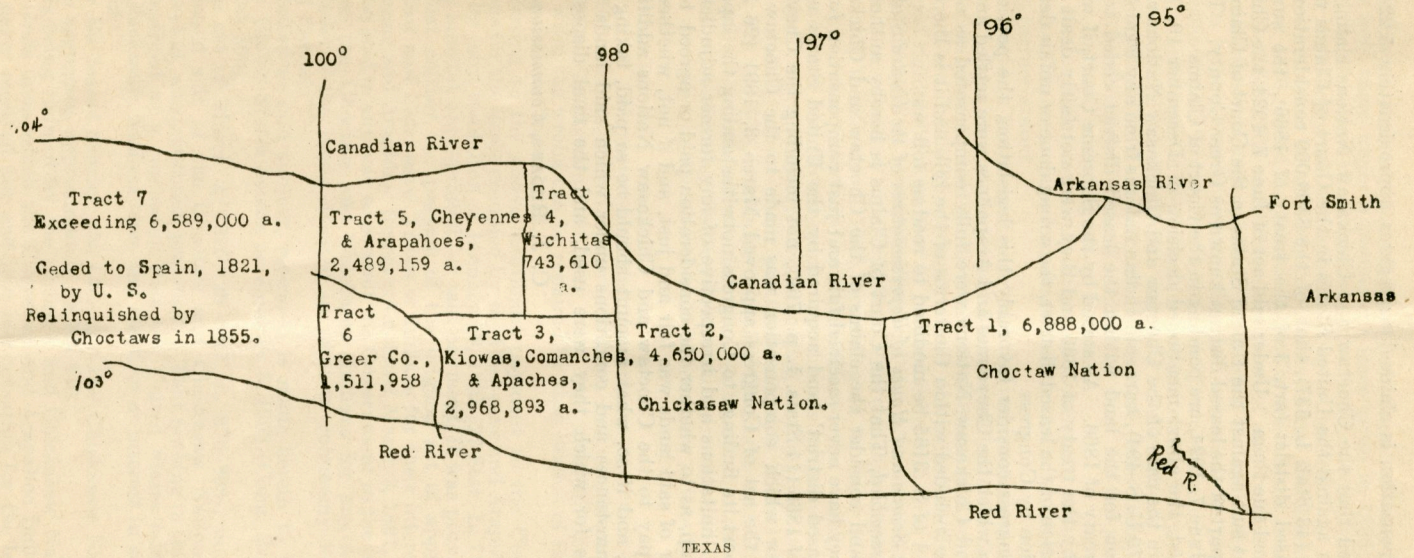
It may be here stated that the Choctaw and Chickasaw Nations claim, in a suit instituted by them against the United States in the Court of Claims under the act of June 7, 1924 (43 Stat. L. 537), that, of the $300,000 consideration for the cession of the leased district (art. 3 of the treaty of 1866), the sum of $85,000 is still unpaid and due them. Under said act of June 7, 1924, the Chickasaw Nation has brought suit against the United States in the Court of Claims to compensation for that part of the leased district known as Greer County. These cases under the act of June 7, 1924, are pending in the Court of Claims.

As hereinbefore stated, the above-mentioned decision of December 10, 1900, of the Supreme Court in the case of the Choctaw and Chickasaw Nations *v.* the United States et al. (179 U. S. 494), bars said Indian nations from any legal claim to further compensation for the land within the leased district ceded to the United States by the treaty of 1866. As stated by the Supreme Court, if wrong was done the Indians by the treaty of 1866 and they were not fairly dealt with in the matter of the cession of the leased district, the wrong done or unfair dealing is a matter for reparation by Congress.

However, should Congress consider favorably this legislation, the portion of the leased district upon which the Cheyennes and Arapahoes were settled and for which the Choctaw and Chickasaw Nations were fully compensated as above indicated should not be included within the terms of the bill, and it is therefore suggested that section 1 of S. 3165 be modified to read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Court of Claims is hereby authorized and directed to hear and consider the claims of the Choctaw and Chickasaw Indian Nations that they have never received fair and just compensation for the remainder of their 'leased district' land acquired by the United States under article 3 of the treaty of 1866 (14 Stats. L. p. 769), not including the Cheyenne and Arapahoe lands for which compensation was made to the Choctaw and Chickasaw Nations by the act of Congress approved March 3, 1891 (26 Stat. L., p. 989), and to report its findings to Congress notwithstanding the lapse of time or the statute of limitations and irrespective of any former adjudication upon title and ownership, as to whether the consideration paid or agreed to be paid for said remainder of said lands was fair and just, and if not, whether the United States should pay to the Choctaw and Chickasaw Nations additional compensation therefor, and if so, what amount should be so paid, taking into consideration the circumstances and conditions under which said lands were acquired, the purposes for which they were used, and the final disposition thereof."

C. J. Rhoads, *Commissioner.*



[Taken in part from S. Doc. 146, 56th Cong., 1st sess.]

Tracts 1 to 7, inclusive, ceded to Choctaws by United States in 1820 in exchange for their lands in Mississippi.
Tract 1, present Choctaw Nation.
Tract 2, present Chickasaw Nation.
Tracts 3, 4, 5, and 6, leased in 1855 and ceded in 1866 to United States.
Tract 7, ceded to Spain 1821 by United States without consent of Choctaws and relinquished by Choctaws to United States in 1855.
Tracts 3, 4, 5, and 6, original leased district referred to in 1855 treaty.
Tract 5, for which Choctaws and Chickasaws received payment in 1893.
Tracts 3, 4, and 6, present leased district, for which Choctaws and Chickasaws are now asking payment.