Cornish

FOR THE RELIEF OF THE WICHITA AND AFFILIATED BANDS OF INDIANS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 7584

PROVIDING FOR THE RELIEF OF THE WICHITA AND AFFILIATED BANDS OF INDIANS

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HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS,
Thursday, January 24, 1918.

The subcommittee, composed of Representatives Tillman, Hastings, and Norton, met at 10.30 o'clock, Hon. John N. Tillman presiding.

Mr. TILLMAN. Gentlemen, this is a hearing on H. R. 7584, a bill introduced by Mr. Ferris, of Oklahoma, and this subcommittee has been appointed by Chairman Carter for the purpose of hearing a number of gentlemen who are present.

The contention of the Wichita Indians for a number of years has been that they are the owners of that land situated between the ninety-eighth and one hundredth meridians of west longitude and the Canadian River on the north and the Red River on the south, in the State of Oklahoma, and originally known as the "leased district," now known as the Commanche country.

The chairman has been informed that Mr. Walker shall come first.

STATEMENT OF MR. PHILLIPS WALKER, ATTORNEY AT LAW, OF WASHINGTON.

Mr. TILLMAN. What is your name, age, and occupation?

Mr. WALKER. Phillips Walker, aged 58 years, attorney at law, Washington, D. C.

Mr. TILLMAN. In what capacity do you appear?

Mr. WALKER. I am simply, Mr. Chairman, as a witness here. Some 15 or 20 years ago I was attorney for these Indians and I got a good deal of information about them, and I told one of their delegates if I was asked to come up here I would come up and tell what I knew about it.

Mr. TILLMAN. The committee would be glad to hear from you.

Mr. WALKER. If, however, I seem to advocate the matter at all, it is because it is matters of opinion.

I want, before I go into the facts of this case, to call the committee's attention to one matter. In the bill this matter is referred to the Court of Claims to ascertain certain facts and render judgment if they see fit. In the two claims that I have gone before the Court of Claims from Congress, namely, the Cherokee case and the Wichita case, the Court of Claims was given equity jurisdiction. The reason is this: The appeal that goes up on law goes up on facts, and the Supreme Court takes them as facts and the equity cases, the case

goes up and the Supreme Court considers and determines the facts as well as the law; and in cases that have gone before the Court of Claims in this sort of claim, the Court of Claims is authorized to sit as a court of equity. The right of appeal to the Supreme Court will be negative.

As I said, I was one of the attorneys for these Indians in the case they had before the Supreme Court in the nineties. I took the part of the case dealing with the aboriginal occupancy and in the course of five years of study became very well acquainted with it. Since the case was decided, about 1902, these Indians from time to time have—some of them—came to see me. Three years ago they came in and talked to me about some small matters and then brought up this claim to the leased district. I told them I couldn't appear for them or do anything for them without a contract approved by the Secretary of the Interior, because it was a tribal matter. We went down to see the assistant commissioner, and he told them that he was favorable to having this matter submitted to the court, but that the policy of the department was against making any contract with an attorney for any congressional work; that when the bill was referred to the Court of Claims they would take up the question of attorneyship.

Then I told them I would serve them as individuals in drawing up a memorial to accompany any bill, for which they agreed to pay me $500. I started in on it, and when I got about half through I came to the conclusion that $500 was insufficient, and I stopped it, but I have got what I have here, and I am going to refresh my memory about dates. The date in this bill regarding the occupancy rights is 1883. That was thedate of the Paw Paw treaty. The United States Government was looking for a place to put the Indians from east of the Mississippi—the Indians afterwards known as the Five Civilized Tribes.

Gen. Clark, who joined Lewis in the Lewis and Clark expedition, was made superintendent of the southwestern Indians, and he was instructed to make a treaty with the Quapaw Indians. Associated with him was Auguste Choteau, who had been a trader at St. Louis for a great many years and was as well acquainted with the Indian situation of that country as anybody else. Choteau, in 1816, had made an extensive report to the Government on the Indian occupancy, as far as known. The Quapaws at that time consisted of 1,060 people—men, women, and children—and they had about 60 or 70 warriors; and they occupied four villages on the Arkansas River. That was at Arkansas Post, in the neighborhood of the city of Little Rock.

Gen. Clark, in that same year, as superintendent of the Missouri Indians, reported about the same facts. Gen. Clark left Washington to make this treaty and told the Secretary of War, who had control of such matters in those times, that the territory acquired ought to cover the white settlements, and he went out with that intention. He reported, when the treaty was made, that he had been very successful, had acquired that land, and also land far to the west, about 30,000,000 acres, and that he acquired from the Indians living on the Arkansas River near its mouth. The bounds of the cession were limited on the north by the Arkansas and Canadian Rivers, and on the south by the Red River, while on the west they

ran from the source of the Canadian River south to the Red River. The best map of that country at that time was Pike's, which had been issued about a year before, and on which the Canadian River was supposed to rise in what would be the extreme western part of Oklahoma now.

It was not until 1820 that Maj. Long came down what he supposed to be the Red River from its source, but which proved to be the Canadian River; and from that he was able to inform the Government that the Canadian River rose in the Rocky Mountains at about the one hundred and third meridian.

In 1825 the Government made a treaty with the Osages in the nature of a quitclaim, which somewhat affects this territory. The boundary of that on the west was a line running from the source of the Kansas River southwardly through the Rock Saline. While Pike's map is very inaccurate in some things, it is very accurate in others, and it shows these rivers.

Mr. TILLMAN. What Pike is that?

Mr. WALKER. Zebulon Pike; he was the Pike who was captured by the Spanish in the neighborhood of Santa Fe. Everything he put on his map after that was from hearsay. The rest of it was from more or less pretty accurate surveys. The sources of the Kansas were pretty accurately known. The Rock Saline was a well-known landmark in northern Oklahoma. A line projected on a present-day map and run from the sources of the Kansas southeastwardly to about Denison, Tex., would be about right and would not cover any of this leased district.

So I want to say, it seems to me, that the theory of this bill is that by some act, in 1818, the United States acquired possession and rights to the leased district. It seems to me that the matter ought to be submitted to the court, in addition, as to whether the Quapaw treaty and the subsequent Osage treaty of 1825—these are the only two—really did reach this territory. It is taken for granted in that bill that they did. The United States having acquired, or pretended to acquire, however it stands, that right to Arkansas and Oklahoma as they stand to-day, and, because of the discovery of the sources of the Canadian River to the west, also of the Panhandle and part of New Mexico, we entered into a treaty with the Choctaws in 1820, giving them all the Quapaw section west of Arkansas. In the meantime, the Spanish treaty of 1819 had been negotiated, and that fixed the limits between Louisiana—the vast territory of Louisiana—and the Spanish possessions, and fixed them on a line running north from the mouth of the Sabine River, to the Red River, then up the river to the one hundredth meridian, north by that meridian to another point, and off to the Snow Mountains. It is the one hundredth meridian, at that point, that interests us.

Ratifications were not exchanged in connection with the Spanish treaty until 1823, after the Choctaw treaty had been confirmed. If it ran to the true source of the Canadian River, it was ceding Spanish territory. So it became necessary, in 1830, to make a new treaty with the Choctaws, limiting their section to the one hundredth meridian. The Choctaws afterwards claimed that they were giving up something for which they should be compensated.

In 1837 the Chickasaws were admitted into partnership with the Choctaws in that territory. That partnership did not deprive the Choctaws; it simply admitted the Chickasaws into that interest. That status continued until 1854, I think—1855, when the Choctaws and Chickasaws leased to the United States, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government might desire to locate therein, their territory west of the ninety-eighth meridian.

Now, that brings us up to the Texas situation. Texas had come into the Union, I think, in 1845, and the United States had agreed to take care of the Indians, but it had no lands to colonize them on. Maj. Robert S. Neighbors was appointed superintendent of the Texas Indians, and he gathered them together, those that were sedentary, at Fort Belknap. That was in 1848 or 1849. The Texas land grants were being taken up by the settlers there, and conflicts occurred with the Indians, and it became apparent that they would have to be moved to the other side of Red River. The Indians here are the Wichitas and affiliated bands of Indians. The latter came from Texas. At that time the Caddos were first known as living in northwestern Louisiana—that is, the State of Louisiana—and perhaps up a little bit in what is now Oklahoma and a little bit in Texas, and around there.

In 1830 there was a treaty made with them by which they agreed to leave the United States. I think it was in 1830. They became great wanderers; they split up, and some of them went to live with the Choctaws, and some went on to the Quapaw Reservation; others went down into Texas, and they were scattered all through that country at a very early date. There were some Delawares who were dealers and who did merchandising with the other Indians, and others became affiliated with other tribes—not many.

That situation resulted in a conference at Fort Arbuckle in 1859.

I want now to go back a step to the Wichitas themselves. The first we have on the Wichitas is 1759, when they were living in two villages just west of the Cross Timbers. The Cross Timbers ran from the Canadian River south along the ninety-eighth degree, about into Texas, and were a formation of bad lands and scrub oak that made a kind of barrier between the Indians on the east and those on the west, and was a landmark in those days.

There were four or five Spanish explorers who went to those Indians in 1758 and 1778, and from then on reported people living there. The Spanish called them the Towash. They apparently lived down in that neighborhood until about 1810. There was an epidemic of smallpox among the Indians at that time, and what were left moved up to the Wichita Mountains, on the western side. They were there in 1834, when Col. Dodge was sent out with an expedition to impress the Indians in that country with the majesty and might of the United States, and he took a considerable military force with him. They were living on the North Fork of the Red River, in the Wichita Mountains. Catlin, whose pictures are in the Smithsonian Institution, was with Dodge, and one of his pictures is of the village of these Indians.

One of the things that Dodge found out about the Wichitas was that they were behind the mountains because they were afraid of the

Osages. He had some Osages with him, and they agreed to the execution of a treaty of peace, and such a treaty was executed in 1835, by which the Wichitas were acknowledged at least as occupants of that country, and agreed to permit the free passage of white settlers from there to the Republic of Mexico, and not to molest their red brothers. It was a general treaty of amity.

The Comanches were a party to that treaty, and the Kiowas to a similar one in 1837. The Kiowas and Comanches had ranged in that territory, but had no settlements. They had no conflict with the Wichitas, because they were an agricultural tribe; and then, again, they were too weak to fight them.

Then, the Osage peril being out of the way, these Indians came to the eastern end of the mountains, where Fort Sill is, and they lived there for a number of years. Afterwards they moved to a village on Rush Creek, which is just west of the present town of Chickasha. They were there prior to 1859. Then there was trouble. A large Comanche body was visiting them, and Maj. Van Dorn attacked them, and they claimed it was the result of the conduct of the Wichitas. When Maj. Neighbors came up, with the delegates from the Texas Indians, he found the Wichitas there. All they did there at Fort Arbuckle was to agree that the Caddos and other tribes were to come up and live with the Wichitas, and have whatever rights the Wichitas had. Whatever rights they had was in this partnership into which they were admitted by this agreement at Fort Arbuckle in 1859.

Now, about that time an Army officer, whose name I do not recall, made a reconnoissance of that leased district, and he made a report, which was published in the congressional document some 25 years ago—I do not recall the date. It would make very interesting reading, in the light of present-day development of that territory. It was stated that the place was not fit for settlement; that the streams were all alkaline; that the soil was not fertile; and that it would be a good place to keep these Indians. I remember when I was a boy, which was not long after that, that all that territory was called the Great American Desert on the school maps.

This was the attitude then adopted: Here is some territory that is worthless to us, and we will give it to you.

The Indian claim—and they have always claimed since then—that at that time they were promised what is now known as the leased district as long as wood grows and water runs.

There was an original map, which is now in the Indian Office, on which was put across this entire tract "Leased district for Wichitas, Wacos, and Caddos." That was in 1859.

Then the Civil War came on, and the Choctaws and Chickasaws seceded and joined the South. The Wichitas as a body were loyal and were driven as refugees into Kansas, and they remained there during the war. After the war they came back; and so did the Choctaws and Chickasaws. Of course, under the circumstances, the Choctaws and Chickasaws became supplicants. There was a conference at Fort Smith, and it resulted in a treaty being executed in 1866, by which the Choctaws and Chickasaws sold to the United States the district which they had leased to the United States in 1855. The original lease was for the settlement of the Wichita and other friendly Indians. The sale had no such exemption, and

that is what gave rise to the later Choctaw and Chickasaw claim to that country.

In 1872 a delegation of Wichita and affiliated bands of Indians was brought to Washington by Capt. Alvord, who says in his report that the agent had failed to call a council, and he had hastily selected a few headmen and brought them on upon his own initiative. They came to Washington and entered into an agreement by which what was afterwards known as the Wichita Reservation was set apart for them. That lay between the Washita and Canadian Rivers, and between the ninety-eighth degree and 98 degrees and 40 minutes. In that agreement they renounced all claims to any other territory. When they got back home they were repudiated by the tribe, and the agreement was never approved by Congress. So that the only thing the agreement did was to delineate the boundaries of the Wichita Reservation, which was subsequently recognized in the appropriations by Congress, and which in 1891 contained their allotments.

So that segregated the Wichita and affiliated bands in a little corner, in about 750,000 acres, in the northeastern part of the leased district.

In 1865 a treaty was made with the Comanches and Kiowas, setting off their range in north of the Red River and west of 98° to New Mexico, and running over the Panhandle. In 1867 one was made with the Kiowas and Comanches, and on the same day one was made with the Apaches, setting off for their use a reservation comprising the southern part of the leased district.

In 1869 an Executive order gave the Cheyennes and Arapahoes a portion of the leased district, that portion lying north of the Kiowa and Comanche Reservation, leaving the Wichitas and affiliated bands without a habitat.

Then came this other proposition, in 1872, which gave them what would really be the eastern part of what had been set apart for the Cheyennes and Arapahoes. In 1890 an agreement was made with the Cheyennes and Arapahoes, which was ratified in 1891. Now, it was at that time that the Choctaws and Chickasaws advanced the claim that the cession of the leased district in 1866 was burdened with the same trust as burdened the lease—that is, for the occupancy of the Wichita and other bands of friendly Indians—and that the moment it was entered into settlement by the whites that trust determined, and they became entitled to compensation at the rate of $1.25 an acre for such land as was not yet allotted to the Indians; and in the case of the Cheyenne and Arapahoe Reservation, Congress recognized that right, and not only paid the Cheyennes and Arapahoes, but paid the Choctaws and Chickasaws $2,991,450 for their interest in those lands. President Harrison was very much opposed to this, and the bill reached him on the last day of the session, and he approved it; but he sent a communication to Congress at the beginning of the next session, saying he had not paid that money, and he gave reasons why he ought not to pay it and asked for further instructions. Congress passed a resolution reaffirming its former action and in a rather sharp manner directed that the money which had been appropriated should be paid over at once.

In 1892 the Kiowas and Comanches made an agreement by which they took allotments and ceded their surplus lands. That was not acted upon until 1900, when it was ratified.

In 1891 the Wichitas took allotments and ceded their surplus lands, and that agreement was ratified in 1895. That agreement did not make any provision for compensation for the surplus lands, but referred the matter to Congress; but in forwarding the agreement the Commissioner of Indian Affairs expressed the opinion that the Choctaws and Chickasaws would claim an interest in these lands, as they had in those of the Cheyennes and Arapahoes, but did not consider the claim well founded. When this Wichita matter came up to Congress this claim came along with it. Senator Jones in the Senate and Mr. Peel in the House introduced bills for their relief. Congress cut the whole Gordian knot by sending it to the Court of Claims. The Choctaws and Chickasaws were to file a petition, and the Wichitas were to reply to that petition, and if they did not do that they were to forfeit their rights. The result of that suit was a finding for the Choctaws and Chickasaws, but there was a dissenting opinion by Justice ————, afterwards Chief Justice, which was to the effect that the attempt to charge the treaty with a trust was a political question, which could not be delegated by Congress to the courts.

The same question had been decided in the Old Settler Cherokee case. The point was that you could not reform a treaty as you could a deed. That point was raised in the Court of Claims by these Indians, and the same line of defense was established. The reason I have called attention to that is that these Indians paid their attorneys forty-three or four thousand dollars for services. They had a 6 per cent contract. They also paid some money for printing briefs—perhaps $1,000. I have always thought that they ought to have that paid back. They were defending the title of the United States. They were settling for the United States a test case. The principle involved the whole leased district—about 10,000,000 acres, at $1.25 an acre. The Indian bill was then before the Senate, and they were not satisfied with the method of payment for these surplus lands. For the school lands there was a judgment. For the others they were to be paid for when sold by the United States. It seemed a very indefinite proposition. We wanted to get our fee. We went before the Indian Committee of the Senate. The committee said to us, "This bill is pretty well loaded up, and we can not do it, but we will loan these Indians enough money to pay your fees and take it back when they sell their lands." So they appropriated $43,000.

At the same time Senator Platt, Senator Jones, and two or three others expressed a good deal of doubt as to whether the United States ought not to pay the bill. They said it was very unfair when the Indians were defending the title of the United States. That matter, of course, is not here. But I wanted to say that much for their benefit.

This case in the Court of Claims, and which went to the Supreme Court, involved only the Wichita Reservation, and not the leased district. The Court of Claims did try to decide that matter adversely to the Indians, but when they got up to the Supreme Court they used this language (the case is reported in 179 United States Reports):

The United States insists that it should be made a condition of any decree recognizing the rights to compensation on account of surplus lands, that the

Wichita and affiliated bands should execute a release to the United States of all right, title, interest, and claim of every nature whatsoever in and to the lands within the limits of the United States, except those allotted to them. This view can not be adopted, because the pleadings do not inform the court of the existence of any claims of that kind; indeed the pleadings could not properly embrace any claim to lands, or to the proceeds of any lands except those within the Wichita Reservation. The court below could not make any decree in reference to claims that have not been referred to it by Congress. It is manifest that while Article VI of the agreement of 1891, between the United States and the Wichita and affiliated bands of Indians, reserved the right of the latter to prefer against the United States any and every claim they believed they had the right to make, the only suit authorized by the jurisdictional act of 1895 was one that would determine the claim of the Choctaws and Chickasaws of an interest in the particular lands here in dispute, and the claim of the Wichita and affiliated bands to be compensated in money for their possessory right in such lands. No suit was authorized by that act that would embrace any and every claim that the Wichita and affiliated bands might elect to prefer against the United States."

Article IV reads as follows:

It is further agreed that there shall be reserved to the said Indians the right to prefer against the United States any and every claim they may believe they have the right to prefer, save and except any claim to the tract of country described in the first article of this agreement.

That was the Wichita Reservation; and that is what these Indians have asked for informally for a long time and are now asking for formally in this bill—the right to prefer a claim which was reserved to them by their treaty of 1891, and which Congress said should be reserved to them by its ratification of 1895.

The points, then, are, first, that the United States never acquired possessory rights to those lands, either under the Quapaw or Osage cessions; second, that the Wichita Indians were, as far back as 1759, occupants of this country; and that the Caddos and their affiliates were admitted to any rights of occupancy that they had in 1859; that these rights of occupancy have not been extinguished by any agreement, and were definitely reserved as subjects of claim in the treaty of 1891.

Another word: What kind of people are these Indians? From the very beginning the Spanish accounts, and afterwards the accounts of Army officers who visited them, show that they lived in permanent villages—or villages that lasted a few years. They were grass houses, and looked like immense beehives. Catlin's picture in the Smithsonian shows them like a great apiary. The remains of those houses show them to have been circular affairs; their foundations were there a few years ago. These Indians lived in one of those villages a few years, and then moved away, not very far, but a little way off; there they stayed a while; and then moved farther along, for one reason or another; but they did not roam. They were agricultural people; they raised crops, watermelons, pumpkins, corn, etc. It was worth while for the roaming Kiowas and Comanches to come there and trade with them; and that is the one reason why the Kiowas and Comanches allowed them to live. That has always been their record—they have always been a sedentary, agricultural people, a peaceful people. They did have quite a record as horse thieves, but I suppose that went with the game. They lived right around the Wichita Mountains. All the earlier Army officers, before it became apparent that that would be very valuable territory, reported that the Wichitas had lived around that

country from time immemorial. Gen. Scott, recently Chief of Staff, when this case was tried was a captain at Fort Sill, and he assisted in getting some information. He knew these Indians well, and his deposition was taken. He said that the Wichitas, as he had been told by old members of the Comanche Tribe, had been around that country from time immemorial; that they went there long before the Comanches, who found them there; that the Comanches were the oldest settlers around there except the Wichitas. That was his testimony. All the evidence goes to provide that they were a permanent people there. Now, what would their possessory rights amount to? Undoubtedly they did a good deal of hunting; their hunting covered a certain amount of territory; they had their settlements. They did not hunt as the Comanches and Kiowas, who roamed up North and away down South, but they hunted around in their territory, in that country, and hunted buffalo out on the plains. Those are the facts about those people as I have covered them. I have gone into their history pretty thoroughly. I started a memorial on the subject, but was interrupted. In its present form it is worthless. It could be completed if I got into the spirit again. That is about the substance of what it would contain.

I am not expressing any opinion as to the justice of this claim. You are better qualified for that, and perhaps the Court of Claims, if Congress concludes to send it over to them, will look into it thoroughly; but I do think these men ought to have their chance. There would be some expense involved—not for attorneys, possibly, but for briefts and printing. I think that in the old case the Indian Office concluded that when the case was sent to the Court of Claims the Indian Office were authorized to pay the bills out of their tribal funds. They did do it, then. It was probably $1,000; perhaps more. I simply make the suggestion. That is for printing of briefs, etc. Of course attorney fees would be under another category.

Mr. TILLMAN. Do you understand that the mere possessory occupancy of the lands, without any authority on the part of the Government, without a treaty, would give them any title to those lands?

Mr. WALKER. The question of possessory occupancy was decided by Marshall in the case of Worcester *v.* Georgia, and it was decided that they did have a possessory right which the United States must recognize.

Mr. TILLMAN. Which the United States must recognize?

Mr. WALKER. Yes. In other words, they could not kick them out; but it was not one that would prevent the United States from negotiating for the settlement and cession of the lands. I think the Lone Wolf case, which the Supreme Court decided some 15 years ago, somewhat modified the possessory question; but my general idea has been this, that when the United States acquired territory from foreign governments, as it acquired Louisiana—I can give you a citation of a case on that—that they acquired it subject to the possessory rights of the Indians. The case is Holden *v.* Joy (17 Wall., 211). The occupancy right is abandoned if the occupancy is abandoned by the Indians.

Mr. TILLMAN. These Indians had possession of this particular tract of land prior to 1803?

Mr. WALKER. The year 1818 is given in the bill.

Mr. TILLMAN. They had possession along in the eighteenth century?

Mr. WALKER. In 1759 they lived in the southern end.

Mr. TILLMAN. This particular lease was part of the Louisiana Purchase?

Mr. WALKER. Yes, sir.

Mr. TILLMAN. I don't get your point fully, I believe. You say that the Supreme Court has decided that this possessory right is to be recognized in some way. I asked you directly whether or not you considered a mere squatting right on the part of the Indians sufficient to give them absolute title?

Mr. WALKER. No. The title is in the United States, subject to the possessory right, and this is nothing but a right of occupancy. They can not dispose of it without the consent of the United States.

Mr. TILLMAN. That would not entitle them, in the Court of Claims, to the value of the land which the United States deeded to some one else?

Mr. WALKER. No. In other words, if it should appear that the land was worth $50 an acre when conveyed by absolute deed—the Indians had no title such as would carry that, because they had no right that they could convey. They simply had the right to stay there until the United States settled with them to move away.

Mr. HASTINGS. They would have a right to compensation for their possessory right, and not for the lands?

Mr. WALKER. I think that is the wording of the bill—possessory right. That is all the Indians had—the possessory right.

Mr. TILLMAN. You are quite sure that they have a possessory right?

Mr. WALKER. I think they have a good enough claim for possessory right to entitle them to have the matter looked into.

Mr. TILLMAN. What position have you?

Mr. WALKER. For the last week I have been Assistant to the Solicitor of the Navy Department.

Mr. TILLMAN. You have no interest in this case?

Mr. WALKER. No.

Mr. TILLMAN. Your statement has been very illuminating.

Mr. WALKER. I think, perhaps, I may say without undue egotism, that I know more about it than anyone else.

Mr. TILLMAN. As an absolutely disinterested authority, would you say that the bill should be favorably reported as it is?

Mr. WALKER. Yes; I think it is but fair to these Indians that they be given their day in court.

Mr. TILLMAN. What would be the expense of the litigation?

Mr. WALKER. The expense would involve printing of the record in the Court of Claims, and briefs. Of course, it would involve also the time of the attorney, who would be taken from some other work. The expense of the Indians would be the printing of the briefs.

Mr. TILLMAN. That should be borne by the tribes?

Mr. WALKER. Yes.

Mr. NORTON. You have been practicing law here for some time in the city, haven't you?

Mr. WALKER. About 25 years. If the case went against the Indians, there would be a judgment for costs for the printing of the record. They stopped printing the records at the Court of Claims during the last year. They are insisting on abstracts, and printing the abstracts, and they have reduced the expense somewhat.

Mr. NORTON. You have read this bill, have you?

Mr. WALKER. Only when I came up this morning.

Mr. NORTON. The main part of the bill is not in the form of a bill presenting a claim to the Court of Claims. There are requirements for specific findings in the bill.

Mr. WALKER. As I have said, there have been this Old Settlers Cherokee case and this Wichita case, which did go down by congressional reference, and which went to the Supreme Court. In both cases the court was given equity jurisdiction, and the result of that was that the whole record went up to the Supreme Court. There were no findings. If an appeal should be given to the Supreme Court in this case, it seems to me the whole record should go up. If it goes down as a law case, the Court of Claims finds facts conclusively, and the Supreme Court can not touch them. If it goes down as an equity case, the whole record will go to the Supreme Court, and they could act upon the facts as well as on the law.

Mr. TILLMAN. How many Indians have you?

Mr. LAMAR. We have 1,124.

Mr. TILLMAN. How much did they recover under the former Wichita claim, if you recall?

Mr. WALKER. I have that here somewhere. That was all for that possessory right—$1.25 an acre. If they got the same amount for the rest, they would get nine or ten million dollars.

Mr. TILLMAN. I refer to the other claim they had before the Court of Claims. What did this amount involve—nine or ten million?

Mr. WALKER. In round figures; yes. They recovered—there were 3,000,000 in the Kiowa and Comanche Reservation and 1,500,000 in Greer County; in the Wichita reservation there were 577,932. The surplus lands, at $1.25 an acre, was $722,215.56, of which 79,611.65 acres were school lands, and for these Congress appropriated, by the deficiency act of 1902, $99,514.56; the remainder, of the value of $622,701, was to be paid for when disposed of by the United States. I don't know whether they have ever got their money for that. Three years ago I was told they had not.

Mr. TILLMAN. Have you a reference to the decision of the Court of Claims in the Wichita case?

Mr. WALKER. Yes, sir; 179 U. S., 494.

Mr. TILLMAN. And the Court of Claims reference?

Mr. WALKER. I haven't that; but I can get it and telephone it up to the clerk for the record, if you wish it.

Mr. TILLMAN. I wish you would do that.

Mr. WALKER. All right. It is 34 C. C., 17.

Mr. TILLMAN. That is all. We will now hear from Arthur Pickard.

STATEMENT OF ARTHUR PICKARD, A WICHITA INDIAN, ACCOMPANIED BY ALBERT LAMAR, ACTING AS INTERPRETER, BOTH OF ANADARKO, OKLA.

(Examination conducted through the interpreter.)

Mr. TILLMAN. You are a Wichita Indian?

Mr. PICKARD. Yes, sir.

Mr. TILLMAN. How old are you?

Mr. PICKARD. Forty years old.

Mr. TILLMAN. Let him proceed with his statement.

Mr. PICKARD. Of course, I am not going to make a long speech, but I want you people to do us the favor of helping us through this matter. My people to-day have got it in their heads, from present knowledge, that they are really entitled to this piece of property, and some day they may have to appear and come into the Court of Claims to finish it up. They have heard from the old people, and as far back as I can remember the people have always told me that we were the owners of this piece of territory, formed of this where we are now and beyond, south to the Red River, covering these mountains 6 miles west. I can remember they have told the same repeated story over and over, and still we believe that we are the owners of that piece of territory, and that they have never met any other Indians on there as far back as they can remember.

Gentlemen, I have never had the chance or opportunity to be before the people in your class before, and this is the first time I have had an opportunity to come before you to make a short talk in my life, and this is what I am going to ask you: Be reasonable and give us a fair show and let us go through with this.

Right to-day we have only one or two men—that is, the oldest men we have—that are living to-day, and they still say we are the owners of that property south of the river; and other people to-day are getting the benefit of this territory, where we who rightfully own it are getting nothing from this territory, while we ought to be getting something from this piece of property on that side of the river.

Mr. NORTON. How many Indians are there out there?

Mr. PICKARD. Do you mean the whole or the Wichitas alone?

Mr. NORTON. Just the Wichitas alone.

Mr. PICKARD. Let me ask you did you mean the Wichitas alone and the affiliated tribes?

Mr. NORTON. Just the Wichitas.

Mr. PICKARD. Just the Wichitas alone?

Mr. NORTON. Yes.

Mr. PICKARD. I don't believe there are over 465—something in that neighborhood.

Mr. NORTON. How many of the affiliated tribes? How many belong to the affiliated tribes?

Mr. TILLMAN. All told.

Mr. PICKARD. Since I have learned how many of us in that territory now—we found out from the Indian officer—there are 1,124.

Mr. NORTON. There are 1,124?

Mr. PICKARD. Yes.

Mr. TILLMAN. What position do you occupy?

Mr. PICKARD. I am farming for myself.

Mr. NORTON. Are you married?

Mr. PICKARD. Yes, sir.

Mr. NORTON. How many children?

Mr. PICKARD. I have got three of my own children.

Mr. NORTON. How much land have you?

Mr. PICKARD. In regard to this land, there may be one or two that is let. The rest of it has no one.

Mr. NORTON. He has no land?

Mr. LAMAR. He has 160 acres for himself.

Mr. TILLMAN. Do the other Wichitas have land?

Mr. LAMAR. Yes, sir.

Mr. TILLMAN. All of them?

Mr. LAMAR. Yes, sir.

Mr. TILLMAN. Allotments?

Mr. LAMAR. Yes, sir.

Mr. NORTON. Do they work their lands?

Mr. LAMAR. Yes, sir.

Mr. NORTON. Farm them?

Mr. LAMAR. Yes, sir.

Mr. NORTON. Have horses and cattle?

Mr. LAMAR. They have no cattle to speak of now. They did have cattle until the white people got down in there and took them away.

Mr. NORTON. What kind of houses do they have?

Mr. LAMAR. Some live in 3-room houses. They live in houses the same as you people live in.

Mr. NORTON. They are in pretty good condition, so far as living and taking care of themselves are concered?

Mr. LAMAR. Yes, sir.

Mr. NORTON. They are not receiving anything from the Government now, are they?

Mr. LAMAR. The rents for their farm lands—that is all. Some of the Indians are holding four or five allotments.

Mr. NORTON. Most of them work on their own farms?

Mr. LAMAR. Yes, sir.

Mr. NORTON. Are they good farms?

Mr. LAMAR. Just as good as any of the white men's.

Mr. NORTON. Do you belong to the tribe?

Mr. LAMAR. Yes, sir.

Mr. NORTON. You have your own allotment?

Mr. LAMAR. Yes, sir; and I work my wife's.

Mr. NORTON. Mr. Pickard works his own allotment?

Mr. LAMAR. Yes, sir.

Mr. HASTINGS (to Mr. Pickard). Do you actually work your own allotment, and raise corn and wheat? (To the interpreter:) You can tell me. Is he a man that works his own allotment?

Mr. LAMAR. Yes, sir.

Mr. HASTINGS. He goes out and plows and works his land?

Mr. LAMAR. Yes, sir; raises corn, cotton, cane, etc.

Mr. HASTINGS. He actually plows the ground himself, personally?

Mr. LAMAR. Yes, sir.

Mr. HASTINGS. About how many of these men, these 1,124 Wichita and affiliated bands, work upon their own farms?

Mr. LAMAR. Some of them are very old; I am speaking now of the young men, something like myself and him; and most of them do.

Mr. HASTINGS. Most of them?

Mr. LAMAR. Most of them; yes, sir.

Mr. HASTINGS. I am glad to know that. Now I am going to ask who represents your tribe. In what way is the tribe represented? Is it represented through a chief or a council?

Mr. LAMAR. Yes, sir.

Mr. HASTINGS. Is it by the whole tribe being called together?

Mr. LAMAR. A regular council.

Mr. HASTINGS. Do you elect your members of the council?

Mr. LAMAR. Yes, sir.
Mr. HASTINGS. Do you have regular elections?
Mr. LAMAR. No, sir; we don't have regular elections like you have, but we appoint our chief.
Mr. HASTINGS. Who is the chief?
Mr. LAMAR. Kiowa.
Mr. HASTINGS. Was he elected by the people?
Mr. LAMAR. Yes, sir.
Mr. HASTINGS. How many members compose your council?
Mr. LAMAR. Something like—we don't take a great many in at all.
Mr. HASTINGS. This bill provides for the employment of an attorney. If this bill was passed, how would you employ an attorney? Who would say that?
Mr. LAMAR. We would have to take contract, whatever contract the attorney makes up.
Mr. HASTINGS. Would you have a contract made by your tribe, acting through your council or through the principal chief?
Mr. LAMAR. The principal chief.
Mr. HASTINGS. So the chief would be authorized to make that contract?
Mr. LAMAR. Yes, sir.
Mr. HASTINGS. You are a member of that tribe?
Mr. LAMAR. Yes, sir.
Mr. HASTINGS. There is no limitation upon the amount of fee to be fixed in this bill. Do you, as a member of the tribe, think, if the bill is to be passed, that something ought to be said here in the bill about the amount of the fee which should be fixed, either by the tribe or by the Secretary of the Interior or by the court that tries the case?
Mr. LAMAR. The fees—you mean the fee of the attorney?
Mr. HASTINGS. Yes; the fee of the attorney whom you employ.
Mr. LAMAR. I have heard Mr. Meritt read the bill over, and he said that the counsel would be allowed 10 cents on the dollar.
Mr. HASTINGS. Ten per cent?
Mr. LAMAR. Yes, sir.
Mr. HASTINGS. You mean you heard the assistant commissioner comment on the bill?
Mr. LAMAR. Yes, sir.
Mr. HASTINGS. Do you consider that fair compensation?
Mr. LAMAR. Yes, sir.

MEMORANDUM AND STATEMENT FOR THE HEARINGS BY CONGRESSMAN SCOTT FERRIS, REPRESENTING THE SIXTH OKLAHOMA DISTRICT AND AUTHOR OF H. R. 7584, A BILL FOR THE RELIEF OF THE WICHITA AND AFFILIATED BANDS OF INDIANS IN OKLAHOMA.

Mr. CHAIRMAN: A committe of four has been selected by the Wichita Tribe of Indians to come here and present to the departments and the Congress of the United States their claims to certain lands in the State of Oklahoma. Their names are Messrs. Stanley Edge, Binger, Okla.; Albert Lamar, Anadarko, Okla.; Arthur Pickard, Anadarko, Okla.; and Enoch Hoag, Binger, Okla. They are here in person and ask to be heard.

The contention of the Wichita Indians has for many years been that they are the aboriginal owners to all of that land west of the 98th meridian, bounded on the north by the Canadian River, on the south by Red River, and on the west by the North Fork of Red River, originally known as the lease district, now known as the Kiowa and Comanche country. The Indians of this tribe consist of about 1,100 full-blood Indians. They have not intermarried to any extent, practically all of them full-bloods and practically all of them incompetent from the standpoint of modern business methods. They have kept no accurate history of their affairs and will not be able to produce to the committee documentary evidence fully proving their claim. Their history has consisted of facts handed down from one generation to another, and as they have their history handed down to them and the facts handed down to them, it is about as follows:

1. They allege that the Wichita and affiliated bands of Indians were the aboriginal possessors of said lands at all times prior to 1818.
2. They assert that neither they, their tribesmen, nor their ancestors have ever transferred in any way their title as such aboriginal owners.
3. They ask that this controversy be sent to the Court of Claims and that an adjudication be afforded them.
4. They ask that the court determine for them the value of the land per acre and make specific findings of fact and law on the above and foregoing contentions.
5. They further ask that the language of the law be so formulated that in the event their claims are just and found to be true that the same be certified to the Treasurer of the United States for payment and immediate settlement.
6. They assert that the matter has been gone over carefully with their Indian superintendent, Mr. C. V. Stinchecum, also his predecessor, Lieut. Earnest Stecker; that they have had many conferences and powwows about the matter and each and every time they have been more thoroughly convinced that they have a just claim against the Government of the United States and that their lands were unjustly taken from them and given to other tribes of Indians, for which they have never been paid; that they are poor and without funds; and they ask that their Government hear them and allow them to present their claims and that their claims be not treated lightly, but that they be gone into thoroughly and to the end that the committee may have all the law and facts before them I beg to attach herewith a brief consisting of a clear statement of the law and the facts as prepared by Judge C. H. Carswell, of Anadarko, Okla., an able, patriotic lawyer, and it is my belief that the same will be of value to the committee when the hearings are had.

STATEMENT OF ENOCH HOAG, A CADDO INDIAN, ACCOMPANIED BY STANLEY EDGE, ACTING AS INTERPRETER, BOTH OF BINGER, OKLA.

(Examination conducted through the interpreter.)
Mr. HASTINGS. What tribe do you belong to?
Mr. HOAG. Caddo.
Mr. HASTINGS. How old are you?
Mr. HOAG. Fifty-six.
Mr. HASTINGS. Married?
Mr. HOAG. Yes, sir.
Mr. HASTINGS. Any children?
Mr. HOAG. Seven children.
Mr. HASTINGS. Have you a farm?
Mr. HOAG. Yes, sir.
Mr. EDGE. You mean on his own allotment?
Mr. HASTINGS. Yes.
Mr. EDGE. He has his place rented out, and he is working with his nephew on his farm.
Mr. HASTINGS. He has his allotment rented?
Mr. EDGE. Yes, sir.
Mr. TILLMAN. Ask him what he thinks his rights are, what he thinks are the merits of this bill, and what he thinks his rights are before the Court of Claims.
Mr. EDGE. Yes.

Mr. HOAG. I would like to speak a few words. We have been appointed by our tribe to represent them before this committee, as we are at present, and just a few words I will speak to you. This committee sitting here are supposed to know; they are well educated, which I am not. Therefore we have agreed to come all the way from home and present a brief. We had a brief. It follows out the evidence to show you and convince you people.

Mr. HASTINGS. Have you heard from the members of the tribe that the tribe is entitled to pay for this land?

Mr. HOAG. I have heard it, but they have the best way—they are old people.

Mr. HASTINGS. Were the Comanches not on this land before the Wichitas?

Mr. HOAG. No, sir.

Mr. HASTINGS. How do you know they were not?

Mr. HOAG. There are two kinds of Comanches. The real Comanches I have never heard where they come from. There is another kind of Comanches—the Petatik Comanches.

Mr. HASTINGS. They were there before the Caddos, weren't they?

Mr. HOAG. The Caddos and the Petatiks were all together for a number of years. The real Comanches——

Mr. HASTINGS (interposing). The real Comanches were up north, and they came down over the Wichita Mountains as the buffalos roamed back and forth over the land there many years ago.

Mr. HOAG. I don't know.

Mr. HASTINGS. If the Comanches were all on that land and owned it before the Wichitas, then the Government should not pay the Wichitas anything, should it?

Mr. HOAG. I have never heard anything about the Comanches. The people told me the Wichitas were there all the time.

Mr. HASTINGS. Were the Kiowas there before the Wichitas?

Mr. HOAG. No, sir.

Mr. HASTINGS. Where did the Kiowas come from?

Mr. HOAG. I heard that the Kiowas went away out West, and went from place to place. I don't know exactly where they came from. The old people could not tell me. They were in one place, and then in another place.

Mr. HASTINGS. About how many Caddos are there?

Mr. EDGE (after addressing Mr. Hoag). He asked me to tell you if I know.

Mr. HASTINGS. You tell it, then.

Mr. EDGE. I don't know exactly what it is now.

Mr. HASTINGS. Approximately.

Mr. TILLMAN. As nearly as you can get at it.

Mr. EDGE. Several years ago I was working there, and during that time I used to make payment over to about 553.

Mr. HASTINGS. There were 553 several years ago?

Mr. EDGE. Yes, sir.

Mr. HASTINGS. Do you know how many there are now?

Mr. FDGE. No.

Mr. HASTINGS. You don't know?

Mr. EDGE. No, sir.

Mr. NORTON. The number of Wichitas and affiliated tribes, 1,124, which was given by the other gentleman, includes the Caddos?

Mr. EDGE. Yes, sir; and Kiowas and Delawares.

Mr. NORTON. That is, all told?

Mr. EDGE. Yes, sir.

Mr. NORTON. Adding them all together?

Mr. EDGE. Yes, sir. I see a record where it says the Kiowas and Canadians are just the same as the Caddos; that the Kiowas are the same thing as the Wichitas.

Mr. TILLMAN. Have you anything more to say?

Mr. HOAG. That is all I have to say, but would like to go on with one matter.

Mr. TILLMAN. Go on.

Mr. EDGE. I will present this. I have here a copy of the 1835 treaty, and would like to present that to the committee for consideration.

Mr. TILLMAN. Put it in the record.

(The document referred to is as follows:)

TREATY WITH THE CADDO, 1835.

[July 1, 1835. 7 Stat., 470. Proclamation, Feb. 2, 1836.]

Articles of a treaty made at the agency house in the Caddo Nation and State of Louisiana, on the first day of July in the year of our Lord one thousand eight hundred and thirty-five, between Jehiel Brooks, commissioner on the part of the United States, and the chiefs, headmen, and warriors of the Caddo Nation of Indians.

LANDS CEDED TO THE UNITED STATES.

ARTICLE I. The chiefs, headmen, and warriors of the said nation agree to cede and relinquish to the United States all their land contained in the following boundaries, to wit:

BOUNDARIES.

Bounded on the west by the north and south line which separate the said United States from the Republic of Mexico, between the Sabine and Red Rivers wheresoever the same shall be defined and acknowledged to be by the two Governments. On the north and east by the Red River from the point where the said north and south boundary line shall intersect the Red River, whether it be in the Territory of Arkansas or the State of Louisiana, following the meanders of the said river down to its junction with the Pascagoula Bayou. On the south by the said Pascagoula Bayou to its junction with the Bayou Pierre, by said bayou to its junction with Bayou Wallace, by said bayou and Lake Wallace to the mouth of the Cypress Bayou, thence up said bayou to the point of its intersection with the first-mentioned north and south line, following the meanders of the said watercourses: But if the said Cypress Bayou be not clearly definable so far then from a point which shall be definable by a line due west till it intersects the said first-mentioned north and south boundary line, be the content of land within said boundaries more or less.

INDIANS TO REMOVE WITHIN ONE YEAR.

ART. II. The said chiefs, headmen, and warriors of the said nation do voluntarily relinquish their possession to the territory of land aforesaid and promise to remove at their own expense out of the boundaries of the United States and the Territories belonging and appertaining thereto within the period of one year from and after the signing of this treaty and never more return to live, settle, or establish themselves as a nation, tribe, or community of people within the same.

MONEY, ETC., TO BE PAID FOR CESSION.

ART. III. In consideration of the aforesaid cession, relinquishment, and removal it is agreed that the said United States shall pay to the said nation of Caddo Indians the sums in goods, horses, and money hereinafter mentioned, to wit:

Thirty thousand dollars to be paid in goods and horses, as agreed upon, to be delivered on the signing of this treaty.

Ten thousand dollars in money to be paid within one year from the first day of September next.

Ten thousand dollars per annum in money for the four years next following so as to make the whole sum paid and payable eighty thousand dollars.

AN AGENT OF THE NATION TO BE APPOINTED BY THEM.

ART. IV. It is further agreed that the said Caddo Nation of Indians shall have authority to appoint an agent or attorney in fact, resident within the United States, for the purpose of receiving for them from the said United States all of the annuities stated in this treaty as the same shall become due to be paid to their said agent or attorney in fact at such place or places within the said United States as shall be agreed on between him and the proper officer of the Government of the United States.

TREATY BINDING WHEN RATIFIED.

ART. V. This treaty, after the same shall have been ratified and confirmed by the President and Senate of the United States, shall be binding on the contracting parties.

In testimony whereof, the said Jehiel Brooks, commissioner as aforesaid, and the chiefs, headmen, and warriors of the said nation of Indians, have hereunto set their hands and affixed their seals at the place and on the day and year above written.

J. BROOKS.	[L. S.]	TIOHTOW (his x mark).	[L. S.]
TARSHAR (his x mark).	[L. S.]	TEHOWAHINNO (his x mark).	[L. S.]
TSAUNINOT (his x mark).	[L. S.]	TOOEKSOACH (his x mark).	[L. S.]
SATIOWNHOWN (his x mark).	[L. S.]	TEHOWAINIA (his x mark).	[L. S.]
TENNEHINUM (his x mark).	[L. S.]	SAUNINOW (his x mark).	[L. S.]
OAT (his x mark).	[L. S.]	SAUNIVOAT (his x mark).	[L. S.]
TINNOWIN (his x mark).	[L. S.]	HIGHAHIDOCK (his x mark).	[L. S.]
CHOWABAH (his x mark).	[L. S.]	MATTAN (his x mark).	[L. S.]
KIANHOON (his x mark).	[L. S.]	TOWABINNEH (his x mark).	[L. S.]
TIATESUM (his x mark).	[L. S.]	AACH (his x mark).	[L. S.]
TEHOWAWINOW (his x mark).	[L. S.]	SOOKIANTOW (his x mark).	[L. S.]
TEWINNUM (his x mark).	[L. S.]	SOHONE (his x mark).	[L. S.]
KARDY (his x mark).	[L. S.]	OSSINSE (his x mark).	[L. S.]

In presence of—

T. J. HARRISON,
Captain, Third Regiment Infantry, Commanding Detachment.
J. BONNELL,
First Lieutenant, Third Regiment, United States Infantry.
J. P. FRILE,
Brevet Second Lieutenant, Third Regiment, United States Infantry.
D. M. HEARD, M. D.,
Acting Assistant Surgeon, United States Army.
ISAAC WILLIAMSON.
HENRY QUEEN,
JOHN W. EDWARDS,
Interpreter.

Agreeably to the stipulations in the third article of the treaty, there have been purchased at the request of the Caddo Indians, and delivered to them, goods and horses to the amount of thirty thousand dollars.

As evidence of the purchase and delivery as aforesaid, under the direction of the commissioner, and that the whole of the same have been received by the said Indians, the said commissioner, Jehiel Brooks, and the undersigned, chiefs and head men of the whole Caddo Nation of Indians, have hereunto set their hands, and affixed their seals, the third day of July, in the year of our Lord one thousand eight hundred and thirty-five.

J. BROOKS.	[L. S.]	OAT (his x mark).	[L. S.]
TARSHAR (his x mark).	[L. S.]	OSSINSE (his x mark).	[L. S.]
TSAUNINOT (his x mark).	[L. S.]	TIOHTOW (his x mark).	[L. S.]
SATIOWNHOWN (his x mark).	[L. S.]	CHOWAWANOW (his x mark).	[L. S.]

In presence of—

LARKIN EDWARDS.
HENRY QUEEN.
JOHN W. EDWARDS, *interpreter.*
JAMES FINNERTY.

[July 1, 1835. 7 Stat., 472.]

Articles supplementary to the treaty made at the agency house in the Caddo Nation and State of Louisiana on the first day of July, one thousand eight hundred and thirty-five between Jehiel Brooks, commissioner, on the part of the United States, and the chiefs, head men, and warriors of the Caddo Nation of Indians, concluded at the same place and on the same day between the said commissioner on the part of the United States and the chiefs, head men, and warriors of the said nation of Indians, to wit:

PREAMBLE.

Whereas the said nation of Indians did in the year one thousand eight hundred and one, give to one François Grappe and to his three sons then born and still living, named Jacques, Dominique, and Belthazar, for reasons stated at the time and repeated in a memorial which the said nation addressed to the President of the United States in the month of January last, one league of land to each, in accordance with the Spanish custom of granting land to individuals. That the chiefs and head men, with the knowledge and approbation of the whole Caddo people, did go with the said François Grappe, accompanied by a number of white men, who were invited by the said chiefs and head men to be present as witnesses, before the Spanish authority at Natchitoches, and then and there did declare their wishes touching the said donation of land to the said Grappe and his three sons, and did request the same to be written out in form and ratified and confirmed by the proper authorities agreeably to law.

And whereas Larkin Edwards has resided for many years to the present time in the Caddo Nation—was a long time their true and faithful interpreter, and though poor he has never sent the red man away from his door hungry. He is now old and unable to support himself by manual labor, and since his employment as their interpreter has ceased possesses no adequate means by which to live: Now therefore—

GRANT BY INDIANS TO F. GRAPPE CONFIRMED.

ARTICLE I. It is agreed that the legal representatives of the said François Grappe, deceased, and his three sons, Jacques, Dominique, and Belthazar Grappe, shall have their right to the said four leagues of land reserved to them and their heirs and assigns forever. The said land to be taken out of the lands ceded to the United States by the said Caddo Nation of Indians as expressed in the treaty to which this article is supplementary. And the said four leagues of land shall be laid off in one body in the southeast corner of their lands ceded as aforesaid, and bounded by the Red River four leagues and by the Pascagoula Bayou one league, running back for quantity from each, so as to contain four square leagues of land, in conformity with the boundaries established and expressed in the original Deed of Gift made by the said Caddo Nation of Indians to the said François Grappe and his three sons, Jacques, Dominique, and Belthazar Grappe.

RESERVATION FOR LARKIN EDWARDS.

ART. II. And it is further agreed that there shall be reserved to Larkin Edwards, his heirs and assigns, forever one section of land to be selected out of the lands ceded to the United States by the said nation of Indians as expressed in the treaty to which this article is supplementary in any part thereof not otherwise appropriated by the provisions contained in these supplementary articles.

ARTICLES BINDING WHEN RATIFIED.

ART. III. These supplementary articles, or either of them, after the same shall have been ratified and confirmed by the President and Senate of the United States, shall be binding on the contracting parties, otherwise to be void and of no effect upon the validity of the original treaty to which they are supplementary.

In testimony whereof, the said Jehiel Brooks, commissioner as aforesaid, and the chiefs, head men, and warriors of the said nation of Indians, have here-

unto set their hands and affixed their seals at the place, and on the day and year above written.

J. BROOKS,			
TARSHAR (his x mark).	[L. S.]	TIOHTOW (his x mark).	[L. S.]
TSAUNINOT (his x mark).	[L. S.]	TEHAWAHINNO (his x mark).	[L. S.]
SATIOWNHOWN (his x mark).	[L. S.]	TOACKOOCH (his x mark).	[L. S.]
TINNEHINAN (his x mark).	[L. S.]	TCHOWAININ (his x mark).	[L. S.]
OAT (his x mark).	[L. S.]	SANNINOW (his x mark).	[L. S.]
TINNOWIN (his x mark).	[L. S.]	SAUNINOT (his x mark).	[L. S.]
CHOWABAH (his x mark).	[L. S.]	HIAHIDOCK (his x mark).	[L. S.]
KIANHOON (his x mark).	[L. S.]	MATTAN (his x mark).	[L. S.]
TIATESUN (his x mark).	[L. S.]	TOWAHINNEK (his x mark).	[L. S.]
TEHOWAWINOW (his x mark)	[L. S.]	AACH (his x mark).	[L. S.]
TEWINNUN (his x mark).	[L. S.]	SOAKIANTOW (his x mark).	[L. S.]
KARDY (his x mark).	[L. S.]	SOHONE (his x mark).	[L. S.]
		OSSINSE (his x mark).	[L. S.]

In presence of—

T. J. HARRISON,
Captain, Third Regiment, commanding detachment.
J. BONNELL,
First Lieutenant, Third Regiment, United States Infantry.
G. P. FIELD,
Brevet Second Lieutenant, Third Regiment, United States Infantry.
D. M. HEARD, M. D.,
Acting Assistant Surgeon, United States Army.
ISAAC C. WILLIAMSON.
HENRY QUEEN.
JOHN W. EDWARDS, *Interpreter.*

Mr. TILLMAN. Is there anything else from any of you?

Mr. HASTINGS. What do you claim isn't paid on it?

Mr. EDGE. The Government agreed to pay $80,000 to the Caddos. They bought their lands from them. The Government agreed, provided the Caddos moved across the Red River; so the Caddos did. What I understand—the old man told me; he was there when the treaty was made—is that they were promised 10 loads of steamboat goods. He said one boat came in—axes, clothes, and one thing and another. They came in and were issued. The second load was on donkeys instead of on a steamboat, and it was not very much.

Mr. HASTINGS. This brief you have filed is with reference to a separate claim of $80,000? Is that correct?

Mr. EDGE. That is what it says.

Mr. HASTINGS. It isn't set forth in the bill?

Mr. EDGE. It is not in that bill.

Mr. HASTINGS. It has nothing to do with this bill?

Mr. EDGE. It is not in the bill.

Mr. HASTINGS. We would not consider your brief on the $80,000 in coming to a conclusion and reporting on this bill, would we?

Mr. EDGE. No.

Mr. HASTINGS. Don't let me confuse you. Wait a minute. Has this brief which you are filing now anything to do with this bill that we were considering before? If this bill which is before the committee were passed and the matter were presented to the Court of Claims would that adjudicate your claim for $80,000 you refer to in this brief?

Mr. EDGE. No; that does not go in this bill.

Mr. HASTINGS. This is a separate bill covering this separate claim of $80,000?

Mr. EDGE. No, sir.

Mr. HASTINGS. You say you are presenting a matter to the committee. I say this for your benefit now. There is no claim before it in regard to this $80,000.

Mr. EDGE. I asked the committee whether there is any objection to presenting the treaty of 1835.

Mr. HASTINGS. There is no objection; but we wanted to know whether that had anything to do with the bill we are considering, and I want to advise you now that there is no bill before the committee to be acted upon with reference to this claim of $80,000.

Mr. EDGE. Yes; I understand.

Mr. HASTINGS. And you could not hope for this committee to take action upon what is not before it. It is like going into court down there in Oklahoma when you had no petition in court—nothing for the court to act upon. So, if you want action upon this $80,000, my suggestion is that you get some bill introduced covering that claim, and then come before the committee.

Mr. TILLMAN. Suppose you take that up with Mr. Ferris.

(Whereupon the committee adjourned.)

SUBCOMMITTEE OF COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Thursday, January 31, 1918.

The subcommittee met at 12.30 p. m., Hon. John N. Tillman presiding.

STATEMENT BY MELVEN CORNISH, OF McALESTER, OKLA.

Mr. CORNISH. Mr. Chairman, and gentlemen of the subcommittee, I appear as special counsel for the Choctaw Nation. The Choctaw Nation has no regular attorney at this time, and the principal chief of the Choctaw Nation, who is now a major in the United States Army at Fort Oglethorpe, Ga., has requested me, by telegram, to make a special appearance before your subcommittee in connection with the bill now pending before it, which is numbered H. R. 7584. The principal chief of the Choctaw Nation requested me to appear provided it was agreeable to your committee and to the Commissioner of Indian Affairs: and that communication was submitted to Mr. Carter, chairman of the Committee on Indian Affairs, and by Mr. Carter to the Commissioner of Indian Affairs, and they stated that inasmuch as there was no regular attorney for the Choctaw Nation at this time they had no objection to the procedure suggested, and it is upon that basis and the existing emergencies and my friendship for the Choctaw people and my interest in their affairs that I appear before you in connection with this bill.

Gov. Johnston, of the Chickasaw Nation, is present, and in view of the fact that the rights and interests of the Choctaws and the Chickasaws in this matter, and in all other matters relating to their lands and he proceeds thereof are identical, I will ask that my statement be taken by your committee as the statement of the Chickasaw Nation as well as the statement of the Choctaw Nation.

Now, gentlemen, this bill, No. 7584, has been introduced on behalf of the Wichita Indians and referred to the Department of the In-

terior. It proposes to give the Wichita Indians the right to file a suit in the Court of Claims, with right of appeal to the Supreme Court of the United States, to test their right as the aboriginal owners to what is known as the "leased district." The "leased district" is the area of country, gentlemen, lying between the ninety-eighth meridian of west longitude on the east, and the one-hundredth meridian of west longitude on the west, and between the Canadian River on the north and the Red River on the south and having an area of something over 7,000,000 acres.

I will state to the subcommittee that if the Choctaw and Chickasaw Indians are sure of anything in the world, if they have a belief that is stronger than any other belief, if they cherish an ambition the realization of which means more to them than any other ambition, it is their right belief that they are entitled to have the Government of the United States pay them a fair compensation for the lands known as the "leased district."

Gentlemen, they are not before you at this time presenting the matter of a settlement of that claim as an original proposition. I do not wish to be misunderstood. I wish to make that plain and clear. This bill provides only for the filing of a petition only on behalf of the Wichitas. They claim, according to the bill itself, the aboriginal right and title to these lands. In other words, they claim that they were in possession of those lands long prior to the Louisiana Purchase and long prior to the treaty of 1820, under which the Choctaw Nation acquired actual title to these lands; and that, therefore, their title is superior to the title of the United States and the title of the Choctaws.

I have no right to state to you the position of the Wichitas, and do not presume to do so, but that is well known, and this bill seeks to give them the right to litigate the question of title, together with certain other claims and contentions which they have against the United States and about which I know nothing and which mean nothing to the Choctaw and Chickasaw Indians.

Having learned that this bill proposed to litigate the claim of the Wichitas to land which the Choctaw and Chickasaw Indians claim to have owned by treaty and patent——

Mr. TILLMAN (interrupting). Now, is their claim antagonistic to the Wichita claim?

Mr. CORNISH. Not necessarily. Having learned that this bill had been introduced providing for the litigation of that claim of the Wichitas and that it had been referred to the Department of the Interior and that the Department of the Interior had recommended its passage, you gentlemen can readily understand that the Choctaws and Chickasaws immediately gave the matter very earnest consideration.

Now, the Secretary of the Interior, in recommending the passage of a bill, does not unqualifiedly recommend the passage of the bill which has been introduced, but in a communication dated December 24, 1917, he suggests the draft of a bill which would be satisfactory to the Department of the Interior and he recommends in this report that this bill, which is recommended by him and which, in a measure, parallels the original bill, should be reported by this committee, and that, if reported, it should pass.

Mr. HASTINGS. And substituted for——

Mr. CORNISH. And substituted for H. R. 7584. Now, gentlemen, I have no criticism of any kind or character to make of the bill originally introduced by the Wichitas, or the draft of a bill recommended by the Department of the Interior; but if that bill is reported, then we make the very reasonable request that we be allowed to intervene, and that whatever rights these Choctaws and Chickasaws have be litigated in that suit.

I am sure you gentlemen are aware that the subject of the "leased district," and of the construction of the treaties and laws relating thereto, and the history of the relations between the Choctaws and Chickasaws on the one side and the Government on the other, and of the litigation and transactions of more than half a century is an awfully long story, and I am puzzled somewhat to know just how much of that story you gentlemen want to hear at this time. Before proceeding along that line, or before inquiring of you gentlemen how you wish me to proceed along that line, I wish to state again, in order that it may be more firmly impressed, if possible, that we do not criticise the proposed bill, either as introduced by the representatives of the Wichitas, or as proposed by the Department of the Interior. So far as we are concerned, we have nothing to say about it or against it. It meets our entire approval and it certainly does not and could not meet our disapproval, because, if these people have what they deem to be a claim which is worthy of adjudication in the Court of Claims, and the Department of the Interior sees fit to accord them that privilege, that is no concern of ours. But we do feel, and we think that we can make plain to your committee or to the court, later on, if allowed to do so, that we have rights which are necessarily involved or affected by this proposed suit, and that we will be able to show that the United States should pay to the Choctaw and Chickasaw Nations a large sum of money, as additional compensation, for the taking of these lands; and if this bill, which has been introduced on behalf of the Wichitas and recommended by the Department of the Interior, is favorably considered by your committee we wish a clause inserted allowing us to intervene and have the claims of the Choctaws and Chickasaws passed on in the same suit and at the same time.

Mr. HASTINGS. Have you prepared such an amendment to submit to the committee?

Mr. CORNISH. Yes, sir; I have.

Mr. HASTINGS. It would fit on either bill, either the one introduced or the one recommended by the Department of the Interior?

Mr. CORNISH. Yes, sir; I would not change a word or a line of the bill recommended by the Department of the Interior. We suggest a fourth paragraph to be an amendment.

Mr. HASTINGS. You suggest a fourth paragraph for an amendment?

Mr. CORNISH. We suggest a fourth paragraph to be an amendment to that bill; that would provide for intervention by the Choctaws and Chickasaws.

Mr. HASTINGS. Would it be disconcerting for you to read that amendment now?

Mr. CORNISH. No, sir; I will read it now. The amendment would be section 4 and would be incorporated in the bill recommended by

the Department of the Interior. Now, are you gentlemen familiar with the draft of the bill suggested by the Department of the Interior?

Mr. TILLMAN. No; I am not.

Mr. HASTINGS. I am not; we did not have it the other day on the hearing.

Mr. CORNISH. The amendment which we propose would become section 4 of that bill, and is as follows:

SEC. 4. That copies of any petition or petitions in the suit herein authorized shall be served on the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, and if it shall appear that any part of the lands, or the proceeds thereof, known as the "leased district" and lying between the ninety-eighth and the one-hundredth meridians of west longitude, on the east and west and the Canadian and Red Rivers, on the north and south, are in any way involved or affected, the Choctaw and Chickasaw Nations may intervene by filing a petition, within sixty days after service of original petition, signed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, or the duly authorized attorneys for said nations, setting forth the basis of their claims for additional compensation for such lands; and the Court of Claims shall have power to determine, anew and without regard to the lapse of time and irrespective of any decision heretofore rendered affecting the title, whether the Choctaws and Chickasaws were the owners of such lands, prior to the treaty of April twenty-eighth, eighteen hundred and sixty-six, between the United States and the Choctaws and Chickasaws and whether the consideration therein agreed to be paid was fair and reasonable. If such consideration be found not to have been fair and reasonable judgment shall be rendered in favor of the Choctaws and Chickasaws and against the United States for the fair and reasonable value of such lands, less any sums that shall have been heretofore paid by the United States for such lands or any part of them.

Now, gentlemen, that brings me to the question which I will submit to the committee. I am prepared to make a statement to your committee in support of the proposition that the Choctaws and Chickasaws are entitled to additional compensation for these lands, as a basis for the request that your committee insert our proposed amendment into the bill. I wish now to pause and inquire the pleasure of your committee on that point.

Mr. TILLMAN. How long would it take?

Mr. CORNISH. Well, Judge, I would say probably an hour.

Mr. TILLMAN. I think you had better cover the matter fully.

(And thereupon, at 12 o'clock and 50 minutes p. m., the committee took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

Mr. TILLMAN. Mr. Cornish, you may proceed with your statement and make it as full as you like.

Mr. CORNISH. Mr. Chairman and gentlemen of the committee, I will make my statement as brief as possible, covering the grounds upon which the Choctaw and Chickasaw Nations rely in their claim for additional compensation from the Government of the United States for the lands known as the "leased district."

I believe it would be useful and convenient to place before your committee a map of the entire grant of land to the Choctaw Nation under the treaty of 1820; and to call attention to the areas now occupied by the Choctaw and Chickasaw Indians and also to the area out of that land known as the "leased district," and for which the Choctaw and Chickasaw Indians claim to be entitled to additional compensation.

The committee will understand that the basis of the title of the Choctaw and Chickasaw Indians for this great area of land is contained in the treaty of October 18, 1820. At that time the Choctaws resided in Mississippi. They exchanged an area of land aggregating more than 4,000,000 acres of land for the vast area in the West which appears on the map, which is now before your committee. The treaty was entered into in pursuance of a policy of the Government of the United States to move the Indians from Mississippi to the West. The description of the land in the West thus granted to them is contained in article 2 of the treaty of 1820, which is as follows:

ART. 2. For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red Rivers, and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokees strike 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.

An examination of the map will show that the lands thus granted were all of the territory lying west of the State of Arkansas and between the Canadian and Red Rivers. The map now before the committee is divided into sections—section 2, section 3, section 4, section 5, section 6, section 7, and section 8. The section marked "2" is the country comprising the present Choctaw Nation; section 3 is the present Chickasaw Nation. In other words, sections 2 and 3 describe the area or country now known as the Choctaw and Chickasaw Nations, upon which the Choctaw and Chickasaw Indians now reside and out of which they have taken their allotments.

The grant in the treaty of 1820 was confirmed in the treaty of 1830. The committee will observe that there is a vast area of land lying west of the one hundredth meridian of west longitude, and that vast area of land was included in the grant contained in the treaty of 1820 and also in the treaty of 1830. In the treaty of 1855 the Choctaw and Chickasaw Indians relinquished their claim to all of that land lying west of the one hundredth meridian of west longitude. That arose in the manner which I shall describe, and in doing so I quote from the decisions of the Court of Claims and of the Supreme Court of the United States in a case to which I shall shortly refer. I make the basic statement that at the time of the grant the United States owned that entire area of land. One month after the grant—and I state the conclusion of the Court of Claims upon this point—and one month after the ratification of the Choctaw treaty of 1820 the United States ratified a treaty with Spain in which the boundaries between United States territory and Spanish territory were defined and that vast area of territory lying west of the one hundredth meridian of west longitude was ceded to Spain as a part of the negotiations for the lands comprising the State of Florida. I will restate that in a word and then pass on. As the time of the grant to the Choctaws in 1820 the United States owned that land. One month after ratification of the treaty by which the Choctaws were given that territory the United States ceded that territory to Spain.

You will understand, gentlemen, that the territory to which I am now referring, and which is west of the one hundredth meridian of west longitude, is not under consideration at this time.

As stated, one month after the grant to the Choctaws the United States ceded this territory to Spain. Very naturally a controversy arose between the Choctaws and the United States. This controversy was raging when the treaty of 1830 was made. As evidence of the existence of that controversy the treaty of 1830 repeats, in all respects, the description of the original Choctaw grant contained in the treaty of 1820 with the proviso: "If in the limits of the United States." Evidently the controversy continued to rage and grew in strength and importance as the years passed, and reached a climax and adjustment in 1855. For a relinquishment of their claim to these far western lands, lying west of the one hundredth meridian of west longitude, and for other concessions, the Choctaws and Chickasaws were paid the sum of $800,000.

Mr. TILLMAN. Did that involve any part of that land which the Wichitas now claim?

Mr. CORNISH. No; the Wichitas, so far as I know, do not assert any claim to these far western lands; and the Choctaws and Chickasaws do not, because they were paid for them under the treaty of 1855.

Now, for this $800,000 which the Government paid them two things were accomplished: First, the claim to the area of land west of the one hundredth meridian of west longitude was relinquished; and, secondly, the United States acquired, by lease, the right to settle certain friendly and roving bands of Indians upon the "leased district," and that is the territory which I shall now describe as lying between the ninety-eighth meridian of west longitude and the one hundredth meridian of west longitude, east and west, and between the Canadian River on the north and the Red River on the south. That is the area designated on the map before you as sections 4, 5, 6, and 7; and that, gentlemen, is a definite and particular description of what is known as the "leased district," and that map appears——

Mr. TILLMAN. The book to which Mr. Cornish refers is the One hundred and seventy-ninth U. S. Reports, and the map to which he has called our attention is on page 500 of said report.

Mr. CORNISH. Yes, sir. Now, as I say, in the treaty of 1855 the Government of the United States actually paid to the Choctaws $600,000 and to the Chickasaws $200,000, for two things: First, for the relinquishment of the far western lands to which I have referred; and, secondly, for a lease upon the "leased district" which I have described, and that lease was for the purpose of settling thereon certain friendly and roving bands of Indians.

Mr. TILLMAN. Were the Wichitas included in that?

Mr. CORNISH. The Wichitas were included in that; yes, sir.

Mr. HASTINGS. Was that $800,000 divided? That is, a certain amount for that lease and a certain amount——

Mr. CORNISH. No, sir; it was not divided; it was a lump sum. But the two things which the Government required in that treaty were, first, the relinquishment of the far western territory; and, secondly, a lease upon the territory which I have later described.

Mr. HASTINGS. It was not divided, but was a lump sum?

Mr. CORNISH. It was not divided; it was a lump sum.

Now, I lay special stress, gentlemen, upon the conditions and circumstances under which the $800,000 was paid. At the time of the original grant of 1820, including the country west of the one hundredth meridian of west longitude, the lands thus granted did belong at that time to the United States, and at that time title did pass to the Choctaws and Chickasaws. I also lay special stress upon the fact that a large part of the money paid in 1855 was for a relinquishment of the substantial rights of the Choctaws and Chickasaws in that large territory west of the one hundredth meridian of west longitude.

Now, a word as to the basis of the rights and interests of the Chickasaws. This vast territory was originally conveyed to the Choctaws in 1820. It was again described in the treaty of 1830; and under that treaty it is definitely provided that an actual patent will be issued to the land thus conveyed; and an actual patent signed by the President of the United States and duly sealed was issued in 1842 in the same way that you would have received title from the Government to your land in Arkansas or in Oklahoma.

Mr. HASTINGS. That is, to the "leased district"?

Mr. CORNISH. Yes, sir. That patent of March 24, 1842, consummated the treaty of 1820 and the treaty of 1830.

Mr. HASTINGS. It did not go west of the——

Mr. CORNISH. The patent repeats the exact description in the treaties of 1820 and 1830 and also contains the proviso in the treaty of 1830, "if in the limits of the United States."

Mr. HASTINGS. I understood you to say that in the treaty of 1820 they ceded that country to Spain?

Mr. CORNISH. The United States did cede to Spain, one month after the grant to the Choctaws, the country west of the one hundredth meridian of west longitude and the proviso in the treaty of 1830 and the patent of 1842 is a recognition of the claim of the Choctaws to those far western lands, which claim was adjusted and paid in the treaty of 1855. In later treaties the description is the same as in the treaty of 1820.

Mr. HASTINGS. In the 1830 treaty?

Mr. CORNISH. In the 1830 treaty, with the proviso, "if in the limits of the United States." This proviso was because of the pretty well established fact, at that time, that the United States had two outstanding conveyances to the same land—one to the Choctaws and one to the Kingdom of Spain. It cheerfully paid, in 1855, the sum of $800,000 to redeem its warranty to the Choctaws. That, however, is not material here because our present discussion is as to the lands falling between the one hundredth meridian of west longitude and the ninety-eighth meridian of west longitude, east and west, and the Canadian River on the north and the Red River on the south and known as the "leased district."

I have set forth with some persistence and earnestness the manner in which the sum $800,000 was paid to the Choctaws and Chickasaws for the purpose of showing that the Indians were possessed of valuable rights in these far western lands which the Choctaw Nation had actually acquired under the treaty of 1820.

I now return to the basis of the interest of the Chickasaws. The affairs of the Chickasaws in Mississippi were not closed up when the Choctaws acquired the western territory under the treaty of 1820.

Later on they entered into negotiations with the Choctaws and acquired an interest in their western lands under the treaty of January 17, 1837, under which the Chickasaws bought an equal and undivided interest in all the lands which the Choctaws owned west of the Mississippi; so that, according to the exact wording of the treaty, "each and every member of either tribe shall have an equal undivided interest in the whole."

Mr. NORTON. I did not hear the first part of your statement. Did you cover how the Choctaws came to own the prior settlement rights to this land before the Wichitas?

Mr. CORNISH. Yes, sir; I have dwelt upon that.

Mr. NORTON. I will read it in the record.

Mr. CORNISH. I have stated that the Choctaws acquired this land by a specific grant in the treaty of 1820.

Mr. NORTON. From whom?

Mr. CORNISH. From the United States.

Mr. NORTON. Where did the United States get it?

Mr. CORNISH. I say that the United States acquired it by the cession from France in the Louisiana Purchase.

Mr. NORTON. Yes; but that didn't wipe out any rights that the Wichitas had?

Mr. CORNISH. It did not. Upon that point I will dwell for a few minutes for the purpose of restating what I said in the opening of my remarks. The matter we are now presenting here is not presented as an original proposition. The Wichitas asked the right to go before the Court of Claims and have the Court of Claims decide the question of whether they were the aboriginal owners of the lands in question. Their bill has been referred to the Department of the Interior, and the Secretary of the Interior has returned it with the draft of a bill to be passed. The Wichitas are asking the right to go into the Court of Claims and litigate the question of their right to these lands. While I have no authority to speak for them and would not presume to do so, it is fairly clear, from the bill first introduced, that they claim rights superior to the United States and the Choctaws and Chickasaws. If they are permitted to submit their claim to the courts, we ask the reasonable privilege of having the claims of the Choctaws and Chickasaws passed on at the same time and in the same suit.

Mr. NORTON. We will be interested to know what the facts are upon which you claim rights superior to that of the Wichitas.

Mr. CORNISH. We do not say that our rights are superior to the Wichitas. That would be submitted to the court. What we do say to the committee, and what the Choctaws and the Chickasaws wish to say to the court, if they are allowed to intervene, is that they were the owners of these lands by solemn treaty and patent, and that at the time these particular lands were ceded in 1866 their compensation was so grossly inadequate that they are entitled to intervene in any suit that may involve these lands and have tested the question as to whether they are entitled to additional compensation. Just what the claim of the Wichitas is we do not know or presume to discuss, but we do feel that if the lands in which we claim to have substantial rights are to be involved in litigation we should be permitted to have an equal privilege with other claimants.

Mr. NORTON. You haven't any bill here?

Mr. CORNISH. Yes, sir. I stated this morning that we have a proposed amendment to the bill recommended on behalf of the Wichitas. We would add an amendment or paragraph to the bill drafted and recommended by the Secretary of the Interior to the effect that if the Wichitas are given the right to sue copies of their petition or petitions shall be served on the principal chief of the Choctaw Nation and on the governor of the Chickasaw Nation, and, if upon examination of that petition it shall appear that our rights are involved or affected the Choctaw and Chickasaw Nations may intervene by filing a petition, and then the court will have the right to determine whether the Choctaws and the Chickasaws were the owners of the lands in question prior to the treaty of April 28, 1866, and whether the consideration therein agreed to be paid was fair and reasonable; and if the consideration be found not to have been fair and reasonable, then judgment may be entered against the United States and in favor of the Choctaws and Chickasaws for the fair and reasonable value of such lands, less any sum or sums that shall have been heretofore paid by the United States for such lands or any part of them.

I now come to a consideration of the treaty of 1866. By article 3 of the treaty of 1866 the Choctaws and Chickasaws ceded the lands which they had leased under the treaty of 1855. Under the treaty of 1855 these lands were leased for certain definite and specific purposes. It is well known that between the dates of the treaty of 1855 and treaty of 1866 the Civil War had come and gone. The Choctaws and Chickasaws had taken the side of the Southern Confederacy. When the treaty of 1866 came to be made it was really a treaty of reconstruction; and the representatives of the Government announced that by reason of their having sided with the Southern Confederacy, the treaties were all stricken down; and it was a matter of reconstruction and a rearrangement of their relations with the Government was necessary. Under those conditions the treaty was negotiated; and I will now read article 3 of the treaty of 1866:

ART. 3. The Choctaws and Chickasaws, in consideration of the sum of $300,000, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district.

That is the land described upon this map, lying between the ninety-eighth and one hundredth meridians of west longitude and to which I have referred heretofore. Now, then, gentlemen, it has been held by the Supreme Court of the United States that the language contained in article 3 of this treaty of 1866 was a cession without condition. The consideration of $300,000 applied to that vast area of land of more than 7,000,000 acres would be less than 4 cents per acre. The Choctaws and Chickasaws have shown, in the Court of Claims and in the Supreme Court of the United States, that they had no thought of doing anything except to confirm the right of lease in the United States which had been granted in the treaty of 1855. But the effect of that language contained in the treaty of 1866 has been passed upon by the Supreme Court of the United States, and to that I shall make ample reference later on.

The question which presents itself here and the question to be presented to the court upon intervention is, Whether in view of the fact that the word "cede" was used in the treaty of 1866, the pitiful consideration of $300,000 was an act of fair dealing between the

great Government of the United States and its helpless and dependent wards. The strange conditions surrounding the transaction appear. The treaty provides further:

Provided, That the said sum shall be invested and held by the United States, at an interest not less than 5 per cent in trust for the said nations, until the legislatures of the Choctaw and Chickasaw Nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively; and also to give to such persons who were residents as aforesaid and their descendants 40 acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of $300,000 shall be paid to the Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of $100 per capita, as shall be sufficient to pay such persons of African descent before referred to as within 90 days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the said legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of $300,000 shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing within 90 days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of $300,000 or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

The treaty provides that the $300,000 which was agreed upon in that treaty was to be held in trust for two years until such time as the Choctaws and Chickasaws should make provision for their freedmen. They were required under that treaty to confer full citizenship upon their freedmen and to give to each 40 acres of land. There were about 10,000 of these freedmen at that time. In order to enjoy the consideration of $300,000 it was necessary to take their freedmen into full citizenship and give them 40 acres of land, or an aggregate of more than 400,000 acres of land. Truly there were many strings tied to this wonderful consideration of less than cents per acre for more than 7,000,000 acres of land, as valuable as any in the State of Oklahoma, and which the Government has since sold for many millions of dollars.

Now, the Choctaws and Chickasaws did not proceed under the requirements of the treaty, they did not proceed to the adoption of their freedmen. The Choctaws made a partial adoption in 1883, and the Chickasaws have never adopted their freedmen. Provision was contained in the Atoka agreement of 1898 to permit the freedmen to have allotments of 40 acres of land, but that land allotted to Chickasaw freedmen has been paid for by the Government of the United States in later litigation which has nothing to do with this controversy. After all is said of this transaction in Indian land, the best and the most that can be claimed on behalf of the United States for the cession or grant of more than 7,000,000 acres of land was the payment of $300,000; and in order to enjoy that $300,000 it was

necessary for the Choctaws and Chickasaws to confer citizenship upon 10,000 freedmen and to give them more than 400,000 acres of land.

It is well known, as a historical fact, the Choctaws and Chickasaws did not intend to cede that country. The Supreme Court has held, however, that the language of the treaty can not be modified by the court. The Supreme Court holds, in the case to which I will presently refer, that, under the act conferring jurisdiction, there is no other way for the court to hold, because the treaty uses the word "cede," and that to cede means to grant. The Supreme Court says that, under the act conferring jurisdiction, it could not hold otherwise; but at the same time that great court took the Choctaws and Chickasaws by the hand, even as a father would lead his children, and led them to the door of Congress for their relief; that the reasoning and decision of the court could not be otherwise; that, by reason of the language of the treaty of 1866, it could not avoid the conclusion it reached, but if any wrong was done, if the consideration was inadequate, the remedy was with the Congress and not with the court.

I now come to a consideration of the litigation that has heretofore grown out of the language of cession contained in the treaty of 1866. The case is The Choctaw and Chickasaw Nation *v.* The United States and the Wichita and Affiliated Bands of Indians. Now, then, you gentlemen will understand that this map contained in the decision of the Supreme Court of the United States, to which I shall refer, shows the entire area of land contained in the treaty of 1830 and patented in 1842. The Chickasaws purchased, for a valuable consideration, an interest in all this land, under the treaty of 1837, so that, for the purposes of the present subject you gentlemen do not know any difference between the Choctaws and the Chickasaws. The tribes own it in common, and their rights are equal, and each member of the tribe owns an equal undivided interest in the lands.

At the time the treaty of 1820 was negotiated the Choctaws owned this entire area. One month after the treaty was negotiated this part [indicating on the map] was ceded to Spain. By the treaty of 1855 this part [indicating] was relinquished by the Choctaws and Chickasaws, and this "leased district" is the part lying between the ninety-eighth and one hundredth meridians of west longitude, east and west, and between the Canadian River on the north and the Red River on the south. That is the area now under discussion, and was leased for the purpose of settling thereon certain roving bands of friendly Indians.

As to whether the Wichitas are or are not the aboriginal owners of this tract, which will enable them to establish a claim against the Government of the United States, or superior to the Government and the Choctaws and Chickasaws, I know nothing; and I want it distinctly understood (and I am stating this for the benefit of Mr. Norton, who was not here this morning) that we have nothing to say about the wisdom of the proposed bill. If Congress shall see fit to allow the Wichitas to go into court to establish their claim, we have no objection, and this bill meets our entire approval; but the very reasonable suggestion that if the Wichitas are allowed to bring suit to establish a claim to lands which we owned

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at one time, and for which we think the United States Government owes us additional compensation, we feel it only reasonable that we be allowed to go into court at the same time, and have our rights tested at the same time the other claim is passed upon.

Now, then, the Wichitas, in pursuance of the rights acquired by the Government of the United States under the treaty of 1855, were settled upon this land, along with other roving bands of friendly Indians. You will observe that the land set apart for the Wichitas is in the northeast part of the district. I desire to call that especially to the attention of the committee. The Government acquired the right to settle certain Indians upon this land, and the reservation of the Wichitas was marked out, and that is what is known as section 5 on the map in the northeast corner of the "leased district." There were no further developments until pressure was brought on the United States to open that reservation for settlement.

At this point I wish to say that the matter of this claim for additional compensation for the "leased district" lands is as well known in the Choctaw and Chickasaw Nations and lies almost as close to the heart of every man, woman, and child in those nations as their religion does. This is a claim that has always been known, and I shall show a little later that the Government of the United States has recognized the claim and bought and paid for a part of the area.

As stated, the Wichitas were settled in the northeast corner of the "leased district" and remained there until the opening of Oklahoma in 1889. There was pressure for the opening of other lands, and then the Government conceived the idea of opening the Wichita Reservation for settlement, which was done. The action of the Government was that the Wichitas be given allotments of 160 acres of land and that the balance be sold. Then the Choctaws and the Chickasaws arose and protested. They had always contended that the word "cede" in the treaty of 1866 was no more than a confirmation of the lease in the treaty of 1855. That claim had lain dormant throughout all those years; no particular persons had pressed it. No action was felt to be necessary until the Government proposed to open the northeast corner of the district for settlement; and by allotment in fee of a part of it and by a sale of the balance, to extinguish the rights of the Choctaws and Chickasaws. All this was proposed in the Wichita agreement of 1891, which was confirmed and ratified by act of Congress of March 2, 1895, and thus ratified it was provided that the Wichitas should be given 160 acres of land and that the balance be sold. The Choctaw and Chickasaw Indians said to the Government: "We have agreed that you are to occupy this land for the use of bands of friendly Indians, but if you are going to sell it and open it to settlement, then we propose to have our rights tested." They accordingly proposed that a provision be inserted in the act ratifying the treaty to test their rights to the "leased district."

If proper language had been used in the drafting of that clause conferring jurisdiction upon the courts, we would not be here to-day. The only proper question would have been settled years ago and the Government of the United States would have reached the conclusion that the consideration of $300,000, and which was hung up out of their reach, for more than 7,000,000 acres of land was not fair and reasonable, and the issue would long ago have been decided in favor of the Choctaws and Chickasaws and additional and reasonable com-

pensation paid and the money distributed and the matter would have been ended. But that act limited the courts to a consideration of the right, title, and interest of the Choctaws and Chickasaws. I read the provision of the act of March 2, 1895, as contained on pages 153 and 154 of the "Laws relating to the Five Civilized Tribes":

That as the Choctaw and Chickasaw Nations claim to have some right, title, and interest in and to the lands ceded by the foregoing agreement, which claim is controverted by the United States, jurisdiction be, and is hereby, conferred upon the Court of Claims to hear and determine the said claim of the Choctaws and Chickasaws and to render judgment thereon, it being the intention of this act to allow said Court of Claims jurisdiction,, so that the rights, legal and equitable, of the United States, and the Choctaw and Chickasaw Nations, and the Wichita and affiliated bands of Indians in the premises, shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney General is hereby directed to appear in behalf of the Government of the United States, and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States: *Provided*, That such appeal shall be taken within 60 days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: *And provided further*, That nothing in this act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw Nations have any claim to or interest in said lands or any part thereof.

That said action shall be presented in a single petition making the United States and the Wichita and affiliated bands of Indians parties defendant, and shall set forth all the facts upon which the said Choctaw and Chicksaw Nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorney of said nations upon information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *Provided*, That if said Choctaw and Chickasaw Nations do not bring their action within ninety days from the approval of this act their claim shall be forever barred: *And provided further*, That it shall be the duty of the Attorney General of the United States, within ten days after the filing of said petition, to give notice to the Wichitas and affiliated bands through the agents, delegates, attorneys, or other representatives of said bands that said bands are made defendants in said suit, the purposes of said suit, that they are required to make answer to said petition, and that Congress has, in accordance with article five of said agreement, adopted this method of determining their compensation, if any. And the answer of the Wichitas and affiliated bands shall state the facts on which they rely for compensation, and may be verified by their agents, delegates, attorneys, or other representatives upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary: *And provided also*, That said Wichitas and affiliated bands shall file their answer in said suit within sixty days after they shall receive from the Attorney General of the United States the notice herein provided for, unless further time is granted by the court, and in the event of failure to answer they may be barred from all claim in the premises aforesaid.

That said Court of Claims shall receive and consider as evidence in the suit everything which shall be deemed by the court necessary to aid it in determining the questions presented, and tending to shed light on the claim, rights, and equities of the parties litigant, and issue rules on any department of the Government therefor if necessary.

It is hereby further provided that said Choctaw and Chickasaw Nations may, at any time before the rendition of final judgment in said case by the Court of Claims, negotiate with the commissioners appointed under section sixteen of the act of Congress approved the third day of March, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and forty-five), or with any successor or successors in said commission for the settlement of the said matters involved in said suit, and move the suspension of such action until such negotiation shall be accepted or rejected by Congress; such settlement, however, to be made with the concurrence of the Secretary of the Interior and Attorney General of the United States.

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

"That as the Choctaw and Chickasaw Nations claim to have some right, title, and interest in and to the lands ceded," says the act. They did have title then and do not now claim it. The Supreme Court of the United States has held that the language in the treaty means a cession. Their claim, then and ever since, has not been that they had a right, title, and interest in the property, but that they have a claim for compensation, in addition to the $300,000 agreed to be paid under the treaty of 1866. I wish to further emphasize the language of the act as showing how the jurisdiction of the court was limited:

That said action shall be presented by a single petition, making the United States and the Wichita and affiliated bands of Indians parties defendant and shall set forth all the facts on which the said Choctaw and Chicksaw Nations claim title to said land.

They had no more title in 1895 than they now have. That is the jurisdictional act under which the famous test suit went to the Court of Claims and to the Supreme Court of the United States.

Mr. NORTON. They claim an equitable right—that they have an equitable claim against the Government, not a legal claim?

Mr. CORNISH. That is it exactly.

Mr. TILLMAN. And that is based upon the fact that they were never paid this $300,000 and upon the fact that it was not reasonable at all?

Mr. CORNISH. Yes, sir.

Mr. NORTON. In fact, the $300,000 was paid, wasn't it?

Mr. CORNISH. Later on, perhaps two-thirds of it was paid. The treaty of 1866 provided that they must not only adopt their freedmen and give them 40 acres of land, but that any persons of African descent who elected to leave and did actually leave the tribe must be given $100, and some of it was paid to the freedmen in that manner. But let us proceed upon the assumption that the $300,000 was paid many years after the treaty of 1866.

Mr. NORTON. If you proceed upon that assumption, was not that price, 4 cents an acre, a fair consideration for land of that character at that time?

Mr. CORNISH. I don't think so.

Mr. NORTON. I say that, having in mind that some of the most valuable lands that are in the Dakotas to-day were sold in large tracts for 18 cents per acre, lands that to-day are worth $200 per acre.

Mr. CORNISH. If that is true, and the court should hold that the compensation was fair and just, we would not get any money.

Mr. NORTON. That is a matter, it seems to me, that the committee ought to take into consideration before reporting this bill.

Mr. CORNISH. Yes, sir; that is true; but upon that point I feel that I could make a very strong argument that the $300,000, even if every dollar of it was paid, was so grossly inadequate that they would be entitled to additional compensation.

Mr. TILLMAN. Let me understand: Do you concede that any portion of it was paid?

Mr. CORNISH. I will concede that a portion of it was paid.

Mr. TILLMAN. Do you say that a portion of it was not paid?

Mr. CORNISH. Yes, sir. The records of the commission will show that a part of it was paid. But I am willing, for the purposes of this argument, not only to concede that it was paid in part, but that it was all paid. I think the records will show that about two-thirds of it

was paid later on, in 1883 and 1884. Some of it was paid. Some of the negroes took their money and went out and then came back. But for the purpose of the discussion here we will concede that most of it was paid, or all of it.

Now, as I have shown, when the Choctaws and Chickasaws saw that the title to this land was passing from the Government they became very much interested and wanted their claim tested, but their real claim then was the same as their claim now. The jurisdiction of the court was limited to the "right, title, and interest," and in filing their petition they were required to file and set forth all the facts upon which they claimed title. Under this act the litigation decided nothing and was barren of beneficial results.

Now, gentlemen, notwithstanding that fact, when the case reached the Court of Claims very voluminous records were made and much testimony was taken and the case given the most thorough consideration; and the opinion was rendered by Judge Howry. That was the action of the court, excepting that there was one dissenting opinion. All of the judges of the court concurred in the opinion of the court excepting Judge Peelle, who dissented. Notwithstanding the limited language of the act conferring jurisdiction; notwithstanding that fact, the Court of Claims rendered an opinion which extends over more than 150 pages.

Mr. HASTINGS. Cite it in the record, will you?

Mr. CORNISH. It appears on page 17 of volume 34 of the Reports of the Court of Claims.

Now, notwithstanding the language contained in the act conferring jurisdiction, which limited the Court of Claims (and the Supreme Court of the United States upon appeal) to the right, title, and interest of the Choctaws and Chickasaws, and that the Choctaws and Chickasaws were limited in their petitions to setting forth the facts upon which they relied for title to these lands, notwithstanding that act and that language under which the court was given jurisdiction, the Court of Claims, through Judge Howry, rendered an opinion of more than 150 pages, in which every contention and claim of the Choctaws and Chickasaws is sustained. The court held that the language contained in the treaty of 1866 was no more and no less than a lease paralleling, in all respects, the lease of 1855, made for practically the same purposes and under practically the same circumstances and conditions.

I will pause here for the purpose of impressing one historical fact upon the committee, because I consider it very important. Before the treaty of 1866 was negotiated at Washington a preliminary treaty was negotiated at Fort Smith. That was the treaty of 1865 and is what is called the unsigned treaty. It was sent along to Washington and became a part of the records of the Indian Office and is a part of the records of the Indian Office to-day; and that preliminary, unsigned treaty of 1866, which is the basis of the treaty of 1866, and which can be made to show the understanding of the Indians and what they were doing, contains no cession of this land, but does contain a clause amplifying the lease provision contained in the treaty of 1855. Now, here is how that was: The treaty of 1855 gave the Government of the United States, for a part of the consideration, the right to settle upon the "leased district" bands of certain roving

friendly Indians, but it was not to settle upon that land certain other Indians thought to be unfriendly and warlike. In other words, the Choctaws and Chickasaws said, "We will agree that you may settle sertain Indians there, but as to certain other Indians known to be warlike Indians, you shall not settle them there." That was in 1855. The lease provision in the treaty of 1855 is amplified in the preliminary treaty of 1866 to this extent, that the Government of the United States may settle there any Indians which may be advantageous to the Government of the United States. That is of record in this decision, and is of record in the Indian Office. A year later the treaty of 1866 was made, not at Fort Smith, but at Washington, and the word "cede" was used.

Now, gentlemen, I am, as I think, too experienced a lawyer in these affairs to stand here and argue as to the meaning of the language contained in the treaty of 1866 in the face of the decision of the Supreme Court of the United States. I am not seeking to reopen that case, because the Supreme Court of the United States has settled it. I am suggesting that the real issue be submitted now, as it should have been submitted in the act of 1895.

Mr. NORTON. Wouldn't it appear, after these changes were made, that the differences between these two treaties had been abated, and that it must now be decided in favor of the ordinary interpretation that is to be given to a later treaty?

Mr. CORNISH. Of course, that might be suggested, but our belief is that the Indians—and that has been shown by the testimony—never felt that they were ceding their country. We do not know just how the word "cede" was used, but it has been established by overwhelming testimony that they were not doing anything but amplifying the lease——

Mr. NORTON. What was the testimony of those that made the treaty on the part of the Government?

Mr. CORNISH. I don't think there was any testimony offered as to that.

Mr. HASTINGS. They relied on the language of the treaty?

Mr. CORNISH. They relied on the language of the treaty, I think. I am going to come to——

Mr. HASTINGS. Was there any difference in the amount of consideration in the treaty of 1855 and in the treaty of 1866? In other words, was there any change in the consideration?

Mr. CORNISH. I don't think there was any difference. I do state definitely and positively that there was a paragraph in the unsigned treaty of 1865 which amplifies and gives the Government rights which were not in the treaty of 1855, that they may settle any Indians upon that land suitable to the purposes of the Government.

Now, the Supreme Court of the United States has settled that question in the case cited. Nothwithstanding that language—act of jurisdiction—the Court of Claims found unqualifiedly for the Choctaws and Chickasaws; there was one dissenting opinion by Judge Peelle. Judge Peelle, dissenting, reached practically the same conclusion that the Supreme Court reached later on. I will read the language:

"It may be that the claimants were wronged," says Judge Peelle, "by the cession of the land under the treaty of 1866, but, if so, their remedy is with the political departments of the Government, and not with the judiciary, at

least not until the Congress, by definite and unmistakable language, shall authorize the court to enter that field."

Now, under this act the court could not enter any field except title. The act should have been drawn so as to allow the courts to enter the field of adequate and fair compensation. The Court of Claims held in their favor, but Judge Peelle said, what the Supreme Court said later, that they were limited to title, and their conclusion could not have been otherwise.

Now, so much for the decision of the Court of Claims.

Mr. NORTON. Did the Court of Claims fix the amount that they should be allowed?

Mr. CORNISH. No; I will read just what it found. I am reading now from pages 148 and 149, of volume 34, of the Court of Claims reports:

We hold the cession in the treaty of 1866 was not intended to divest the Choctaws and Chickasaws of all their interest in the leased district, but was intended to enlarge the scope of the ninth article of the treaty of 1855. Hence, a trust must be implied in favor of the claimants under the terms of the grant.

And when, after refusing to ratify the full treaty, Congress appropriated sums sufficient to cover the amounts to be paid under article 46 of the agreement, and the Choctaws and Chickasaws took the money, the character of the transaction could not be changed by their acceptance of the consideration. If the cession was not absolute, but one in trust, the payments could not operate as an estoppel. If any part of the consideration, provided for in article 3, was received as an advance not in payment for the land, but for another purpose, whether for the benefit of freedom or for securing a Government into which large numbers of other Indians were to come and to share, the Choctaws and Chickasaws can not be held to be estopped by receiving the consideration.

And, finally, if they received the consideration upon the same understanding that every administrative officer of the Government had proclaimed as to the character of the transaction, their act can not be held to estop them from asserting its true character. The joint resolution of the Fifty-second Congress establishing the trust in the lands allotted to the Cheyenne and Arapahoes is a recognition, as far as that resolution can affect this case, that no payment had ever been made for any part of the leased district. The act of 1895 ratifying the agreement of 1891 with the defendant Indians is a violation of the trust. The Government had the right to settle Indians permanently on the lands mentioned in the agreement, but not to divert the proceeds of the sale of the lands from the Choctaw and Chickasaw Nations to other Indians. We can not say that the allotment of 160 acres to each of the defendant Indians is unreasonable in the establishment of Wichitas and the affiliated bands as permanent settlers, but beyond this the agreement violates the trust. A decree will therefore be entered in conformity with this opinion, following as far as the same may be applicable the form of the decree in the case of The Western Cherokee Indians (27 C. Cls. R., 1) and Journeycake *v.* The Cherokee Nation (28 C. Cls. R., 281; 30 ibid., 172).

Then the case went, on appeal, to the Supreme Court of the United States, and the Supreme Court of the United States held, just as Judge Peelle held, in dissenting in the Court of Claims; and I read from pages 532, 533, 534, 535, 536, 538, and 538, volume 179, of the United States Supreme Court reports:

But in no case has it been adjudged that the courts could by mere interpretation or in deference to its views as to what was right under all the circumstances incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded, because, in the opinion of the court, that meaning may in a particular transaction work what it would regard as injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the Government. Congress did not intend, when passing the act under which this

litigation was inaugurated, to invest the Court of Claims or this court with authority to determine whether the United States had, in its treaty with the Indians, violated the principles of fair dealing.

The jurisdictional act should have been drawn, as we are now proposing, to settle the question of whether the compensation was just or unjust. The Supreme Court said that the act did not permit it to enter that field, and therefore it did not do it.

That power belongs by the Constitution to another department of the Government, and to alter, amend, or add to any treaty by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power and not an exercise of judicial functions. It would be to make, and not to construe a treaty. Neither can this court supply a casus omissus in a treaty, any more than in a law. We are to find out the intention of the parties by just rules of interpretation applied to the subject-matter; and having found that, our duty is to follow it as far as it goes, and to stop where that stops—whatever may be the imperfections or difficulties which it leaves behind. * * * In the next place, this court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. We are not at liberty to dispense with any of the conditions or requirements of the treaty, or to take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice.

In the jurisdictional act of March 2, 1895 (28 Stat., 876, 898, ch. 188), Congress authorized suit to be brought in the Court of Claims, so that the rights, legal and equitable, of the United States and of the Choctaw and Chickasaw Nations, and the Wichita and Affiliated Bands of Indians in the premises "shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party"—taking care, however, to add that nothing in the act "shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw Nations have any claim to or interest in said lands or any part thereof."

The language at the end of this excerpt refers to the payment by the United States for the Cheyenne and Arapahoe Reservation, to which I shall refer later.

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

I read further from the opinion of the court:

It is said in the present case that the interpretation of the treaty in accordance with the views of the United States would put the Government in the attitude of having acquired lands from the Indians at a price far below their real value. Even if this were true it would not authorize the court in determining the legal rights of the parties to proceed otherwise than according to the established principles of interpretation, and out of a supposed wrong to one party evolve a construction not consistent with the clear import of the words of the treaty. If the treaty of 1866, according to its tenor and obvious import, did injustice to the Choctaws and Chickasaws, the remedy is with the

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

And one other:

While the dependent character of the Indians makes it the duty of the court to closely scrutinize the provisions of the treaty and to interpret them "in the light of the larger reason and the superior justice that constitute the spirit of the law of nations" (Choctaw Nation *v.* United States, 119 U. S., 1, 28), the court must take care, when using its power to ascertain the intention of the parties, not to disregard the obvious import of the words employed, and thereby, in effect, determine questions of mere governmental policy. We may repeat that if a wrong was done to the Indians by the treaty of 1866, interpreted as we have indicated—and we are not to be understood as expressing the opinion that they were not under all the circumstances fairly dealt with—the wrong can be repaired by that branch of the Government having full power over the subject.

Now, gentlemen, I believe that covers the suit that grew out of the ratification of the Wichita treaty of 1891, which was ratified by the act of March 2, 1895, and under which the Government sought to fully and finally dispose of the title to this property in which the Choctaws and Chickasaws claim an interest.

Mr. NORTON. Your proposition, then, is simply this, that the Choctaws and Chickasaws have gone to the Court of Claims and have gone to the Supreme Court on one theory to recover on this claim, and have been whipped on that theory, and now you think you have a right to go to the Court of Claims and to the Supreme Court on the theory that you are presenting to us?

Mr. CORNISH. Yes, sir; I might agree largely to that statement. They did go to the Court of Claims and to the Supreme Court on the bare question of title. It was held that they had no title. Their case was then and is now one of equitable compensation.

Mr. TILLMAN. Mr. Cornish, on that question. We recognize the principle of law that if a man does not put in all his claims when he goes into court he is estopped. If there is any question that is not litigated that could be litigated, it is the duty of the parties to see that it is done, and if it is not done the doctrine of estoppal applies.

Mr. CORNISH. Yes, sir; that is a doctrine of the law that is well known, and if that doctrine should be applied to these Indians, the dependent and helpless wards of the Government, we would have nothing to stand on except the Government's sense of fairness and justice.

Mr. HASTINGS. But you did not have any right to question the title?

Mr. CORNISH. No. The question is, Did the Government deal fairly with its dependent wards? That is the question. The question then was and now is, whether it was a fair and reasonable consideration. That is all there is to it now, and that is all there was to it then.

Now, gentlemen, I wish to call attention to the disposition of the Cheyenne and Arapahoe reservation. The Cheyennes and Arapahoes were settled on the northwest corner of this reservation, a reservation of approximately 2,000,000 acres. When old Oklahoma was opened, the people being land hungry, pressed for the opening of the Wichita

country, and this litigation resulted. And then there was pressure for the opening of other land, and in 1891 the Cheyenne and Arapahoe land was opened by Executive order. The Choctaws and Chickasaws submitted their claim and the United States Government passed an act appropriating them $2,900,000 for that land, and that money was distributed among the Choctaws and Chickasaws. That is the strongest thing I am going to say to-day. That is a direct recognition of their claim for fair compensation for the "leased district."

Mr. NORTON. What would there be inconsistent in the Government doing that and still maintaining the Choctaws and Chickasaws had no further right to compensation after the treaty of 1866, under which they are to receive $300,000 as compensation for that 7,000,000 acres of land?

Mr. CORNISH. I wish to understand your position fully, in order that I may fairly reply to it. Understand that the Cheyenne and Arapahoe reservation was included in the "leased district."

Mr. NORTON. Yes; and the Arapahoes and Cheyennes were settled on that land after the Government had acquired the land under the treaty of 1866?

Mr. CORNISH. That is right.

Mr. NORTON. What would be inconsistent in the Government paying the Arapahoes $2,900,000 for their land——

Mr. CORNISH. You misunderstand me. The Government did not pay the Cheyennes and Arapahoes; it paid the Choctaws and the Chickasaws.

Mr. NORTON. I misunderstood you.

Mr. CORNISH. The committee will understand that the Choctaws and Chickasaws immediately became active when the Government proposed to open up another section of the "leased district"; they immediately asserted their claim, and the Government paid them $2,900,000.

I read now from the act of March 3, 1891, found on page 78 of The Laws Relating to the Five Civilized Tribes. This is in the Indian appropriation act of March 3, 1891.

And the sum of $2,991,450 be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to pay the Choctaw and Chickasaw Nations of Indians for all the right, title, interest, and claim which said nations of Indians may have in, and to certain lands now occupied by, the Cheyenne and Arapahoe Indians under Executive order; said lands lying south of the Canadian River and now occupied by the said Cheyenne and Arapahoe Indians; said lands have been ceded in trust by article three of the treaty between the United States and the Choctaw and Chickasaw Nations of Indians, which was concluded April twenty-eighth, eighteen hundred and sixty-six, and proclaimed on the tenth day of August of the same year, and whereof there remains, after deducting allotments as provided by said agreement, a residue ascertained by survey to contain two million three hundred and ninety-three thousand one hundred and sixty acres; three-fourths of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of the said Choctaw Nation to receive the same at such time and in such sums as directed and required by the legislative authority of said Choctaw Nation, and one-fourth of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Chickasaw Nation to receive the same at such time and in such sums as directed and required by the legislative authority of said Chickasaw Nation; this appropriation to be immediately available and to become operative upon the execution by the duly appointed delegates of said respective nations specially authorized thereto by law of releases and conveyances to the United States of all the right, title, interest, and claim of said respective nations of Indians in and to said land (not including Grier County, which is now in dispute) in manner and form satisfactory to the President of the United States; and said releases and conveyances when fully executed and delivered shall operate to extinguish all claim of every kind and character of said Choctaw and Chickasaw Nations of Indians in and to the tract of country to which said releases and conveyances shall apply.

The sum of almost three millions of dollars was appropriated "to pay the Choctaw and Chickasaw Nations of Indians for all the right, title, interest, and claim which said Nations of Indians may have in and to certain lands," says Congress. I do not mean to say to you gentlemen that this is absolutely binding on the Government of the United States. I just offer it as evidence of the fact that there are times when our great Government is willing to correct acts of injustice to its helpless and dependent wards.

"Said lands," says Congress, "have been ceded in trust by article 3 of the treaty between the United States and said Choctaw and Chickasaw Nations of Indians, which was concluded April 28, 1866." "Have been ceded in trust," says Congress. The Supreme Court held otherwise. The Supreme Court held that it had not been ceded in trust, but here is an expression, in the Indian Appropriation Act of March 3, 1891, in which Congress says that it has been ceded in trust; and, irrespective of the strict and technical meaning of legal terms, Congress was willing to go to the heart of the real question and pay a fair price for the land which the Government had acquired for practically nothing. The land occupied by the Wichitas, and the Cheyennes, and Arapahoes is all included in the same original grant and is identical; and the action which Congress took in paying for the Cheyenne and Arapahoe Reservation would apply to the entire "leased district."

Mr. NORTON. They must have had a pretty strong lobby in Congress.

Mr. CORNISH. They may have had. I am not seeking to have you gentlemen reach any conclusion or make any ruling, but I am endeavoring to show you that this is a claim in which the Choctaws and Chickasaws have always believed; and if these lands or the proceeds thereof are to be made the subject of litigation, the claims of the Choctaws and Chickasaws possess sufficient merit to justify them in asking that they be permitted to intervene and be heard.

Mr. HASTINGS. How much land is ceded under that?

Mr. CORNISH. A little less than 2,000,000 acres.

Mr. HASTINGS. So that Congress appropriated——

Mr. CORNISH. $1.25 an acre. The Government appropriated every dollar and paid it.

Mr. NORTON. Congress made that appropriation without sending it to the Court of Claims or having it passed upon by the Supreme Court?

Mr. CORNISH. Yes, sir. I want to make this clear, that I do not stand here and argue that the word "cede" does not mean what the Supreme Court said it meant, because none of us would do that. But I do say that the Supreme Court, in page after page of its opinion, which I have read to you, did state that it reached that conclusion because it was not possible to reach any other conclusion because of the limited language of the act under which it was given jurisdiction of the cause, and the court took these Indians by the

hand and led them to the door of Congress and pointed them to the power which, and which alone, had the power to correct the wrong.

Mr. NORTON. Congress has control of the Treasury and can give you the whole thing if they desire.

Mr. CORNISH. Yes, sir. That covers the matter with reference to the Cheyennes and Arapahoes.

Now, I believe I have covered the subject as fully and completely as I can at this time. I wished to bring to you a comprehensive statement of this matter, in order that, if you felt, in justice and fairness, you should permit the Wichitas to litigate their claims, that you permit us to litigate ours at the same time. I am not asking you to hold that the word "cede" does not mean cede, against the holding and decision of the Supreme Court of the United States. And I do not ask you to decide as to the adequacy of the $300,000, or as to whether that was fair and reasonable. But bear in mind that the Choctows and Chickasaws are not here pressing this matter, as an original proposition, at this time. We wish the committee to fully understand that.

We discovered this bill here a week ago. The Choctaws and Chickasaws have no regular attorney here at this time. Their principal chief is now a major in the National Army at Fort Oglethorpe, Ga. The governor of the Chickasaws is here. When they read in the first paragraph of that bill that the Wichitas were seeking compensation for all the lands within the "leased district" they became actively interested, in the same way that they probably became interested and active when the Government sought to lay hands on the Wichita Reservation in 1895; and so the principal chief of the Choctaw Nation, as I stated in your absence this morning, Mr. Norton, knowing of my interest in Choctaw and Chickasaw matters, and knowing of my knowledge of their affairs, by reason of my long years of service with them, wired me to make a special appearance before this subcommittee, in conjunction with Governor Johnston of the Chickasaw Nation, adding, in his telegram, that I should make that appearance if it was agreeable to the chairman of the committee and to the Commissioner of Indian Affairs. That telegram was submitted to Mr. Carter, chairman of the Committee on Indian Affairs, and by him to the Commissioner of Indian Affairs, and they said they had no objection, and I am sure it is agreeable to you gentlemen, and it is under those circumstances that I am appearing here to present these views upon this great question.

Now, just one other thought: I wish to call your attention to one condition existing in the State of Oklahoma. Gentlemen, if I buy, to-day, in Oklahoma, 40 acres of land from a full-blooded Indian and pay him $100 for that land and take from him a deed that is regular upon its face, properly drawn, and properly acknowledged, and if that transaction is open and aboveboard and in the full light of the Lord's sunshine, without any taint or suspicion of unfair dealing, there is no way in the world for me to acquire title to that 40 acres of land (that is, from a restricted Indian, and those Indians were all restricted at that time) until I have complied with the laws of the Government of the United States itself and have taken that deed to the judge of the probate court and have convinced the judge

of the probate court that I have paid a fair and reasonable compensation for that land. That is the law at the present time; that is the law which the Government of the United States has passed, and wisely, for the protection of the lands of the restricted Indians in Oklahoma and elsewhere. Now, if we were before a court upon the claim under discussion I would ask the Government of the United States to deal with itself just as it deals with the purchasers of land in the State of Oklahoma from the Indians.

If you gentlemen feel that the $300,000 agreed to be paid was a fair consideration, and you are willing to take the responsibility of saying that the payment, or the agreement to pay, under the circumstances, $300,000 for that magnificent estate of more than 7,000,000 acres, worth, I will say, upon an average of $50 an acre to-day; if you are willing to say that less than 4 cents an acre, under the conditions and circumstances under which that treaty was entered into, was a fair consideration, and that it is so very fair and so very just that we have not the right to have testimony taken upon that point, then we would not have much of a case before you. But I do not believe you will reach that conclusion. I do believe that if you reach the conclusion that the department's bill is to be reported by you and reported by a full committee and passed by the House and becomes a law, I do believe you will hold that there is sufficient merit and sufficient reason and sufficient justice in the contention of the Choctaws and Chickasaws, in connection with this great matter, that would entitle them, in all fairness, to go along into court, if the other interests are going into court, and have their rights passed on at the same time.

Now then, gentlemen, I submit myself to the committee for any question that may occur to any member of the committee. I do not believe I have anything further to offer, unless some member of the committee has something to ask me.

Mr. TILLMAN. I guess that is all, Mr. Cornish, and the committee thanks you for your statement.

Gov. Douglass H. Johnston, of the Chickasaw Nation, was present and was asked by the committee if he desired to submit further proof or make any statement, and he stated that Mr. Cornish had submitted everything and he did not care to offer anything further.

(And thereupon, at 3 o'clock and 40 minutes, the committee adjourned.)