

IN THE COURT OF CLAIMS

Cong. No. 17641

THE CHOCTAW AND CHICKASAW NATIONS

VS.

THE UNITED STATES

DOCUMENTS

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Excerpt, TREATY WITH THE CHOCTAW, 1820 (Kappler, Laws and Treaties, Vol. II, p. 192).

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 River, and bounded as follows:—Beginning on the Arkansas River, where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due South to the Red River; thence down Red River, three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning.

Excerpt, TREATY WITH THE CHOCTAW, 1830 (Kappler, Laws and Treaties, Vol. II, p. 311).

ARTICLE II. The United States under a grant specially to be made by the President of the U. S. 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 live 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 agreeably 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.

ARTICLE 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, 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.

EXCERPT, TREATY WITH THE CHOCTAW AND CHICKASAW, 1837
(Kappler, Laws and Treaties, Vol. II. p. 487).

ARTICLE 2. The Chickasaw district shall be bounded as follows, viz: beginning on the north bank of Red River, at the mouth of Island Bayou, about eight or ten miles below the mouth of False Wachitta; thence running north along the main channel of said bayou to its source; thence along the dividing ridge between the Wachitta and Low Blue Rivers to the road leading from Fort Gibson to Fort Wachitta; thence along said road to the line dividing Musha-la-tubbee and Push-meta-haw districts; thence eastwardly along said district line to the source of Brushy Creek; thence down said creek to where it flows into the Canadian River, ten or twelve

miles above the mouth of the south fork of the Canadian; thence west along the main Canadian River to its source, if in the limits of the United States, or to those limits; and thence due south to Red River, and down Red River to the beginning.

ARTICLE 3. The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of five hundred and thirty thousand dollars—thirty thousand of which shall be paid at the time and in the manner that the Choctaw annuity of 1837 is paid, and the remaining five hundred thousand dollars to be invested in some safe and secure stocks, under the direction of the Government of the United States, redeemable within a period of not less than twenty years—and the Government of the United States shall cause the interest arising therefrom to be paid annually to the Choctaws in the following manner: twenty thousand dollars of which to be paid as the present Choctaw annuity is paid, for four years, and the residue to be subject to the control of the general council of the Choctaws; and after the expiration of the four years the whole of said interest to be subject to the entire control of the said council.

CHOCTAW PATENT, 1842 (*Court of Claims, No. 18,932, Record, Claimants' Request for Findings of Facts, pp. 4-5; consecutive pencil paging, pp. 78-79*).

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the second article of the treaty began and held at Dancing Rabbit creek on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty (as ratified by the senate of the United States on the 24th day of February, 1831), by the commissioners on the part of the United States, and the mingoes, chiefs, captains, and warriors of the Choctaw nation, on the part of said nation, it is provided that "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 live 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 agree-

ably to the treaty made and concluded at Washington city in the year 1825:

Now, know ye that the United States of America, in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw nation the aforesaid "tract of country west of the Mississippi;" to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended "to be conveyed" by the aforesaid article, "in fee simple to them and their descendants, to inure to them, while they shall exist as a nation and live on it," liable to no transfer or alienation, except to the United States, or with their consent.

In testimony whereof, I, John Tyler, president of the United States of America, have caused these letters to be made patent, and seal of the general land office to be hereunto affixed. Given under my hand, at the city of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

By the president:

JOHN TYLER.

DAN'L WEBSTER,
Secretary of State.

JOHN C. SPENCER,
Secretary of War.

T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

TREATY WITH THE CHOCTAW AND CHICKASAW, 1855 (*Kappler, Laws and Treaties, Vol. II, pp. 706-711*).

Articles of agreement and convention between the United States and the Choctaw and Chickasaw tribes of Indians, made and concluded at the city of Washington, the twenty-second day of June, A. D. one thousand eight hundred and fifty-five, by George W. Manypenny, commissioner on the part of the United States, Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis, commissioners on the part of the Choctaws; and Edmund Pickens and Sampson Folsom, commissioners on the part of the Chickasaws:

Whereas, the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians,

has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a re-adjustment of their relations to each other and to the United States: and

Whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country, of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude: and

Whereas, the Choctaws contend, that, by a just and fair construction of the treaty of September 27, 1830, they are, of right, entitled to the net proceeds of the lands ceded by them to the United States, under said treaty, and have proposed that the question of their right to the same, together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment, and whereas, it is necessary for the simplification and better understanding of the relations between the United States and the Choctaw Indians, that all their subsisting treaty stipulations be embodied in one comprehensive instrument:

Now, therefore, the United States of America, by their commissioner, George W. Manypenny, the Choctaws, by their commissioners, Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Dickson W. Lewis, and the Chickasaws, by their commissioners, Edmund Pickens and Sampson Folsom do hereby agree and stipulate as follows, viz:

ARTICLE 1. The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

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 ever 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.

ARTICLE 2. A district for the Chickasaws is hereby established, bounded as follows, to-wit: Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles in a straight line, below the mouth of False Wachitta; thence running a northwesterly course, along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River; and thence down Red River to the beginning: *Provided, however,* If the line running due north, from the eastern source of Island Bayou, to the main Canadian shall not include Allen's or Wa-pa-nacka Academy, within the Chickasaw District, then, an offset shall be made from said line, so as to leave said academy two miles within the Chickasaw district, north, west and south from the lines of boundary.

ARTICLE 3. The remainder of the country held in common by the Choctaws and Chickasaws, shall constitute the Choctaw district, and their officers and people shall at all times have the right of safe conduct and free passage through the Chickasaw district.

ARTICLE 4. The government and laws now in operation and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district, until the Chickasaws shall adopt a constitution, and enact laws, superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

ARTICLE 5. The members of either the Choctaw or the Chickasaw tribe, shall have the right, freely, to settle within the jurisdiction of the other, and shall thereupon be entitled to all the rights, privileges, and immunities of citizens thereof; but no member of either tribe shall be entitled to participate in the funds belonging to the other tribe. Citizens of both tribes shall have the right to institute and prosecute suits in the courts of either, under such regulations as may, from time to time, be prescribed by their respective legislatures.

ARTICLE 6. Any person duly charged with a criminal offense against the laws of either the Choctaw or the Chick-

asaw tribe, and escaping into the jurisdiction of the other, shall be promptly surrendered, upon the demand of the proper authorities of the tribe, within whose jurisdiction the offense shall be alleged to have been committed.

ARTICLE 7. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits; excepting, however, all persons, with their property, who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States agent, assisted if necessary by the military, with the following exceptions, viz: Such individuals as are now, or may be in the employment of the Government, and their families; those peacefully travelling, or temporarily sojourning in the country or trading therein, under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes.

ARTICLE 8. In consideration of the foregoing stipulations, and immediately upon the ratification of this convention, there shall be paid to the Choctaws, in such manner as their national council shall direct, out of the national fund of the Chickasaws held in trust by the United States, the sum of one hundred and fifty thousand dollars.

ARTICLE 9. The Choctaw Indians do hereby absolutely and forever quit-claim and relinquish 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 do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; 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: *Pro-*

vided, however, The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore.

ARTICLE 10. 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 six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

ARTICLE 11. The Government of the United States, not being prepared to assent to the claim set up under the treaty of September the twenty-seventh, eighteen hundred and thirty, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States.

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

Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims national and individual against the United States; and, if so, how much.

ARTICLE 12. In case the Senate shall award to the Choctaws the net proceeds of the lands, ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just—the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund, awarded by the Senate to the Choctaws, as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe, shall on their requisition be paid over to them by the United States. But should the Senate allow a gross sum, in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be

accepted by the Choctaws, and they shall thereupon become liable for, and bound to pay, all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

ARTICLE 13. The amounts secured by existing treaty stipulations—viz: permanent annuity of three thousand dollars, under the second article of the treaty of eighteen hundred and five; six hundred dollars per annum for the support of the light-horse men under the thirteenth article of the treaty of eighteen hundred and twenty; permanent annuity of six thousand dollars for education; under the second article of the treaty of eighteen hundred and twenty-five; six hundred dollars per annum permanent provision for the support of a blacksmith, under the sixth article of the treaty of eighteen hundred and twenty; and three hundred and twenty dollars permanent provision for iron and steel, under the ninth article of the treaty of eighteen hundred and twenty-five—shall continue to be paid to, or expended for the benefit of, the Choctaws as heretofore; or the same may be applied to such objects of general utility as may, from time to time, be designated by the general council of the tribe, with the approbation of the Government of the United States. And the funds now held in trust by the United States for the benefit of the Choctaws under former treaties, or otherwise, shall continue to be so held; together with the sum of five hundred thousand dollars out of the amount payable to them under articles eighth and tenth of this agreement, and also whatever balance shall remain, if any, of the amount that shall be allowed the Choctaws, by the Senate, under the twelfth article hereof, after satisfying the just liabilities of the tribe. The sums so to be held in trust shall constitute a general Choctaw fund, yielding an annual interest of not less than five per centum; no part of which shall be paid out as annuity, but shall be regularly and judiciously applied, under the direction of the general council of the Choctaws, to the support of their government for purposes of education, and such other objects as may be best calculated to promote and advance the improvement, welfare, and happiness of the Choctaw people and their descendants.

ARTICLE 14. The United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasion, and from aggression by other Indians and white persons not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured, out of the Treasury of the United States, upon the same principle and according to the same rules upon which white persons are entitled to indemnity for injuries or aggression upon them, committed by Indians.

ARTICLE 15. The Choctaws and Chickasaws shall promptly apprehend and deliver up all persons accused of any crime

or offense against the laws of the United States, or of any State thereof, who may be found within their limits, on demand of any proper officer of a State, or of the United States.

ARTICLE 16. All persons licensed by the United States to trade with the Choctaws or Chickasaws shall be required to pay to the respective tribes a moderate annual compensation for the land and timber used by them; the amount of such compensation, in each case, to be assessed by the proper authorities of said tribe, subject to the approval of the United States agent.

ARTICLE 17. The United States shall have the right to establish and maintain such military posts, post-roads, and Indian agencies, as may be deemed necessary within the Choctaw and Chickasaw country, but no greater quantity of land or timber shall be used for said purposes, than shall be actually requisite; and if, in the establishment or maintenance of such posts, post-roads, and agencies, the property of any Choctaw or Chickasaw shall be taken, injured, or destroyed, just and adequate compensation shall be made by the United States. Only such persons as are, or may be in the employment of the United States, or subject to the jurisdiction and laws of the Choctaws, or Chickasaws, shall be permitted to farm or raise stock within the limits of any of said military posts or Indian agencies. And no offender against the laws of either of said tribes, shall be permitted to take refuge therein.

ARTICLE 18. The United States, or any incorporated company, shall have the right of way for railroads, or lines of telegraphs, through the Choctaw and Chickasaw country; but for any property taken or destroyed in the construction thereof, full compensation shall be made to the party or parties injured, to be ascertained and determined in such manner as the president of the United States shall direct.

ARTICLE 19. The United States shall, as soon as practicable, cause the eastern and western boundary lines of the tract of country described in the 1st article of this convention, and the western boundary of the Chickasaw district, as herein defined, to be run and permanently marked.

ARTICLE 20. That this convention may conduce as far as possible to the restoration and preservation of kind and friendly feeling among the Choctaws and Chickasaws, a general amnesty of all past offenses, committed within their country, is hereby declared.

And in order that their relations to each other and to the United States may hereafter be conducted in a harmonious and satisfactory manner, there shall be but one agent for the two tribes.

ARTICLE 21. This convention shall supersede and take the place of all former treaties between the United States and

the Choctaws, and also, of all treaty stipulations between the United States and the Chickasaws, and between the Choctaws and Chickasaws, inconsistent with this agreement, and shall take effect and be obligatory upon the contracting parties, from the date hereof, whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes, and by the President and Senate of the United States.

ARTICLE 22. It is understood and agreed that the expenses of the respective commissioners of the two tribes, signing these articles of agreement and convention, in coming to, and returning from this city, and while here, shall be paid by the United States.

In testimony whereof, the said George W. Manypenny, commissioner on the part of the United States, and the said commissioners on the part of the Choctaws and of the Chickasaws, have hereunto set their hands and seals.

Done in triplicate at the city of Washington, on this twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-five.

George W. Manypenny,	
United States Commissioner.	[L. s.]
P. P. Pitchlynn,	[L. s.]
Israel Folsom,	[L. s.]
Sam'l. Garland,	[L. s.]
Dickson W. Lewis,	[L. s.]
Choctaw Commissioners.	
Edmund Pickens, his x mark,	[L. s.]
Sampson Folsom,	[L. s.]
Chickasaw Commissioners.	

Executed in presence of—

A. O. P. NICHOLSON,
JAMES G. BERRET,
DOUGLAS H. COOPER, United States Indian agent.

Excerpt, order, E. D. TOWNSEND, Assistant Adjutant General Headquarters of the Army, Washington, APRIL 17, 1861, to Lieut. Col. WM. H. EMORY, First Cavalry, Commanding Fort Arbuckle (Rebellion Records, Ser. I, Vol. I. p. 667).

On receipt of this communication, you will, by order of the General-in-Chief, with all the troops in the Indian country west of Arkansas, march to Fort Leavenworth, Kans., taking such useful public property as your means of transport will permit. The troops may or may not be replaced by

Arkansas volunteers. The action of that State will not affect your movement.

Excerpt, report, W. H. EMORY, Lieutenant-Colonel, First Cavalry, Commanding, Headquarters Troops in the Indian Country West of the Arkansas River, MAY 19, 1861, to Lieutenant-Colonel, TOWNSEND, Assistant Adjutant-General, Headquarters Army, Washington, D. C. (Rebellion Records, Ser. I, Vol. I, p. 648).

On the 9th I found the command from Cobb (two companies of foot) thirty-five miles northeast of that post, and on the same day I took the most direct course to Leavenworth that the nature of the ground would permit. I am now in Kansas, . . .

Report, W. H. EMORY, Late Lieutenant-Colonel, First Cavalry, Headquarters Troops from Texas Frontier, Fort Leavenworth, MAY 31, 1861, to Lieutenant-Colonel TOWNSEND, Assistant Adjutant General (Rebellion Records, Ser. I, Vol. I, p. 649).

I arrived here this morning, and turned over the command to Major Sackett in good condition; not a man, an animal, an arm, or wagon has been lost except two deserters.

Excerpt, letter, C. H. CARRUTH, United States Indian Agent, Leavenworth, Kansas, NOVEMBER 26, 1861, to Major General HUNTER, Commanding Western Division of the United States Army (Commissioner of Indian Affairs, Report, 1861, pp. 48-49).

. . . Though at the present time there is a strong Union feeling among the southern tribes, I believe that unless help reaches them, next spring will find them wholly committed to the south. Four thousand Texans are on Red river, where the Missouri and Texas road crosses it. Five thousand have been ordered up, in addition, to help the Creek rebels repel a fancied northern invasion of six thousand men at least. This is the information the Creek secessionist officers give. While the army of McCulloch, Price, Rains, and company has full swing on the eastern Cherokee border.

Such is as near the position of the Indian country as I am able to give. I have from the first believed it would be good

policy to let loose the northern Indians, under the employ of government; it certainly would be better for the border states to have the Indian country for a battle ground than to have it remain a shelter for rebel hordes the coming winter.

The Indians will make no further resistance to the south until help is furnished them, while a little aid would thoroughly arouse the Union feeling, which, once enlisted in open war, there can be no turning back.

Before spring they must be either our enemies or friends. The south will not let them remain neutral. At heart the great mass of them are with us. We can rouse three thousand Creeks and Seminoles, more of the Cherokees, and some of the Chickasaws. We can get all the tribes around Fort Cobb, worthless as they are, just debased enough for rebels, yet at heart Union.

Among this Union element we can throw a thousand or two northern Indian warriors, and whites enough to give nerve to the forces, and thus we can thoroughly commit those who now waver. And the Union Indians once thoroughly committed openly to government, it will be a war to the death. They will kill off their half-breeds; they may murder their wives and children; cruelties unheard of may be the order of the day—when then? It was the south that started this Indian warfare, and unless we turn the tide against them, if we wait until spring, believing there is honor among the knaves who are working this ruin, Kansas will be the scene of these cruelties, northern mothers will be the victims, our children may be slaughtered, our homes burned.

Such, sir, is my opinion of what ought to be done. I should not have given it, but you kindly asked me to give my views. I trust I am not prejudiced against the southern tribes. I am not ashamed to call myself a friend to the Indians. . . .

Excerpt, report, GEORGE A. CUTLER, United States Agent for Creeks, Temporary Office, Creek Agency, Sac and Fox Agency, SEPTEMBER 5, 1863, to Col. WILLIAM G. COFFIN, Sup't Indian Affairs, Leavenworth City (Commissioner of Indian Affairs, Report, 1863, pp. 181-182).

. . . The Indian country, which, with Texas, is probably the finest grazing country in the world, was, as it were, alive with cattle.

It would, we have every reason to believe, have required but a few thousand of our troops to have made all the bene-

fits of this vast source of supply secure to the Union army;
...

Excerpt, CONFEDERATE TREATY WITH THE CHOCTAWS AND CHICKASAWS, JULY 12, 1861, ratified by Confederate States, DECEMBER 20, 1861 (Court of Claims, No. 18,932). (Record, Request for Findings and Brief for the United States, pp. 21-22; consecutive pencil paging, pp. 839-840).

ARTICLE XLIX. In consideration of the common interests of the Choctaw and Chickasaw nations and the Confederate States, and of the protection and rights guaranteed to the said nations by this treaty, the said nations hereby agree that they will raise and furnish a regiment of ten companies of mounted men to serve in the armies of the Confederate States for twelve months. The company officers of the regiment shall be elected by the members of each company, respectively, the colonel shall be appointed by the President, and the lieutenant-colonel and major be elected by the members of the regiment. The men shall be armed by the Confederate States, receive the same pay and allowances as other mounted troops in the service, and not be marched beyond the limits of the Indian country west of Arkansas against their consent.

Excerpt, letter, ALBERT PIKE, Brigadier-General [Confederate Army], Comdg. Dept. of Indian Territory, Headquarters Department of Indian Territory, Fort Washita, Ind. Ter., OCTOBER 26, 1862, to Lieut. Col. S. S. ANDERSON, Assistant Adjutant-General, Trans-Mississippi Dept. (Rebellion Records, Ser. I, Vol. XIII, p. 905).

... It is true I am opposed to taking the Indians out of their own country to fight our battles. I think it is cruel, unjust, ungenerous, and mean. We never told them when we made the treaties that they would be invited to that entertainment. ...

Excerpt, letter, [Major] N. B. PEARCE, Fort Smith, Ark., JULY 5, 1862, to General [THOMAS C. HINDMAN, Confederate Army] (Rebellion Records, Ser. I, Vol. XIII, p. 963).

Today I saw Mr. F. E. Williams, of Scullyville. He had just come in from Pike's headquarters. I asked him if Pike

had left, and his reply was that Pike did not intend to leave; that he had ordered Colonel Cooper to take his regiment to Gibson, and that the Major of the regiment stepped out and said that their time would be out in a month; that the treaty did not require them to leave their nation, and that he would not go, and the regiment coincided with the major in his views, and acted accordingly. ...

Excerpt, letter, A. B. CAMPBELL, Surgeon United States Army, Headquarters Department of Kansas, Fort Leavenworth, Kansas, FEBRUARY 5, 1862, to Major JAMES K. BARNES, Surgeon United States Army, Medical Director, Department of Kansas; Official Copy sent by CHARLES G. HALPINE, Major and Assistant Adjutant General, Headquarters Department of Kansas, Fort Leavenworth, Kansas, FEBRUARY 8, 1862, to Hon. WM. P. DOLE, Commissioner of Indian Affairs (Commissioner of Indian Affairs, Report, 1862, p. 152).

... Why the officers of the Indian department are not doing something for them [the refugee Indians] I cannot understand; common humanity demands that more should be done, and done at once, to save them from total destruction.

Excerpt, report, W. G. COFFIN, Superintendent of Indian Affairs South, Fort Roe, Verdigris, FEBRUARY 13, 1862, to Hon. W. P. DOLE, Commissioner of Indian Affairs (Commissioner of Indian Affairs, Report, 1862, pp. 145-146).

... The destitution, misery, and suffering amongst them [the refugee Indians] is beyond the power of any pen to portray; it must be seen to be realized. There are now here over two thousand men, women, and children, entirely barefooted, and more than that number who have not rags enough to hide their nakedness. Many have died and others are constantly dying. I should think, at a rough guess, that from twelve to fifteen hundred dead ponies are lying around in the camps and in the river. ... There are, perhaps, now two thousand ponies living; they are very poor and many of them must die before grass comes, which we expect here from the 1st to the 10th of March. We are issuing a little corn to the Indians and they are feeding them a little, and we hope will save most of them.

Excerpt, report, E. H. CARRUTH, United States Indian Agent, and H. W. MARTIN, Special Indian Agent, Camp Wattles, Wolf Creek, Cherokee Nation, JULY 25, 1862, to Colonel Wm. G. COFFIN, Superintendent of Indian Affairs (Commissioner of Indian Affairs, Report, 1862, pp. 160-161).

The situation of the Indian regiment is peculiar. The retreat of all the white forces leaves them alone to hold the country. They had but two days' rations when Colonel Salomon retreated. . . . One regiment of whites with the Indians would be of great service. There has, however, been much less plundering since they left. Everything was then laid to the Indians. Nearly everything in the shape of subsistence is used or destroyed in the progress of our army. The "protection" we are now giving would ruin any country on earth

Excerpt, report, WILLIAM P. DOLE, Commissioner, Department of the Interior, Office of Indian Affairs, OCTOBER 31, 1863, to Hon. J. P. USHER, Secretary of the Interior (Commissioner of Indian Affairs, Report, 1863, p. 26).

Recent information from refugees and other sources, believed by Colonel Phillips and others to be entirely reliable, indicates that a strong Union element exists among the Chickasaws and Choctaws; that Union leagues are formed in their midst, and that a very considerable portion of the people are prepared to throw off the authority of the rebels as soon as a Union force shall appear. It is said that even now the rebel authorities are obliged to keep a battalion of troops constantly stationed in their country to watch the movements of our friends.

TREATY WITH THE CHOCTAW, JUNE 19, 1865 (Rebellion Records, Ser. I, Vol. XLVIII, part II, p. 1006. A similar treaty was concluded with the Chickasaw, JULY 14, 1865; ibid., p. 1097).

Treaty stipulations made and entered into this 19th day of June, 1865, at Doaksville, C. N., between Lieut. Col. A. C. Matthews and Adj. W. H. Vance, U. S. Volunteers, commissioners appointed by the military authorities of the United States, and P. P. Pitchlynn, principal chief and governor of the Choctaw Nation on part of said nation, as follows, to-wit:

ARTICLE I. All acts of hostilities on the part of both armies having ceased (by virtue of a convention entered into

on the 26th day of May, 1865, between Maj. Gen. E. R. S. Canby, U. S. Army, commanding Military Division of West Mississippi, and General E. Kirby Smith, C. S. Army, commanding Trans-Mississippi Department), the Indians of the Choctaw Nation here represented, lately allied with the Confederate States in acts of hostility against the Government of the United States, do agree at once to return to their respective homes, and there remain at peace with the United States and offer no indignity whatever or commit any acts of hostilities against the whites or Indians of the various tribes who have been friendly to or engaged in the service of the United States during the war.

ART. II. It is stipulated by the undersigned commissioners on the part of the United States that so long as the Indians aforesaid observe the provisions of Article I of this agreement they shall be protected by the U. S. authorities in their persons and property, not only from the encroachments on the part of the whites but also from the Indians who have been engaged in the service of the United States.

ART. III. The above articles of agreement to remain and be in full force and effect until the meeting of the grand council to meet at Armstrong Academy, C. N., on the 1st day of September, A. D. 1865, and until such time as the proceedings of said council shall be ratified by the proper authorities, both of the Choctaw Nation and the United States.

In testimony whereof, the said Lieut. Col. A. C. Matthews and Adj. W. H. Vance, commissioners on the part of the United States, and P. P. Pitchlynn, principal chief and governor of the Choctaw Nation, have hereto set their hands.

A. C. MATTHEWS,

Lieut. Col. U. S. Vols.

W. H. VANCE,

Adjutant, U. S. Volunteers, Commissioners.

P. P. PITCHLYNN,

Principal Chief Choctaw Nation.

Letter, JAS. HARLAN, Secretary, Department of the Interior, Washington, D. C., JULY 6, 1865, to Major-General POPE (Rebellion Records, Ser. I, Vol. XLVIII, part II, pp. 1056-1058).

Your communication of the 19th of June last, addressed to this Department through the Secretary of War, and letters from Major-General Dodge and from you addressed to Lieutenant-General Grant on the subject of Indian hostilities and Indian intercourse, have been received and fully consid-

ered. In reply allow me to say that the manifest indisposition mentioned by you of subordinate officers of this Department to act in harmony with the policy of the War Department, and the alleged publication of uncharitable strictures reflecting on the character and conduct of those in command of troops in the Indian country, are without the sanction or approval of the Secretary of the Interior, and measures will be adopted to terminate such conduct. It is the desire of the Secretary of the Interior to subordinate the action of the agents of the Department to the policy of the Secretary of War in relation to Indian tribes at war, and to secure the support of the military authorities in carrying out the civil policy of the Government in relation to those Indians at peace with the United States. The policy of the Government in relation to nearly all of the latter class of Indians has been settled by the President and the Senate in treaty stipulations, which carry with them the plighted faith of the nation and the force of law. Whether this policy is wise or unwise is not now a practical question for the Secretary of the Interior or the Secretary of War, nor for the President in his character as Commander-in-Chief or Chief Executive officer of the nation. Treaties made and ratified must be enforced by the President until abrogated by the same power which made them. All the Indians referred to by you as annuity Indians are in this category. It is on this account that the Secretary of the Interior recommended, and, as he supposes, the President approved the designation of some suitable person to proceed to the Indian country, to be on the ground when the proper moment should arrive to represent the President in negotiating for peace, and for the settlement of the Indians in districts of country as remote as practicable from the great lines of travel across the plains and unsettled Territories. It is true a general or other military officer might be thus designated by the President, were it not that Congress has provided by law that such treaties shall be negotiated by an officer of the Indian Department. For that reason it was, in the opinion of the Secretary of the Interior, necessary to send some such officer, conversant with the subject and the probable views of the Senate, to act in concert with the military authorities, whose presence and power would awe the Indians into obedience. Otherwise all would be futile on account of the non-compliance of the Indians or the refusal of the Senate to ratify the new arrangements. Hence, whether a new policy shall be proposed or the old policy enforced, a prudent, careful, and well-informed negotiation will be needed.

The evils growing out of the settlement of the Indians on the borders of our frontier mentioned by you, and which you propose to remedy by removing them far in the rear of our settlements, have not escaped the observation of this Depart-

ment. But it is no more than just to the Government, and is at the same time in support of the wisdom of your suggestion, to say that when these Indians were first settled on their present reservations they were far in the rear of our settlements. That the rapid growth of the nation has brought our people to their doors, and surrounded them in some cases with a white population, is no fault of theirs and no misfortune of ours. And if it does render their removal and relocation desirable to us and to them, the practical inquiry arises "where can you find for them a place and habitation" free from this returning evil? There is not now one foot of territory belonging to the United States except the comparatively small district west of Arkansas not embraced within the limits of an organized Territory. And this excepted district is owned in fee simple by the Indians who now occupy it. It is hoped that they may be induced to open this territory to settlement by other Indians who have obtained the same degree of civilization with themselves. Should the Department succeed in this arrangement, provision may be made for such of the Indians residing in Kansas and Nebraska as may agree to remove to that Territory. So far as it may be practicable to execute this design, your suggestions will be carried into effect, but beyond this the Government has no home to offer them where they would be free from constant friction with the worst classes of white people. They must, therefore, remain on their reservations for the present. And it is just to say of some of these that they are doing comparatively well and are increasing in numbers. But the more difficult question still remains. What shall be done with the wild, uncivilized, or blanket Indians, who live by the chase, now that the encroachments of the white people are pressing them on every side and permeating their country in every direction, destroying and driving off the game on which they have chiefly relied for support.

As Congress has organized civil governments in these Territories, and has thus invited their settlement by civilized people, it is no longer possible for the Secretary of the Interior or the Secretary of War to preserve them unbroken for a habitation for the Indians. It is equally clear that these Indians cannot long support themselves by their former pursuits. They must, therefore, gradually perish by the sword if they remain hostile; by starvation should they become peaceful and avoid plunder, or they must resort to pastoral and agricultural pursuits. As their extermination cannot be entered on by a great and Christian nation, there is but one course left for consideration. The Government must attempt to civilize them, and the first step to be taken in this policy is to give them a local habitation. They must be induced or compelled to live on some limited district of

country designated by metes and bounds, which they will learn to regard, and which others can be compelled to respect, as their home, where they will gradually adopt from necessity and by imitation pastoral and agricultural pursuits. At first the district of country assigned to each tribe may be large, and afterward diminished from time to time as game disappears and the Indians become more and more accustomed to civilized pursuits. During the transition period it will become the duty of the Government to supply them with a portion of the means of subsistence commensurate with the deficiency occasioned by the destruction of game by our advancing settlements. To this policy there are great objections, but it is doubtful whether there will be any other practical mode of procedure devised that will not be liable to greater embarrassments. In the selection of such reservations the agents of this Department will be expected to avail themselves of the great knowledge of the character of the country and of the various Indian tribes acquired by the military officers in command of expeditions against any of these Indians, and in command of the military posts located in their vicinity, and as far as practicable to act in harmony with their views.

Excerpts, report, JAS. HARLAN, Secretary of the Interior, Department of the Interior, DECEMBER 4, 1865, to the PRESIDENT (Secretary of the Interior, Report, 1865, pp. VII-VIII).

. . . Civilized and powerful tribes, however, residing within the Indian territory, united early in the year 1861 with the Indians of the prairies immediately west and north, for hostile operations against the United States. In flagrant violation of treaties which had been observed by us with scrupulous good faith, and in the absence of any just ground of complaint, these confederated Indians entered into an alliance with the rebel authorities and raised regiments in support of their cause.

. . . Hostilities were then suspended, and, at the request of the Indians, commissioners were sent to negotiate a treaty of peace. Such preliminary arrangements were made as, it is believed, will result in the abolition of slavery among them, the cession within the Indian territory of lands for the settlement of the civilized Indians now residing on reservations elsewhere, and the ultimate establishment of civil government, subject to the supervision of the United States.

The perfidious conduct of the Indians in making unprovoked war upon us has been visited with the severest retri-

bution. The country within the Indian territory has been laid waste, vast amounts of property destroyed, and the inhabitants reduced from a prosperous condition to such extreme destitution, that thousands of them must inevitably perish during the present winter, unless timely provision be made by this government for their relief.

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The policy of the total destruction of the Indians has been openly advocated by gentlemen of high position, intelligence, and personal character; but no enlightened nation can adopt or sanction it without a forfeiture of its self-respect and the respect of the civilized nations of the earth.

Financial considerations forbid the inauguration of such a policy. The attempted destruction of three hundred thousand of these people . . . would involve an appalling sacrifice of the lives of our soldiers and frontier settlers, and the expenditure of untold treasure. It is estimated that the maintenance of each regiment of troops engaged against the Indians of the plains costs the government about two million dollars per annum. All the military operations of last summer have not occasioned the immediate destruction of more than a few hundred Indian warriors. Such a policy is manifestly as impracticable as it is in violation of every dictate of humanity and Christian duty.

STIPULATIONS FOR TREATIES presented by United States Commissioners to Indian Delegations, Fort Smith, Arkansas, SEPTEMBER 9, 1865 (Commissioner of Indian Affairs, Report, 1865, 318-319).

Such treaties must contain, substantially, the following stipulations:

1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.
2. Those settled in the Indian territory must bind themselves, when called upon by the government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the territory, and with the United States.
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.

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

6. It is the policy of the government, unless other arrangements be made, that all the nations and tribes in the Indian territory be formed into one consolidated government, after the plan proposed by the Senate of the United States, in a bill for organizing the Indian territory.

7. No white person, except officers, agents, and employees of the government, or of any internal improvement authorized by the government, will be permitted to reside in the territory, unless formally incorporated with some tribe, according to the usages of the band.

"UNSIGNED" TREATY, SEPTEMBER 13, 1865, (*Commissioner of Indian Affairs, Report, 1865, pp. 330-331*).

Articles of agreement entered into this thirteenth day of September, 1865, between the commissioners designated by the President of the United States and the persons here present representing or connected with the following named nations and tribes of Indians located within the Indian country, viz: Cherokees, Creeks, Choctaws, Chickasaws, Osages, Seminoles, Senecas, Senecas and Shawnees, and Quapaws.

Whereas the aforesaid nations and tribes, or bands of Indians, or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off their allegiance to the government of the United States, and to enter into treaty stipulations with said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights of every kind, character, and description which had been promised and guaranteed to them by the United States; and whereas the government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the government to act with magnanimity with all parties deserving its clemency, and to re-establish order and legitimate authority among the Indian tribes; and whereas the undersigned representatives or parties connected with said nations or tribes of Indians have become satisfied that it is for the general good of the people to reunite with and be restored to the relations which formerly existed between them and the

ARTICLE 4. 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

7. Amendments should be proposed to the Territorial Bill, denominated Senate Bill, 459, so as to make the provision a permanent one instead of temporary, and so that the Governor thereof might be chosen by the tribes located within the proposed territory, from one of their own number, in the same manner as provided for a delegate to Congress.

8. The 1st, 2nd, 7th, 8th, 9th, & 10th articles are agreed to. The 3d, 4th, 5th, 6th & 11th articles are open to discussion.

TREATY WITH THE CHOCTAW AND CHICKASAW, 1866 (*Kappler, Laws and Treaties, Vol. II, pp. 918-931*).

Articles of agreement and convention between the United States and the Choctaw and Chickasaw Nations of Indians, made and concluded at the City of Washington the twenty-eighth day of April, in the year eighteen hundred and sixty-six, by Dennis N. Cooley, Elijah Sells, and E. S. Parker, special commissioners on the part of the United States, and Alfred Wade, Allen Wright, James Riley, and John Page, commissioners on the part of the Choctaws, and Winchester Colbert, Edmund Pickens, Holmes Colbert, Colbert Carter, and Robert H. Love, commissioners on the part of the Chickasaws.

ARTICLE 1. Permanent peace and friendship are hereby established between the United States and said nations; and the Choctaws and Chickasaws do hereby bind themselves respectively to use their influence and to make every exertion to induce Indians of the plains to maintain peaceful relations with each other, with other Indians, and with the United States.

ARTICLE 2. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involun-

4. A stipulation in the treaties that slavery, or involuntary servitude, shall never exist in the tribe or nation, except in punishment of crime.

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

6. It is the policy of the government, unless other arrangements be made, that all the nations and tribes in the Indian territory be formed into one consolidated government, after the plan proposed by the Senate of the United States, in a bill for organizing the Indian territory.

7. No white person, except officers, agents, and employees of the government, or of any internal improvement author- 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 4. 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 place of the land cultivated as last aforesaid.

ARTICLE 5. A general amnesty of all past offences against the laws of the United States, committed before the signing of this treaty by any member of the Choctaw or Chickasaw Nations, is hereby declared: and the United States will especially request the States of Missouri, Kansas, Arkansas, and Texas to grant the like amnesty as to all offences committed by any member of the Choctaw or Chickasaw Nation. And the Choctaws and Chickasaws, anxious for the restoration of kind and friendly feelings among themselves, do hereby declare an amnesty for all past offences against their respective governments, and no Indian or Indians shall be proscribed, or any act of forfeiture or confiscation passed against those who may have remained friendly to the United States, but they shall enjoy equal privileges with other members of said tribes, and all laws heretofore passed inconsistent herewith are hereby declared inoperative. The people of the Choctaw and Chickasaw Nations stipulate and agree to deliver up to any duly authorized agent of the United States all public property in their possession which belong to the late "so-called Confederate States of America," or the United States, without any reservation whatever; particularly ordnance, ordnance-stores, and arms of all kinds.

ARTICLE 6. The Choctaws and Chickasaws hereby grant a right of way through their lands to any company or companies which shall be duly authorized by Congress, or by the legislatures of said nations, respectively, and which shall,

with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad through the Choctaw and Chickasaw Nations from the north to the south thereof, and from the east to the west side thereof, in accordance with the provisions of the 18th article of the treaty of June twenty-second, one thousand eight hundred and fifty-five, which provides that for any property taken or destroyed in the construction thereof full compensation shall be made to the party or parties injured, to be ascertained and determined in such manner as the President of the United States shall direct. But such railroad company or companies, with all its or their agents and employes shall be subject to the laws of the United States relating to intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior for that purpose. And it is also stipulated and agreed that the nation through which the road or roads aforesaid shall pass may subscribe to the stock of the particular company or companies such amount or amounts as they may be able to pay for in alternate sections of unoccupied lands for a space of six miles on each side of said road or roads, at a price per acre to be agreed upon between said Choctaw and Chickasaw Nations and the said company or companies, subject to the approval of the President of the United States: *Provided, however,* That said land, thus subscribed, shall not be sold, or demised, or occupied by any one not a citizen of the Choctaw or Chickasaw Nations, according to their laws and recognized usages: *Provided,* That the officers, servants, and employes of such companies necessary to the construction and management of said road or roads shall not be excluded from such occupancy as their respective functions may require, they being subject to the provisions of the Indian intercourse law and such rules and regulations as may be established by the Secretary of the Interior: *And provided also,* That the stock thus subscribed by either of said nations shall have the force and effect of a first-mortgage bond on all that part of said road, appurtenances, and equipments situated and used within said nations respectively, and shall be a perpetual lien on the same, and the said nations shall have the right, from year to year, to elect to receive their equitable proportion of declared dividends of profits on their said stock, or interest on the par value at the rate of six per cent. per annum.

2. And it is further declared, in this connection, that as fast as sections of twenty miles in length are completed, with the rails laid ready for use, with all water and other stations necessary to the use thereof, as a first-class road, the said company or companies shall become entitled to patents for the alternate sections aforesaid, and may proceed to dispose thereof in the manner herein provided for, subject to the approval of the Secretary of the Interior.

3. And it is further declared, also, in case of one or more of said alternate sections being occupied by any member or members of said nations respectively, so that the same cannot be transferred to the said company or companies, that the said nation or nations, respectively, may select any unoccupied section or sections, as near as circumstances will permit, to the said width of six miles on each side of said road or roads, and convey the same as an equivalent for the section or sections so occupied as aforesaid.

ARTICLE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively.

ARTICLE 8. The Choctaws and Chickasaws also agree that a council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

1. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe, lawfully resident in said Territory, shall be taken, under the direction of the Superintendent of Indian Affairs, by competent persons, to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior and paid by the United States.

2. The council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations respectively who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and head-men of said tribes, to be taken in the order of their rank as recognized in tribal usage in the number and proportions above indicated.

3. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall

meet at such time and place as he shall designate, but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of thirty days, and provided that the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interests of said tribes shall require it.

4. The general assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said Territory, the arrest and extradition of criminals escaping from one tribe to another, the administration of justice between members of the several tribes of the said Territory, and persons other than Indians and members of said tribes or nations, the construction of works of internal improvement, and the common defense and safety of the nations of the said Territory. All laws enacted by said council shall take effect at the times therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States or the laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations, except as herein provided for.

5. Said council shall be presided over by the superintendent of Indian affairs, or, in case of his absence from any cause, the duties of the superintendent enumerated in this article shall be performed by such person as the Secretary of the Interior shall indicate.

6. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all the proceedings of said council, and to transmit a true copy thereof, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior immediately after the sessions of said council shall terminate. He shall be paid five hundred dollars, as an annual salary, by the United States.

7. The members of the said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer.

8. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

9. Whenever Congress shall authorize the appointment of a Delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in said council.

10. And it is further agreed that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of "governor of the Territory of Oklahoma," and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belong to an executive officer charged with the execution of the laws, which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

11. And the said marshal and the said secretary shall each be entitled to a salary of five hundred dollars per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior, it being understood that the said fee-lists may at any time be corrected and altered by the Secretary of the Interior, as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services.

The salary of the interpreter shall be five hundred dollars, to be paid in like manner by the United States.

12. And the United States agree that in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations, the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations.

13. And whereas it is desired by the said Choctaw and Chickasaw Nations that the said council should consist of an upper and lower house, it is hereby agreed that whenever a majority of the tribes or nations represented in said council shall desire the same, or the Congress of the United States shall so prescribe, there shall be, in addition to the council now provided for, and which shall then constitute the lower house, an upper house, consisting of one member from each tribe entitled to representation in the council now provided for—the relations of the two houses to each other being such as prevail in the States of the United States; each house

being authorized to choose its presiding officer and clerk to perform the duties appropriate to such offices; and it being the duty, in addition, of the clerks of each house to make out and transmit to the territorial secretary fair copies of the proceedings of the respective houses immediately after their respective sessions, which copies shall be dealt with by said secretary as is now provided in the case of copies of the proceedings of the council mentioned in this act, and the said clerks shall each be entitled to the same per diem as members of the respective houses, and the presiding officers to double that sum.

ARTICLE 9. Such sums of money as have, by virtue of treaties existing in the year eighteen hundred and sixty-one, been invested for the purposes of education, shall remain so invested, and the interest thereof shall be applied for the same purposes, in such manner as shall be designated by the legislative authorities of the Choctaw and Chickasaw Nations, respectively.

ARTICLE 10. The United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and others moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six.

ARTICLE 11. Whereas the land occupied by the Choctaw and Chickasaw Nations, and described in the treaty between the United States and said nations, of June twenty-second, eighteen hundred and fifty-five, is now held by the members of said nations in common, under the provisions of the said treaty; and whereas it is believed that the holding of said land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare and the best interests of their individual members, it is hereby agreed that, should the Choctaw and the Chickasaw people, through their respective legislative councils, agree to the survey and dividing their land on the system of the United States, the land aforesaid east of the ninety-eighth degree of west longitude shall be, in view of the arrangements hereinafter mentioned, surveyed and laid off in ranges, townships, sections and parts of sections; and that for the purpose of facilitating such surveys and for the settlement and distribution of said land as hereinafter provided, there shall be established at Boggy Depot, in the Choctaw Territory, a land-office; and that, in making the said surveys and conducting the business of the said office, including the appointment of all necessary agents and surveyors, the same system shall be pursued which has heretofore governed in

respect to the public lands of the United States, it being understood that the said surveys shall be made at the cost of the United States and by their agents and surveyors, as in the case of their own public lands, and that the officers and employes shall receive the same compensation as is paid to officers and employes in the land-offices of the United States in Kansas.

ARTICLE 12. The maps of said surveys shall exhibit, as far as practicable, the outlines of the actual occupancy of members of the said nations, respectively; and when they are completed, shall be returned to the said land-office at Boggy Depot for inspection by all parties interested, when notice for ninety days shall be given of such return, in such manner as the legislative authorities of the said nations, respectively, shall prescribe, or, in the event of said authorities failing to give such notice in a reasonable time, in such manner as the register of said land-office shall prescribe, calling upon all parties interested to examine said maps to the end that errors, if any, in the location of such occupancies, may be corrected.

ARTICLE 13. The notice required in the above article shall be given, not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations, may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land-office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona-fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be cancelled, and the land shall thereafter be discharged from all claim on account thereof.

ARTICLE 14. At the expiration of the ninety days aforesaid the legislative authorities of the said nations, respectively, shall have the right to select one quarter-section of land in each of the counties of said nations respectively, in trust for the establishment of seats of justice therein, and also as many quarter-sections as the said legislative councils may deem proper for the permanent endowment of schools, seminaries, and colleges in said nation, provided such selection shall not embrace or interfere with any improvement in the actual occupation of any member of the particular nation without his consent; and provided the proceeds of sale of

the quarter-sections selected for seats of justice shall be appropriated for the erection or improvement of public buildings in the county in which it is located.

ARTICLE 15. At the expiration of the ninety days' notice aforesaid, the selection which is to change the tenure of the land in the Choctaw and Chickasaw Nations from a holding in common to a holding in severalty shall take place, when every Choctaw and Chickasaw shall have the right to one quarter-section of land, whether male or female, adult or minor, and if in actual possession or occupancy of land improved or cultivated by him or her, shall have a prior right to the quarter-section in which his or her improvement lies; and every infant shall have selected for him or her a quarter-section of land in such location as the father of such infant, if there be a father living, and if no father living, then the mother or guardian, and should there be neither father, mother, nor guardian, then as the probate judge of the county, acting for the best interest of such infant, shall select.

ARTICLE 16. Should an actual occupant of land desire, at any time prior to the commencement of the surveys aforesaid, to abandon his improvement, and select and improve other land, so as to obtain the prior right of selection thereof, he or she shall be at liberty to do so; in which event the improvement so abandoned shall be open to selection by other parties: *Provided*, That nothing herein contained shall authorize the multiplication of improvements so as to increase the quantity of land beyond what a party would be entitled to at the date of this treaty.

ARTICLE 17. No selection to be made under this treaty

thus granted, nor the buildings which have been or may be erected thereon, shall ever be sold or otherwise disposed of, except with the consent of the legislatures of said nations respectively and approval of the Secretary of the Interior; and whenever such lands or buildings shall be sold or disposed of, the proceeds thereof shall be applied, under the direction of the Secretary of the Interior, to the support and maintenance of other similar establishments for the benefit of the Choctaws and Chickasaws, and such other persons as may hereafter become members of their nations, according to their laws, customs, and usages.

ARTICLE 18. In making a selection for children the parent shall have a prior right to select land adjacent to his own improvements or selection, provided such selection shall be made within thirty days from the time at which selections under this treaty commence.

ARTICLE 19. The manner of selecting as aforesaid shall be by an entry with the register of the land-office, and all selections shall be made to conform to the legal subdivisions of the said lands as shown by the surveys aforesaid on the maps aforesaid; it being understood that nothing herein contained is to be construed to confine a party selecting to one section, but he may take contiguous parts of sections by legal subdivisions in different sections, not exceeding together a quarter-section.

ARTICLE 20. Prior to any entries being made under the foregoing provisions, proof of improvements, or actual cultivation, as well as the number of persons for whom a parent or guardian, or probate judge of the county proposes to select, and of their right to select, and of his or her author-

ARTICLE 24. Whereas it may be difficult to give to each occupant of an improvement a quarter-section of land, or even a smaller subdivision, which shall include such improvement, in consequence of such improvements lying in towns, villages, or hamlets, the legislative authorities of the respective nations shall have power, where, in their discretion, they think it expedient, to lay off into town lots any section or part of a section so occupied, to which lots the actual occupants, being citizens of the respective nations, shall have pre-emptive right, and, upon paying into the treasury of the particular nation the price of the land, as fixed by the respective legislatures, exclusive of the value of said improvement, shall receive a conveyance thereof. Such occupant shall not be prejudiced thereby in his right to his selection elsewhere. The town lots which may be unoccupied shall be disposed of for the benefit of the particular nation, as the legislative authorities may direct from time to time. When the number of occupants of the same quarter-section shall not be such as to authorize the legislative authorities to lay out the same, or any part thereof, into town lots, they may make such regulations for the disposition thereof as they may deem proper, either by subdivision of the same, so as to accommodate the actual occupants, or by giving the right of prior choice to the first occupant in point of time, upon paying the others for their improvements, to be valued in such way as the legislative authorities shall prescribe, or otherwise. All occupants retaining their lots under this section, and desiring, in addition, to make a selection, must pay for the lots so retained, as in the case of town lots. And any Choctaw or Chickasaw who may desire to select a sectional division other than that on which his homestead is, without abandoning the latter, shall have the right to purchase the homestead sectional division at such price as the respective legislatures may prescribe.

ARTICLE 25. During ninety days from the expiration of the ninety days' notice aforesaid, the Choctaws and Chickasaws shall have the exclusive right to make selections, as aforesaid, and at the end of that time the several parties shall be entitled to patents for their respective selections, to be issued by the President of the United States, and countersigned by the chief executive officer of the nation in which the land lies, and recorded in the records of the executive office of the particular nation; and copies of the said patents, under seal, shall be evidence in any court of law or equity.

ARTICLE 26. The right here given to the Choctaws and Chickasaws, respectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such.

ARTICLE 27. In the event of disputes arising in regard to the rights of parties to select particular quarter-sections or other divisions of said land, or in regard to the adjustment of boundaries, so as to make them conform to legal divisions and subdivisions such disputes shall be settled by the register of the land-office and the chief executive officer of the nation in which the land lies, in a summary way, after hearing the parties; and if said register and chief officer cannot agree, the two to call in a third party, who shall constitute a third referee, the decisions of any two of whom shall be final, without appeal.

ARTICLE 28. Nothing contained in any law of either of the said nations shall prevent parties entitled to make selections contiguous to each other; and the Choctaw and Chickasaw Nations hereby agree to repeal all laws inconsistent with this provision.

ARTICLE 29. Selections made under this treaty shall, to the extent of one quarter-section, including the homestead or dwelling, be inalienable for the period of twenty-one years from the date of such selection, and upon the death of the party in possession shall descend according to the laws of the nation where the land lies; and in the event of his or her death without heirs, the said quarter-section shall escheat to and become the property of the nation.

ARTICLE 30. The Choctaw and Chickasaw Nations will receive into their respective districts east of the ninety-eighth degree of west longitude, in the proportion of one-fourth in the Chickasaw and three-fourths in the Choctaw Nation, civilized Indians from the tribes known by the general name of the Kansas Indians, being Indians to the north of the Indian Territory, not exceeding ten thousand in number, who shall have in the Choctaw and Chickasaw Nations, respectively, the same rights as the Choctaws and Chickasaws, of whom they shall be the fellow-citizens, governed by the same laws, and enjoying the same privileges, with the exception of the right to participate in the Choctaw and Chickasaw annuities and other moneys, and in the public domain, should the same, or the proceeds thereof, be divided per capita among the Choctaws and Chickasaws, and among others the right to select land as herein provided for Choctaws and Chickasaws, after the expiration of the ninety days during which the selections of land are to be made, as aforesaid, by said Choctaws and Chickasaws; and the Choctaw and Chickasaw Nations pledge themselves to treat the said Kansas Indians in all respects with kindness and forbearance, aiding them in good faith to establish themselves in their new homes, and to respect all their customs and usages not inconsistent with the constitution and laws of the Choctaw and Chickasaw Nations respectively. In making selections after the advent of the Indians and the actual occu-

pancy of land in said nation, such occupancy shall have the same effect in their behalf as the occupancies of Choctaws and Chickasaws; and after the said Choctaws and Chickasaws have made their selections as aforesaid, the said persons of African descent mentioned in the third article of the treaty, shall make their selections as therein provided, in the event of the making of the laws, rules, and regulations aforesaid, after the expiration of ninety days from the date at which the Kansas Indians are to make their selections as therein provided, and the actual occupancy of such persons of African descent shall have the same effect in their behalf as the occupancies of the Choctaws and Chickasaws.

ARTICLE 31. And whereas some time must necessarily elapse before the surveys, maps, and selections herein provided for can be completed so as to permit the said Kansas Indians to make their selections in their order, during which time the United States may desire to remove the said Indians from their present abiding places, it is hereby agreed that the said Indians may at once come into the Choctaw and Chickasaw Nations, settling themselves temporarily as citizens of the said nations, respectively, upon such land as suits them and is not already occupied.

ARTICLE 32. At the expiration of two years, or sooner, if the President of the United States shall so direct, from the completion of the surveys and maps aforesaid, the officers of the land-offices aforesaid shall deliver to the executive departments of the Choctaw and Chickasaw Nations, respectively, all such documents as may be necessary to elucidate the land-title as settled according to this treaty, and forward copies thereof, with the field-notes, records, and other papers pertaining to said titles, to the Commissioner of the General Land Office; and thereafter grants of land and patents therefor shall be issued in such manner as the legislative authorities of said nations may provide for all the unselected portions of the Choctaw and Chickasaw districts as defined by the treaty of June twenty-second, eighteen hundred and fifty-five.

ARTICLE 33. All lands selected as herein provided shall thereafter be held in severalty by the respective parties, and the unselected land shall be the common property of the Choctaw and Chickasaw Nations, in their corporate capacities, subject to the joint control of their legislative authorities.

ARTICLE 34. Should any Choctaw or Chickasaw be prevented from selecting for him or herself during the *the* ninety days aforesaid, the failure to do so shall not authorize another to select the quarter-section containing his improvement, but he may at any time make his selection

thereof, subject to having his boundaries made to conform to legal divisions as aforesaid.

ARTICLE 35. Should the selections aforesaid not be made before the transfer of the land records to the executive authorities of said nations, respectively, they shall be made according to such regulations as the legislative authorities of the two nations, respectively, may prescribe, to the end that full justice and equity may be done to the citizens of the respective territories.

ARTICLE 36. Should any land that has been selected under the provisions of this treaty be abandoned and left uncultivated for the space of seven years by the party selecting the same, or his heirs, except in the case of infants under the age of twenty-one years, or married women, or persons non compos mentis, the legislative authorities of the nation where such land lies may either rent the same for the benefit of those interested, or dispose of the same otherwise for their benefit, and may pass all laws necessary to give effect to this provision.

ARTICLE 37. In consideration of the right of selection hereinbefore accorded to certain Indians other than the Choctaws and Chickasaws, the United States agree to pay to the Choctaw and Chickasaw Nations, out of the funds of Indians removing into said nations respectively, under the provisions of this treaty, such sum as may be fixed by the legislatures of said nations, not exceeding one dollar per acre, to be divided between the said nations in the proportion of one-fourth to the Chickasaw Nation and three-fourths to the Choctaw Nation, with the understanding that at the expiration of twelve months the actual number of said immigrating Indians shall be ascertained, and the amount paid that may be actually due at the rate aforesaid; and should still further immigrations take place from among said Kansas Indians, still further payments shall be made accordingly from time to time.

ARTICLE 38. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw.

ARTICLE 39. No person shall expose goods or other articles for sale as a trader without a permit of the legislative authorities of the nation he may propose to trade in: but no license shall be required to authorize any member of the Choctaw or Chickasaw Nations to trade in the Choctaw

or Chickasaw country who is authorized by the proper authority of the nation, nor to authorize Choctaws or Chickasaws to sell flour, meal, meat, fruit, and other provisions, stock, wagons, agricultural implements, or tools brought from the United States into the said country.

ARTICLE 40. All restrictions contained in any treaty heretofore made, or in any regulation of the United States upon the sale or other disposition of personal chattel property by Choctaws or Chickasaws are hereby removed.

ARTICLE 41. All persons who are members of the Choctaw or Chickasaw Nations, and are not otherwise disqualified or disabled, shall hereafter be competent witnesses in all civil and criminal suits and proceedings in any courts of the United States, any law to the contrary notwithstanding.

ARTICLE 42. The Choctaw and Chickasaw Nations shall deliver up persons accused of crimes against the United States who may be found within their respective limits on the requisition of the governor of any State for a crime committed against the laws of said State, and upon the requisition of the judge of the district court of the United States for the district within which the crime was committed.

ARTICLE 43. The United States promise and agree that no white person, except officers, agents, and employes of the Government, and of any internal improvement company, or persons travelling through, or temporarily sojourning in, the said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations.

ARTICLE 44. Post-offices shall be established and maintained by the United States at convenient places in the Choctaw and Chickasaw Nations, to and from which the mails shall be carried at reasonable intervals, at the rates of postage prevailing in the United States.

ARTICLE 45. All the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty.

ARTICLE 46. 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, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars 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; the residue, not affected by any provisions of this treaty, to remain in the Treasury of the United States at an annual interest of five per cent., no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

ARTICLE 47. As soon as practicable after the lands shall have been surveyed and assigned to the Choctaws and Chickasaws in severalty as herein provided, upon application of their respective legislative councils, and with the assent of the President of the United States, all the annuities and funds invested and held in trust by the United States for the benefit of said nations respectively shall be capitalized or converted into money, as the case may be; and the aggregate amounts thereof belonging to each nation shall be equally divided and paid per capita to the individuals thereof respectively, to aid and assist them in improving their homesteads and increasing or acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of their lands in severalty will involve: *Provided, nevertheless*, That there shall be retained by the United States such sum as the President shall deem sufficient of the said moneys to be invested, that the interest thereon may be sufficient to defray the expenses of the government of said nations respectively, together with a judicious system of education, until these objects can be provided for by a proper system of taxation; and whenever this shall be done to the satisfaction of the President of the United States, the moneys so retained shall be divided in the manner and for the purpose above mentioned.

ARTICLE 48. Immediately after the ratification of this treaty there shall be paid, out of the funds of the Choctaws and Chickasaws in the hands of the United States, twenty-five thousand dollars to the Choctaw and twenty-five thousand dollars to the Chickasaw commissioners, to enable them

to discharge obligations incurred by them for various incidental and other expenses to which they have been subjected, and for which they are now indebted.

ARTICLE 49. And it is further agreed that a commission, to consist of a person or persons to be appointed by the President of the United States, not exceeding three, shall be appointed immediately on the ratification of this treaty, who shall take into consideration and determine the claim of such Choctaws and Chickasaws as allege that they have been driven during the late rebellion from their homes in the Choctaw [and Chickasaw] Nations on account of their adhesion to the United States, for damages, with power to make such award as may be consistent with equity and good conscience, taking into view all circumstances, whose report, when ratified by the Secretary of the Interior, shall be final, and authorize the payment of the amount from any moneys of said nations in the hands of the United States as the said commission may award.

ARTICLE 50. Whereas Joseph G. Heald and Reuben Wright, of Massachusetts, were licensed traders in the Choctaw country at the commencement of the rebellion, and claim to have sustained large losses on account of said rebellion, by the use of their property by said nation, and that large sums of money are due them for goods and property taken, or sold to the members of said nation, and money advanced to said nation; and whereas other loyal citizens of the United States may have just claims of the same character: It is hereby agreed and stipulated that the commission provided for in the preceding article shall investigate said claims, and fully examine the same; and such sum or sums of money as shall by the report of said commission, approved by the Secretary of the Interior, be found due to such persons, not exceeding ninety thousand dollars, shall be paid by the United States to the persons entitled thereto, out of any money belonging to said nation in the possession of the United States: *Provided*, That no claim for goods or property of any kind shall be allowed or paid, in whole or part, which shall have been used by said nation or any member thereof in aid of the rebellion, with the consent of said claimants: *Provided also*, That if the aggregate of said claims thus allowed and approved shall exceed said sum of ninety thousand dollars, then that sum shall be applied pro rata in payment of the claims so allowed.

ARTICLE 51. It is further agreed that all treaties and parts of treaties inconsistent herewith be, and the same are hereby, declared null and void.

In testimony whereof, the said Dennis N. Cooley, Elijah Sells, and E. S. Parker, commissioners in behalf of the United States, and the said commissioners on behalf of the

Choctaw and Chickasaw nations, have hereunto set their hands and seals the day and year first above written.

D. N. Cooley,
Commissioner of Indian Affairs, [SEAL.]

Elijah Sells,
superintendent of Indian affairs, [SEAL.]

E. S. Parker, special commissioner, [SEAL.]
Commissioners for United States.

Alfred Wade, [SEAL.]

Allen Wright, [SEAL.]

James Riley, [SEAL.]

John Page, [SEAL.]

Choctaw commissioners.

Winchester Colbert, [SEAL.]

Edmund (his x mark) Pickens, [SEAL.]

Holmes Colbert, [SEAL.]

Colbert Carter, [SEAL.]

Robert H. Love, [SEAL.]

Chickasaw commissioners.

Campbell Leflore,

Secretary of Choctaw delegation.

E. S. Mitchell,

Secretary of Chickasaw delegation.

In presence of—

Jno. H. B. Latrobe,

P. P. Pitchlynn,

Principal chief Choctaws.

Douglas H. Cooper.

J. Harlan.

Charles E. Mix.

Excerpts, ATTORNEY-GENERAL'S BRIEF (Court of Claims, No. 18,932, Record, Request for Findings and Brief for the United States, pp. 93, 103-104, 116; consecutive pencil paging, pp. 911, 921-922, 934).

*Page 911:—*The rebellion of the Choctaws and Chickasaws has an important bearing upon the treaty of 1866. The United States had a right to demand, and did demand, of them certain conditions before the former harmonious relations could be restored. These conditions were not oppressive or severe, but they called for some surrenders of rights previously enjoyed, surrenders which, but for the rebellion, the United States would have had no right to demand. It is a mistake to suppose that the Choctaw and Chickasaw treaty of 1866 put the tribes back where they were before their rebellion. It did so to a great extent, but it required of them

conditions which they would hardly have voluntarily agreed to had their old treaty rights not been forfeited.

Pages 921-922:—From the Rebellion Records, the transactions at the Fort Smith council, and the treaties subsequently made, it appears that the only slaveholding tribes, and the only ones whose treaties with the Confederacy had been really made by the duly constituted authorities of the tribes, and who had actively participated in the rebellion, were the Choctaws and Chickasaws, Creeks, Cherokees, and Seminoles, so that it was to these tribes alone that the third, fourth, and fifth stipulations applied. Of these stipulations the third was by far the most onerous, as it involved not merely the abolition of slavery, but the "incorporation into the tribes" of all the emancipated slaves "on an equal footing with the original members," or a suitable and equivalent provision for them; in other words, either a gift to the former slaves of a share in the tribal property, or else some equivalent provision out of the tribal funds.

This compulsory endowment of the former slaves was no small matter, and it was undoubtedly intended as a punishment for the Indians' participation in the rebellion. To the Choctaws and Chickasaws it was especially onerous, not only because they seem to have had, either actually or proportionately, the most slaves, but because they were more deeply imbued with the slaveholding sentiment than were the other tribes. Their alliance with the Confederacy was avowedly entered into in consequence of their possession of slave property, which they wished to retain. The action of their legislatures shows an intense aversion to admitting their slaves to an equality with themselves as members of their tribes. In this respect, therefore, the Choctaws and Chickasaws differed from the three other tribes, and another point of difference was that they had "leased" to the United States a portion of the land originally granted them. None of the other tribes had done this, and as the United States, in 1865-66, wished to remove some, at least, of the restrictions upon its use of the leased district, it was necessary that the Choctaw and Chickasaw treaty should contain at least one provision not common to the others.

Page 934:— . . . The third stipulation required that measures must be taken for the freedmen's "incorporation into the tribes on an equal footing with the original members, or [for their being] suitably provided for." It was no more proposed to pay the Indians for making this provision for the freedmen than it was proposed to pay for the emancipation. Both emancipation and admission of freedmen to property rights were required of the Indians as part of the pen-

alty for their participation in the rebellion, and for neither the one nor the other was compensation ever suggested.

Justice demanded this course. The Indians were not citizens, and could not plead that their rebellion was the outcome of political strife or due to peculiar views of the Constitution. The one controlling motive was the desire to preserve the right of property in slaves, as the Choctaw and Chickasaw resolutions of 1861 (Reb. Rec., Vol. I, 585, 682) make perfectly clear. To require that the slaves should be admitted not merely to freedom but to the tribal property rights was a most fitting and appropriate punishment for the offences committed.

ARTICLE 24. Whereas it may be difficult to give to each occupant of an improvement a quarter-section of land, or even a smaller subdivision, which shall include such improvement, in consequence of such improvements lying in towns, villages, or hamlets, the legislative authorities of the respective nations shall have power, where, in their discretion, they think it expedient, to lay off into town lots any section or part of a section so occupied, to which lots the actual occupants, being citizens of the respective nations, shall have pre-emptive right, and, upon paying into the treasury of the particular nation the price of the land, as fixed by the respective legislatures, exclusive of the value of said improvement, shall receive a conveyance thereof. Such occupant shall not be prejudiced thereby in his right to his selection elsewhere. The town lots which may be unoccupied shall be disposed of for the benefit of the particular nation, as the legislative authorities may direct from time to time. When the number of occupants of the same quarter-section shall not be such as to authorize the legislative authorities to lay out the same, or any part thereof, into town lots, they may make such regulations for the disposition thereof as they may deem proper, either by subdivision of the same, so as to accommodate the actual occupants, or by giving the right of prior choice to the first occupant in point of time, upon paying the others for their improvements, to be valued in such way as the legislative authorities shall prescribe, or otherwise. All occupants retaining their lots under this section, and desiring, in addition, to make a selection, must pay for the lots so retained, as in the case of town lots. And any Choctaw or Chickasaw who may desire to select a sectional division other than that on which his homestead is, without abandoning the latter, shall have the right to purchase the homestead sectional division at such price as the respective legislatures may prescribe.

ARTICLE 25. During ninety days from the expiration of the ninety days' notice aforesaid, the Choctaws and Chickasaws shall have the exclusive right to make selections, as aforesaid, and at the end of that time the several parties shall be entitled to patents for their respective selections, to be issued by the President of the United States, and countersigned by the chief executive officer of the nation in which the land lies, and recorded in the records of the executive office of the particular nation; and copies of the said patents, under seal, shall be evidence in any court of law or equity.

ARTICLE 26. The right here given to the Choctaws and Chickasaws, respectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such.

ARTICLE 27. In the event of disputes arising in regard to the rights of parties to select particular quarter-sections or other divisions of said land, or in regard to the adjustment of boundaries, so as to make them conform to legal divisions and subdivisions such disputes shall be settled by the register of the land-office and the chief executive officer of the nation in which the land lies, in a summary way, after hearing the parties; and if said register and chief officer cannot agree, the two to call in a third party, who shall constitute a third referee, the decisions of any two of whom shall be final, without appeal.

ARTICLE 28. Nothing contained in any law of either of the said nations shall prevent parties entitled to make selections contiguous to each other; and the Choctaw and Chickasaw Nations hereby agree to repeal all laws inconsistent with this provision.

ARTICLE 29. Selections made under this treaty shall, to the extent of one quarter-section, including the homestead or dwelling, be inalienable for the period of twenty-one years from the date of such selection, and upon the death of the party in possession shall descend according to the laws of the nation where the land lies; and in the event of his or her death without heirs, the said quarter-section shall escheat to and become the property of the nation.

ARTICLE 30. The Choctaw and Chickasaw Nations will receive into their respective districts east of the ninety-eighth degree of west longitude, in the proportion of one-fourth in the Chickasaw and three-fourths in the Choctaw Nation, civilized Indians from the tribes known by the general name of the Kansas Indians, being Indians to the north of the Indian Territory, not exceeding ten thousand in number, who shall have in the Choctaw and Chickasaw Nations, respectively, the same rights as the Choctaws and Chickasaws, of whom they shall be the fellow-citizens, governed by the same laws, and enjoying the same privileges, with the exception of the right to participate in the Choctaw and Chickasaw annuities and other moneys, and in the public domain, should the same, or the proceeds thereof, be divided per capita among the Choctaws and Chickasaws, and among others the right to select land as herein provided for Choctaws and Chickasaws, after the expiration of the ninety days during which the selections of land are to be made, as aforesaid, by said Choctaws and Chickasaws; and the Choctaw and Chickasaw Nations pledge themselves to treat the said Kansas Indians in all respects with kindness and forbearance, aiding them in good faith to establish themselves in their new homes, and to respect all their customs and usages not inconsistent with the constitution and laws of the Choctaw and Chickasaw Nations respectively. In making selections after the advent of the Indians and the actual occu-

pancy of land in said nation, such occupancy shall have the same effect in their behalf as the occupancies of Choctaws and Chickasaws; and after the said Choctaws and Chickasaws have made their selections as aforesaid, the said persons of African descent mentioned in the third article of the treaty, shall make their selections as therein provided, in the event of the making of the laws, rules, and regulations aforesaid, after the expiration of ninety days from the date at which the Kansas Indians are to make their selections as therein provided, and the actual occupancy of such persons of African descent shall have the same effect in their behalf as the occupancies of the Choctaws and Chickasaws.

ARTICLE 31. And whereas some time must necessarily elapse before the surveys, maps, and selections herein provided for can be completed so as to permit the said Kansas Indians to make their selections in their order, during which time the United States may desire to remove the said Indians from their present abiding places, it is hereby agreed that the said Indians may at once come into the Choctaw and Chickasaw Nations, settling themselves temporarily as citizens of the said nations, respectively, upon such land as suits them and is not already occupied.

ARTICLE 32. At the expiration of two years, or sooner, if the President of the United States shall so direct, from the completion of the surveys and maps aforesaid, the officers of the land-offices aforesaid shall deliver to the executive departments of the Choctaw and Chickasaw Nations, respectively, all such documents as may be necessary to elucidate the land-title as settled according to this treaty, and forward copies thereof, with the field-notes, records, and other papers pertaining to said titles, to the Commissioner of the General Land Office; and thereafter grants of land and patents therefor shall be issued in such manner as the legislative authorities of said nations may provide for all the unselected portions of the Choctaw and Chickasaw districts as defined by the treaty of June twenty-second, eighteen hundred and fifty-five.

ARTICLE 33. All lands selected as herein provided shall thereafter be held in severalty by the respective parties, and the unselected land shall be the common property of the Choctaw and Chickasaw Nations, in their corporate capacities, subject to the joint control of their legislative authorities.

ARTICLE 34. Should any Choctaw or Chickasaw be prevented from selecting for him or herself during the *the* ninety days aforesaid, the failure to do so shall not authorize another to select the quarter-section containing his improvement, but he may at any time make his selection

thereof, subject to having his boundaries made to conform to legal divisions as aforesaid.

ARTICLE 35. Should the selections aforesaid not be made before the transfer of the land records to the executive authorities of said nations, respectively, they shall be made according to such regulations as the legislative authorities of the two nations, respectively, may prescribe, to the end that full justice and equity may be done to the citizens of the respective territories.

ARTICLE 36. Should any land that has been selected under the provisions of this treaty be abandoned and left uncultivated for the space of seven years by the party selecting the same, or his heirs, except in the case of infants under the age of twenty-one years, or married women, or persons non compos mentis, the legislative authorities of the nation where such land lies may either rent the same for the benefit of those interested, or dispose of the same otherwise for their benefit, and may pass all laws necessary to give effect to this provision.

ARTICLE 37. In consideration of the right of selection hereinbefore accorded to certain Indians other than the Choctaws and Chickasaws, the United States agree to pay to the Choctaw and Chickasaw Nations, out of the funds of Indians removing into said nations respectively, under the provisions of this treaty, such sum as may be fixed by the legislatures of said nations, not exceeding one dollar per acre, to be divided between the said nations in the proportion of one-fourth to the Chickasaw Nation and three-fourths to the Choctaw Nation, with the understanding that at the expiration of twelve months the actual number of said immigrating Indians shall be ascertained, and the amount paid that may be actually due at the rate aforesaid; and should still further immigrations take place from among said Kansas Indians, still further payments shall be made accordingly from time to time.

ARTICLE 38. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw.

ARTICLE 39. No person shall expose goods or other articles for sale as a trader without a permit of the legislative authorities of the nation he may propose to trade in; but no license shall be required to authorize any member of the Choctaw or Chickasaw Nations to trade in the Choctaw

or Chickasaw country who is authorized by the proper authority of the nation, nor to authorize Choctaws or Chickasaws to sell flour, meal, meat, fruit, and other provisions, stock, wagons, agricultural implements, or tools brought from the United States into the said country.

ARTICLE 40. All restrictions contained in any treaty heretofore made, or in any regulation of the United States upon the sale or other disposition of personal chattel property by Choctaws or Chickasaws are hereby removed.

ARTICLE 41. All persons who are members of the Choctaw or Chickasaw Nations, and are not otherwise disqualified or disabled, shall hereafter be competent witnesses in all civil and criminal suits and proceedings in any courts of the United States, any law to the contrary notwithstanding.

ARTICLE 42. The Choctaw and Chickasaw Nations shall deliver up persons accused of crimes against the United States who may be found within their respective limits on the requisition of the governor of any State for a crime committed against the laws of said State, and upon the requisition of the judge of the district court of the United States for the district within which the crime was committed.

ARTICLE 43. The United States promise and agree that no white person, except officers, agents, and employes of the Government, and of any internal improvement company, or persons travelling through, or temporarily sojourning in, the said nations, or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations.

ARTICLE 44. Post-offices shall be established and maintained by the United States at convenient places in the Choctaw and Chickasaw Nations, to and from which the mails shall be carried at reasonable intervals, at the rates of postage prevailing in the United States.

ARTICLE 45. All the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty.

ARTICLE 46. 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, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars 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; the residue, not affected by any provisions of this treaty, to remain in the Treasury of the United States at an annual interest of five per cent., no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

ARTICLE 47. As soon as practicable after the lands shall have been surveyed and assigned to the Choctaws and Chickasaws in severalty as herein provided, upon application of their respective legislative councils, and with the assent of the President of the United States, all the annuities and funds invested and held in trust by the United States for the benefit of said nations respectively shall be capitalized or converted into money, as the case may be; and the aggregate amounts thereof belonging to each nation shall be equally divided and paid per capita to the individuals thereof respectively, to aid and assist them in improving their homesteads and increasing or acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of their lands in severalty will involve: *Provided, nevertheless*, That there shall be retained by the United States such sum as the President shall deem sufficient of the said moneys to be invested, that the interest thereon may be sufficient to defray the expenses of the government of said nations respectively, together with a judicious system of education, until these objects can be provided for by a proper system of taxation; and whenever this shall be done to the satisfaction of the President of the United States, the moneys so retained shall be divided in the manner and for the purpose above mentioned.

ARTICLE 48. Immediately after the ratification of this treaty there shall be paid, out of the funds of the Choctaws and Chickasaws in the hands of the United States, twenty-five thousand dollars to the Choctaw and twenty-five thousand dollars to the Chickasaw commissioners, to enable them

to discharge obligations incurred by them for various incidental and other expenses to which they have been subjected, and for which they are now indebted.

ARTICLE 49. And it is further agreed that a commission, to consist of a person or persons to be appointed by the President of the United States, not exceeding three, shall be appointed immediately on the ratification of this treaty, who shall take into consideration and determine the claim of such Choctaws and Chickasaws as allege that they have been driven during the late rebellion from their homes in the Choctaw [and Chickasaw] Nations on account of their adhesion to the United States, for damages, with power to make such award as may be consistent with equity and good conscience, taking into view all circumstances, whose report, when ratified by the Secretary of the Interior, shall be final, and authorize the payment of the amount from any moneys of said nations in the hands of the United States as the said commission may award.

ARTICLE 50. Whereas Joseph G. Heald and Reuben Wright, of Massachusetts, were licensed traders in the Choctaw country at the commencement of the rebellion, and claim to have sustained large losses on account of said rebellion, by the use of their property by said nation, and that large sums of money are due them for goods and property taken, or sold to the members of said nation, and money advanced to said nation; and whereas other loyal citizens of the United States may have just claims of the same character: It is hereby agreed and stipulated that the commission provided for in the preceding article shall investigate said claims, and fully examine the same; and such sum or sums of money as shall by the report of said commission, approved by the Secretary of the Interior, be found due to such persons, not exceeding ninety thousand dollars, shall be paid by the United States to the persons entitled thereto, out of any money belonging to said nation in the possession of the United States: *Provided*, That no claim for goods or property of any kind shall be allowed or paid, in whole or part, which shall have been used by said nation or any member thereof in aid of the rebellion, with the consent of said claimants: *Provided also*, That if the aggregate of said claims thus allowed and approved shall exceed said sum of ninety thousand dollars, then that sum shall be applied pro rata in payment of the claims so allowed.

ARTICLE 51. It is further agreed that all treaties and parts of treaties inconsistent herewith be, and the same are hereby, declared null and void.

In testimony whereof, the said Dennis N. Cooley, Elijah Sells, and E. S. Parker, commissioners in behalf of the United States, and the said commissioners on behalf of the

Choctaw and Chickasaw nations, have hereunto set their hands and seals the day and year first above written.

D. N. Cooley,

Commissioner of Indian Affairs, [SEAL.]

Elijah Sells,

superintendent of Indian affairs, [SEAL.]

E. S. Parker, special commissioner, [SEAL.]

Commissioners for United States.

Alfred Wade, [SEAL.]

Allen Wright, [SEAL.]

James Riley, [SEAL.]

John Page, [SEAL.]

Choctaw commissioners.

Winchester Colbert, [SEAL.]

Edmund (his x mark) Pickens, [SEAL.]

Holmes Colbert, [SEAL.]

Colbert Carter, [SEAL.]

Robert H. Love, [SEAL.]

Chickasaw commissioners.

Campbell Leflore,

Secretary of Choctaw delegation.

E. S. Mitchell,

Secretary of Chickasaw delegation.

In presence of—

Jno. H. B. Latrobe,

P. P. Pitchlynn,

Principal chief Choctaws.

Douglas H. Cooper.

J. Harlan.

Charles E. Mix.

Excerpts, ATTORNEY-GENERAL'S BRIEF (Court of Claims, No. 18,932, Record, Request for Findings and Brief for the United States, pp. 93, 103-104, 116; consecutive pencil paging, pp. 911, 921-922, 934).

*Page 911:—*The rebellion of the Choctaws and Chickasaws has an important bearing upon the treaty of 1866. The United States had a right to demand, and did demand, of them certain conditions before the former harmonious relations could be restored. These conditions were not oppressive or severe, but they called for some surrenders of rights previously enjoyed, surrenders which, but for the rebellion, the United States would have had no right to demand. It is a mistake to suppose that the Choctaw and Chickasaw treaty of 1866 put the tribes back where they were before their rebellion. It did so to a great extent, but it required of them

conditions which they would hardly have voluntarily agreed to had their old treaty rights not been forfeited.

Pages 921-922:—From the Rebellion Records, the transactions at the Fort Smith council, and the treaties subsequently made, it appears that the only slaveholding tribes, and the only ones whose treaties with the Confederacy had been really made by the duly constituted authorities of the tribes, and who had actively participated in the rebellion, were the Choctaws and Chickasaws, Creeks, Cherokees, and Seminoles, so that it was to these tribes alone that the third, fourth, and fifth stipulations applied. Of these stipulations the third was by far the most onerous, as it involved not merely the abolition of slavery, but the “incorporation into the tribes” of all the emancipated slaves “on an equal footing with the original members,” or a suitable and equivalent provision for them; in other words, either a gift to the former slaves of a share in the tribal property, or else some equivalent provision out of the tribal funds.

This compulsory endowment of the former slaves was no small matter, and it was undoubtedly intended as a punishment for the Indians’ participation in the rebellion. To the Choctaws and Chickasaws it was especially onerous, not only because they seem to have had, either actually or proportionately, the most slaves, but because they were more deeply imbued with the slaveholding sentiment than were the other tribes. Their alliance with the Confederacy was avowedly entered into in consequence of their possession of slave property, which they wished to retain. The action of their legislatures shows an intense aversion to admitting their slaves to an equality with themselves as members of their tribes. In this respect, therefore, the Choctaws and Chickasaws differed from the three other tribes, and another point of difference was that they had “leased” to the United States a portion of the land originally granted them. None of the other tribes had done this, and as the United States, in 1865-66, wished to remove some, at least, of the restrictions upon its use of the leased district, it was necessary that the Choctaw and Chickasaw treaty should contain at least one provision not common to the others.

Page 934:— . . . The third stipulation required that measures must be taken for the freedmen’s “incorporation into the tribes on an equal footing with the original members, or [for their being] suitably provided for.” It was no more proposed to pay the Indians for making this provision for the freedmen than it was proposed to pay for the emancipation. Both emancipation and admission of freedmen to property rights were required of the Indians as part of the pen-

alty for their participation in the rebellion, and for neither the one nor the other was compensation ever suggested.

Justice demanded this course. The Indians were not citizens, and could not plead that their rebellion was the outcome of political strife or due to peculiar views of the Constitution. The one controlling motive was the desire to preserve the right of property in slaves, as the Choctaw and Chickasaw resolutions of 1861 (Reb. Rec., Vol. I, 585, 682) make perfectly clear. To require that the slaves should be admitted not merely to freedom but to the tribal property rights was a most fitting and appropriate punishment for the offences committed.