

WASHINGTON, D. C., *Feb.* 1, 1887.

HON. L. Q. C. LAMAR,
Secretary of the Interior.

SIR: We have carefully considered the opinion of the attorney-general, of October 14, 1886, adverse to your right to approve certain mining contracts of the Choctaw nation with the Osage Coal and Mining Company. We respectfully request you to inquire of the attorney-general whether, in forming that opinion, he examined section 2079 of the revised statutes and also the act of March 3, 1883, printed at the foot of page 590 of volume 22 of the statutes of the United States.

We also request you to inquire of the attorney-general whether, if the contract had taken the form of a sale of coal with the privilege of mining it, instead of the form of a lease for mining purposes, it would, in his opinion, have been improper for the secretary of the interior to approve the contract.

The attorney-general bases his opinion mainly on the prohibitions of section 2116 of the revised statutes. He does not refer to section 2079, or to the act of March 3, 1883.

The opinion presents three propositions :

(1) That the department of the interior cannot approve a contract for selling coal from the Choctaw country, without authority derived from some treaty or statute ;

(2) That no treaty or statute confers any such authority ; and

(3) That section 2116 of the revised statutes prohibits the sale of coal from Choctaw lands, otherwise than by treaty or convention with the United States.

So far as the sale of coal, stone, and timber is concerned, this decision of the attorney-general places the Chickasaws and Choctaws in an exceedingly difficult position. For section 2116 of the revised statutes contains the following provision :

“No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation, or tribe of Indians, shall be of any validity, in law or equity, unless the same be made by treaty, or convention, entered into pursuant to the constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty, or convention, directly, or indirectly, or to treat with any such nation, or tribe of Indians, for the title or purchase of any lands, by them held or claimed, is liable to a penalty of one thousand dollars.”

This section of the revised statutes, in the opinion of the attorney-general, prohibits a sale of coal from the Choctaw country, otherwise than by a treaty. If it prohibits the sale of coal, it of course prohibits the sale of stone and timber, otherwise than by treaty. But, then, section 2079 of the revised statutes prohibits the Chickasaws and Choctaws and all other Indians from making any treaty whatever. The following is the prohibition :

“Sec. 2079. No Indian nation, or tribe, within the territory of the United States, shall be acknowledged, or recognized, as an independent nation, tribe, or power, with whom the United States may contract by treaty ; but no obligation of any treaty lawfully made and ratified with any such Indian nation prior to March 3, 1871, shall be hereby invalidated or impaired.”

The effect of the attorney-general's decision is that the Chickasaws and Choctaws are unable to sell coal, stone, or

timber, otherwise than by treaty, because prohibited by section 2116 of the revised statutes, and are unable to sell coal or timber, by treaty, because prohibited from making any treaty by section 2079. This decision seems greatly to impair the value of the title guaranteed to the Chickasaws and Choctaws, by numerous treaties and statutes. It seems to have been made without consideration of the provisions of the act of March 3, 1883, printed at the foot of page 590 of vol. 22, U. S. statutes. That act declares that—

“The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the treasury, for the benefit of such tribe, under such regulations as the secretary of the interior shall prescribe ; and the secretary shall report his action, in detail, to Congress, at its next session.”

Now, this act does not interdict the sale of timber, coal, or other products, even by tribes other than the five civilized tribes. On the contrary, it legalizes such sales, by providing that the proceeds of the sales shall be paid into the treasury, *for the benefit of those tribes*. If it had been the purpose of Congress to prohibit such sales, or to recognize and keep alive some former prohibition of such sales, it would have been very easy to accomplish that purpose, by the enactment of a new prohibition, or the re-enactment of an old prohibition. But nothing of this kind was done. What Congress did was to declare that the proceeds of such sales should be paid into the treasury *for the benefit of the Indians*. And that, by necessary implication, authorized the sales. But, so far as the five tribes are concerned, the case is still stronger in favor of the legality of such sales. The statute, not only did not prohibit sales of timber, coal, or other products, by the five civilized tribes, but did not even require the proceeds of their sales to be paid into the treasury of the United

States. By the strongest conceivable implication, it authorized them to sell timber, coal, and other products of their lands, and to appropriate the proceeds to their own use.

Very respectfully,

G. W. HARKINS,
N. G. FRAZIER,
Chickasaw Delegates.

C. J. HARRIS,
H. T. LANDRUM,
Cherokee Delegates.