

MEMORANDUM OF AUTHORITIES, in support of the amendment intended to be proposed by Mr. Owen, of Oklahoma, to the Indian Appropriation bill, H. R. 12579, which passed the House of Representatives on February 20th, 1914, and is now pending in the Senate.

It is contended by the Creek Tribe of Indians that Congress should appropriate such sum of money as will be necessary to equalize all allotments in the Creek nation upon a basis of \$1040., being the standard value of allotments in the Creek Nation as fixed by Governmental appraisement. In presenting this contention of the citizens of the Creek Nation I shall present the matter with as much brevity as the subject will admit. In order to thoroughly understand the contention made, as above stated, it is necessary to call attention to the early treaties entered into by the Government of the United States with the several tribes of Indians constituting the five civilized tribes of Oklahoma. Reviewing the early treaties between the United States and the several tribes mentioned it will be observed that a valuable consideration passed to the United States for every foot of land granted to either of the tribes, which consideration consisted of large holdings of land in the various States where the several tribes were domiciled.

It appears that on the 24th day of April, 1802, the United States entered into a compact with the State of Georgia, by which it was agreed that the Creek Indians who were then domiciled in the State of Georgia, were to be removed from said

State. In order that this compact might be complied with the United States on the 12th day of February, 1825 (7th Stat. 237), entered into a treaty with the Creek Nation of Indians by the terms of which the Creek tribe of Indians ceded to the United States all lands owned and occupied by them in the State of Georgia for lands West of the Mississippi, to be selected by a committee for that purpose. This committee was appointed and selected the territory now embraced in the Creek Nation in the State of Oklahoma. Various other treaties were entered into at different times carrying into effect the treaty referred to, and finally on the 14th day of February, 1833, at Fort Gibson, (7th Stat. 417), articles of agreement were concluded between commissioners on the part of the United States and the Creek Nation of Indians by the terms of which, in consideration of the grants and cessions of land by the Creeks in the State of Georgia, the United States agreed to convey in fee simple the land selected by them in what was then the Indian Territory. Following the language of the various treaties with the several tribes of Indians composing the five civilized tribes, one is impressed with the idea that it was the cherished hope of the Indians that they would not be molested or disturbed in their quiet enjoyment of the land selected by them, and that they might be permitted to hold same in common.

Prior to August 7th, 1856, the boundaries were unsettled between the Creek and Seminole Indians, and on the day last mentioned a treaty was entered into between the United States and the Creek tribe of Indians (11th Stat. 699), in which the

Creeks ceded to the Seminoles certain bounded territory in consideration of which the United States agreed as follows:

"The United States do hereby solemnly agree and bind themselves that no State or Territory shall ever pass laws for the Government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement, shall ever be embraced or included within, or annexed to any territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same."

Having thus settled all of the differences between the Creek tribe of Indians and the United States, and having been guaranteed the quiet and peaceful enjoyment of all the lands embraced in the Territory conveyed to them by the United States, no further treaties were made until after the Civil War.

Right granted Freedmen to Share in the Lands and  
Tribal Funds of the Five Civilized Tribes.

S E M I N O L E S.

Article 3 of the Seminole Treaty of March 21, 1906 (14 Stat. L., 755), Volume II, Kappler Treaties, page 911, provides that "In compliance with the desire of the United States to locate other Indians and freedmen thereon the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek Nation " under the Treaty of August 7, 1856.

As to why the United States wished to locate freedmen thereon, you will find reasons therefor assigned by Judge Parker in his decision of the United States v. Payne (2 McCrary U. S. Circ. Rep., 8th Circ., 299)

Article 2 of the same treaty provides that:

"Inasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil right, :::: these persons and their descendants :::: shall have and enjoy all the rights of native citizens."

CHOCTAWS AND CHICKASAWS.

Article 3 of the Choctaw and Chickasaw Treaty of April 28, 1866 (14 Stat., 769) Volume II, Kappler Treaties, 919, after providing for the cession of the leased district to the United States in consideration of \$300,000, to be invested and held by the United States in trust "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 (September 10, 1865) and their descendants, heretofore held in slavery among said nations all the rights, privileges and immunities, including the right of suffrage, of citizens of said Nations, except in the annuities, moneys, and public domain claimed by or belonging to, said Nations, respectively, and also to give to such persons who were residents as aforesaid and their descendants, forty acres each of the land of said Nations on the same terms as the Choctaws and Chickasaws."

#### C H E R O K E E S .

Article 9 of the Cherokee Treaty of July 19, 1866, (14 Stat., 799), Volume II Kappler Treaties, 944, provides:

"that all freedmen who have been liberated by voluntary act of their former owners, or by law, as well as all colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months (prior to February 11, 1867), and their descendants, shall have all the rights of native Cherokees."

It will be remembered that at the outbreak of the Civil War Gen. Albert Pike, went over into the Indian Territory and induced a large majority of the Creek Indians to join the Southern Confederacy. After the close of the Civil War, without any consideration passing to the Creek Indians, and as a penalty for their having joined the Southern Confederacy--as declared in the Preamble--certain agents of the Government caused the Creek Indians to enter into the Creek treaty of June 14th, 1866, (14th Stat. 785) Vol. 2, Kappler Treaties 931.

C R E E K S .

The Creek Treaty of June 14, 1866, (14 Stat., 785)  
Vol. II, Kappler Treaties, 931, After reciting in the preamble,  
of said Treaty that:

"the Creeks made a treaty with the so-called Confederate States on the tenth of July, one thousand eight hundred and sixty-one whereby they ignored their allegiance to the United States and unsettled the treaty relations existing between the Creeks and the United States, and did so render themselves liable to forfeit to the United States all benefits and advantages enjoyed by them in lands, annuities, protection, and immunities, including their lands and other property held by grant or gift from the United States; and whereas in view of said liabilities the United States required of the Creeks a portion of their land wherein to settle other Indians."

And it is noted that in this preamble of the Creek Treaty there is omitted therefrom the phraseology used in Article 3 of the Seminole Treaty of March 21, 1866. -

"to locate other Indians and freedmen thereon."

But in article 2 of the Creek Treaty of June 14, 1866, it is provided that:

Inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return in one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said Nation to settle within the limits of the jurisdiction of the Creek Nation as citizens thereof, shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds"

thus putting freedmen on a parity with blood citizens, having an equal interest in both the land and tribal funds, using stronger language in recognition of freedmen's equal participation with blood citizens in property rights of the Nation than

any one other of the Five Civilized Tribes. An attempt was made in the Cherokee Nation to exclude freedmen from equal participation with blood citizens in the distribution of tribal funds, and both the Court of Claims and the Supreme Court of the United States sustained the contention of the freedmen that they were to be treated on an absolute equality with blood citizens. See case of Whitmire Trustee vs. Cherokee Nation (30 Ct. Cl., 138, 152, 180), also decision of the Court of Claims of February 3, 1896, not reported, and the decision of the Supreme Court of the United States in the same case, dated January 29, 1912.

Section 21 of the Act of June 28, 1898 (30 Stat. L., 495) commonly called the Curtis Act, found on page 20 of Laws, Etc., of the Five Civilized Tribes, provides:

"The roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March fourteenth, eighteen hundred and sixty-seven, is hereby confirmed, and said Commission is directed to enroll all persons now living whose names are found on said rolls and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation."

The original Creek Agreement with the United States, negotiated March 8, 1900, approved March 1, 1901, ratified by the Creek Council May 25, 1901, and proclaimed by the President June 25, 1901, in Section 2 thereof, after providing for the appraisal of all lands belonging to the Creek tribe of Indians in the Indian Territory at their true value, excluding only lawful improvements on lands in actual cultivation, provided

further in Section 3 thereof for an allotment of all tribal lands among the citizens of the tribe so as to give each one an equal share of the whole, in value as nearly as may be, in manner as follows:

"One hundred and sixty acres of land valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values."

This original Creek Agreement remained in force about one year, when it was superseded by the Supplemental Creek Agreement approved June 30, 1902 (32 Stat. L., 500), which was ratified by the Creek National Council on July 26, 1902, and proclaimed by the President on August 8, 1902, whereof Section 2 changed the method of appraisement of the lands at their true value, as provided in Section 2 of the original agreement, which was amended to read that all lands "shall be appraised at not to exceed six dollars and fifty cents per acre, excluding only lawful improvements on lands in actual cultivation."

Section 3 of the Supplemental Agreement amended paragraph 2 of Section 3 of the original agreement to read:

"If any citizen select lands, the appraised value of which is \$6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment."

Under the provision that precluded the appraisal of lands at "not to exceed \$6.50 per acre", 158 wiser ones of the Creek citizens procured allotments of 160 acres of land in excess of the value of \$1040, such excess being \$1,600.69. .



850 received completed allotments of 160 acres of the value of \$1040.

Had there been an equalization of Creek allotments at the close of the enrollment of citizens, both blood and freedmen, and including children born prior to May 25, 1901, living on the latter date, under the original Creek Agreement, approved March 1/ 1901, and the Supplemental Agreement approved June 30, 1902, there would have been sufficient Creek tribal funds to equalize all allotments on the basis of \$1040. But before the work was completed, believing as did many Creek tribal officials and citizens that there was a surplus of unallotted Creek tribal lands, they petitioned Congress to add children born since May 25, 1901, which was the limit fixed under the original and supplemental Creek agreements for the enrollment of children, and Congress answering their importunities passed the Act of Congress of March 3, 1905, which provided for the enrollment of children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on said latter date (Page 87, laws, Etc.), and the latter Act of Congress approved April 26, 1906 (34 Stat., 137), Section 2 whereof provided for the enrollment of additional children who were minors living March 4, 1906, whose parents have been enrolled as members of the Creek tribe.

Under the original and supplemental Creek agreements of March 1, 1901, and June 30, 1902, there were enrolled, including citizens by blood, freedmen and children living May 25, 1901, a total number of 15,790 persons, who for the purpose of

this bill may be termed "agreement Indians", and who are entitled, if any, to a standard allotment of the value of \$1040.

Under the later act of March 3, 1905, (33 Stat., 1048), page 87 of Laws, Decisions, Etc. 2099 minor children, both blood and freedmen, were enrolled, and under the still later act of April 26, 1906, (34 Stat. L/, 137) 821 minor children, both blood and freedmen, were enrolled, making a total enrollment of new-born children enrolled under the two above acts, of 2920 minor children or "Newborns", of whom 1135 were new-born children have been allotted 160 acres of land irrespective of value.

The 15,790 persons enrolled under the original and supplemental agreements have also been allotted 160 acres of land irrespective of value. There being insufficient Creek tribal funds on deposit in the United States Treasury, including moneys now on deposit in State and National banks of Oklahoma, pursuant to Act of March 3, 1911 (36 Stat., 1058-70), the question arises: Who shall wait, the original Creek Agreement citizens or the New-born children enrolled under the latter acts of Congress, which were never approved by the Creek tribe, although tribal officers sought their enactment by Congress. It has been estimated that to equalize all Creek allotments, including the new-born children it will take \$6,913,932.95, and as there is now on deposit in the United States Treasury \$2,784,797.93, and in the State and National banks of Oklahoma there are on deposit \$1,035,350.00, making a total of Creek tribal funds of \$3,865,054.78, which would create a deficiency of \$3,028,878.17, for which deficiency the Creek Nation

claims the United State is liable to make good, because the Creek citizens were not apprised of the exact number of enrolled citizens and the amount of tribal funds on deposit, and the amount of unallotted tribal lands at the time they urged the enrollment of the new-born children. It is admitted that if the Creek officials had known the exact status of Creek tribal affairs, they would not have asked for the enrollment of the new-born children, and there would have been sufficient funds on hand to equalize allotments of all persons enrolled under the original and supplemental agreements. Inasmuch as it will require a judicial determination as to whether the United States is liable for this deficiency, and guaranteed to each and every enrolled citizen an allotment of the standard value of \$1040, it is meet and proper that the new-born children should be omitted from present participation in the equalization of Creek allotments until the question of the liability of the United States to make good the deficiency is determined by a court of final resort.

By review of these figures you can readily see how manifestly unfair it would be to the citizens of the Creek Nation to refuse to redeem the promise the Government made to the individual members of the Creek Tribe of Indians. It would simply mean that the more intelligent members of the Creek Indians who are not greatly in need of the protection of the Government, and who on account of their intelligence and business accumin, have selected allotments of the standard value of \$1040, would be permitted to retain all of such allotments,

and that the weak and dependent members of the tribe, who, on account of their lack of business experience and good judgment, and who really need the protection of the Government, who have received allotments at less than the standard value of \$1040--and many of such class of Indians have received allotments of little or no value--would not be afforded the protection they deserve, and which has been solemnly granted to them.

In concluding, I desire to call attention to the fact that Congress in the Indian Appropriation Act of March 3rd, 1909, (35 Stat. L. 781,805) proposed to reduce the standard value of the Creek allotment from \$1040, as fixed in the agreement, to \$800, and settle with the Creek Indians upon the latter basis, which settlement it was proposed they should expect, in lieu of all claims against the Government, this proposition was submitted to the Creek Council for their action and on the 22nd day of April, 1909, the said Council of Creek Nation almost unanimously rejected the proposal.

Respectfully submitted,

National Attorney for the Creek Nation.