

UNRATIFIED TREATY WITH THE CREEKS, 1868

Edited by
Berlin B. Chapman.

The Creek treaty of September 2, 1868 has been an elusive document. Kappler omits it. The "Treaty File" and the "Record of Treaties" are the places where attendants in the Office of Indian Affairs look for unratified treaties. The Creek treaty is in neither of these places. Mr. Paul M. Niebell, Attorney of Record for the Creeks and Seminoles, found the treaty in a drawer of miscellaneous papers in the Office of Indian Affairs. For a decade Mr. Niebell has worked in the files of that office, and few persons know the files as he does. Mr. George McElroy, Secretary to Senator Josh Lee, secured a photostatic copy of the treaty that I might edit it for the *Chronicles of Oklahoma*. The photostatic copy is deposited with the Oklahoma Historical Society.

In Washington on March 28, 1868 G. W. Stidham and S. W. Perryman, delegates duly authorized by the Creek nation, addressed a letter to N. G. Taylor, Commissioner of Indian Affairs, asking that a commissioner be delegated to confer with them in the making of a treaty supplemental to that made on June 14, 1866, with the Creek nation.¹ The letter² by Stidham and Perryman is marked "Exhibit A" below. In Washington on September 2, 1868, Taylor, representing the United States, met Stidham and Perryman and concluded a treaty. The treaty is marked "Exhibit B" below.

The National Council of the Muskogee nation ratified and approved the treaty by an act of November 13, 1868. By the act the national delegates of the Muskogee nation were invested with power to accede to any amendment that might be proposed or made by the Senate of the United States to the treaty, which amend-

¹ The Creek treaty of June 14, 1866, is in Kappler ii, p. 931. The treaty was proclaimed Aug. 11, 1866.

² The letter is in OIA, R.C.F. S. 534-1869. A photostatic copy of the letter has been donated to the Oklahoma Historical Society.

ment however should not in any way annul, abridge, or interfere with rights already secured to the Muskogee nation in existing treaties.

It appears that the "Sands faction" of Creeks, defeated in the election of 1867, opposed the ratification of the treaty. The faction was a group of Adullamites who were said to be "opposed to schools and civilization" and who desired the "restoration of the old laws, manners, and customs, drifting back toward the dark past." During the winter of 1868-1869 Stidham and Perryman returned to Washington to urge the ratification of the treaty. A rival delegation, entirely unauthorized by any legal body in the Creek nation, also proceeded to Washington, and in direct violation of the advice and instructions of Agent J. W. Dunn, opposed the action of the authorized delegates. In a report on July 6, 1869, Dunn said: "I presume that the unauthorized persons, Sands Little Tiger, and Fish, had little influence at the department, if, indeed, they were received at all; but upon their return they succeeded in making many of their people believe that they had defeated the ratification of the treaty, and had succeeded in many other things desired."³

On February 6, 1869, Taylor transmitted the treaty to O. H. Browning, Secretary of the Interior. In an accompanying letter⁴ Taylor summarized the grounds for the treaty as stated in the preamble. Taylor closed the letter with this sentence: "I think it was just and proper that this treaty should be made and respectfully recommend it for your favorable consideration." Two days later Browning transmitted the treaty to President Johnson, "to be laid before the Senate of the United States, for the constitutional

³ Dunn to Supt. L. N. Robinson, *Indian Affairs 1869, H. Ex. Docs.*, 41 Cong. 2 sess., iii (1414), p. 855. In regard to the "Sands faction", see ann. rept. of Agent F. S. Lyon to Com. Ind. Aff., *Indian Affairs 1871, H. Ex. Docs.*, 42 Cong. 2 sess., iii (1505), pp. 989-994.

In 1870 there was some trouble between the legal Creek government and the "Sands faction" which was augmented by Sands visiting Washington and returning with long stories and promises, which were told as coming from the government, and which created dissension and strife, resulting frequently in open rebellion against the constitutional authorities. Agent F. A. Field to Com. Ind. Aff., Sept. 1, 1870, *Indian Affairs 1870, H. Ex. Docs.*, 41 Cong. 3 sess., iv(1449), p. 762.

⁴ Taylor to Browning, OIA, *Rept. Book 18*, pp. 152-153.

action of that body.”⁵ On February 9 Johnson laid the treaty before the Senate, together with the letters by Taylor and Browning.⁶ The treaty was read in the Senate the first time. On motion of Senator L. M. Morrill of Maine it was ordered that the treaty be referred to the Committee on Indian Affairs, and with accompanying documents, be printed in confidence for the use of the Senate.⁷ Apparently the treaty was never reported out of committee.

In an annual report⁸ under date of December 23, 1869, E. S. Parker, Commissioner of Indian Affairs, said that it was no doubt just that certain treaties made during the preceding year, and which were pending before the United States Senate, should be definitely acted upon. He named the Creek treaty as one which had been recommended previously by the Office of Indian Affairs, and he added that nothing had since occurred to change the opinion then entertained in regard to the treaty. In a summary Parker stated the “chief ground” for the treaty as set forth in the preamble. In a letter⁹ to the Secretary of the Interior on January 21, 1870, Parker stated that according to delegates representing the Creeks, it was the desire of the Indians that the treaty should be ratified. “I therefore respectfully recommend favorable action by the Senate,” said Parker.

No effort is here made to point out the representations and misrepresentations contained in the preamble of the Creek treaty of 1868. It would be a study of merit to examine treaties made with the Five Civilized Tribes in 1866, to probe decisions of the courts relative thereto, and to explain the degree of cession and concession made by each of the tribes. The Creek treaty of 1868 and contemporary sources relative thereto must be interpreted with the policy of the government to concentrate Indians on reservations

⁵ Browning to the President, Feb. 8, 1869, OIA, *Record of Letters Sent*, No. 8, p. 242.

⁶ Johnson's message of February 9, 1869 is in *Messages and Papers of the Presidents*, vi, p. 702.

⁷ *Executive Journal of the U. S. Senate*, xvi, p. 474 (1868-1869). I am indebted to Asst. Supt. Annie A. Nunns of the Wis. Hist. Society for this citation. committee.

⁸ *Indian Affairs 1869, loc. cit.*, pp. 448-449.

⁹ OIA, *Rept. Book 19*, pp. 137-138.

within Indian Territory. "The Indian Territory," said Justice David J. Brewer, "was looked upon as the permanent home of the Indians." And after the close of the Civil War thirteen reservations were established in Indian Territory west of the Five Civilized Tribes.

The letter by Stidham and Perryman on March 28, 1868, and the Creek treaty of September 2, 1868 are as follows:

EXHIBIT A

Rooms of the Creek Delegation
No. 445½ 10th St.
Washington, Mch. 28, 1868

Hon. N. G. Taylor
Commissioner of Indian Affairs
Sir

The undersigned, delegates duly authorized by the Creek Nation to treat with the United States respecting its National Affairs, respectfully represent:

That by the 3d article of the Creek Treaty of 11th Aug. 1866, it is provided that the Creek Nation cede to the United States the west half of their lands in the Indian Territory, estimated to contain 3,250,560 acres, at 30 cents per acre.

The undersigned represent that the land therein agreed to be sold to the United States is very fertile, in a delightful climate and is as good as the eastern part of the Creek lands, being traversed by beautiful streams of living water and well wooded. That it is worth at least one dollar per acre, and may be sold at that price by the United States, to other Indian tribes moving to the Territory. That 200,000 acres of it were in 1866 sold by the United States to the Seminoles at 50 cents per acre.

They further represent that the said cession was obtained against the earnest protest of the Creek Delegates who claimed that the price fixed for said land was greatly below its value. And said Delegates never would have consented to the cession at 30 cents per acre had they and the Nation not been under a kind of duress and felt that if they did not agree to these terms they would be compelled to submit to worse.

As these lands are worth greatly more than the United States agreed to give us for them, we respectfully ask that a new Treaty be made by which the approximate value of the lands may be given us.

We further represent that, as is well known to you, about one third of the Creeks in September 1861, under the lead of Opothleholo, left their homes and property in the Creek Nation and escaped through the Cherokee Nation into the Union lines. The men among these loyal refugees entered the Union Army and served faithfully and gallantly until the end of the war.

All the Union refugees including those who entered the Union Army and those who did not, endured great privations and suffering from which several thousands of them perished. On the return of the survivors to our country at the close of the war they found their houses and improvements laid waste and all their stock lost or stolen. The aggregate losses of these loyal men by their adherence to the cause of the Union, and by the failure of the Government to give them protection amount probably to several millions of dollars.

These losses the United States is bound in good faith to make good. Its obligation to do so was expressly recognized by it in the proposed Treaty with the Creek Nation concluded at the Sac and Fox Agency in Kansas Sept. 3d 1863, and thereafter ratified by the Senate, but which *projet* [project] never went into effect as a Treaty because of the failure of the Creek Nation to assent to one of the Senate amendments. The language of the clause referred to is as follows: "The United States agrees fairly and honorably to remunerate the loyal members of said Nation for all losses sustained by them during the present rebellion either through seizure or destruction of said property by persons in arms against the Government or by the military authorities of the United States."

The undersigned further represent that it was provided in the 3d article of the Treaty of Aug. 11th 1866, that there shall be paid out of the Creek funds \$100,000 to re-imburse the loyal refugees pro rata for their losses by being driven from their homes; but that said amount is not one twentieth part of such losses.

The undersigned therefore respectfully ask that a Commissioner be delegated to make a supplemental Treaty with the Creek Nation represented here by them as Delegates, by which provision shall be made for allowing said Nation a fair price for said ceded lands, and for compensating said loyal refugees to a reasonable amount for the losses they have incurred by their adherence to the Government and its failure to protect them during the late rebellion.

Very respectfully

Your obedient Servants

G. W. Stidham

S. W. Perryman

Creek Delegation.

EXHIBIT B**UNRATIFIED TREATY WITH THE CREEKS, 1868**

Articles of a Treaty made and concluded at the City of Washington on the second day of September in the year of Our Lord one Thousand eight hundred and sixty eight by and between the United States represented by Nathaniel G. Taylor, Commissioner of Indian Affairs and the Creek Nation represented by its delegates George W. Stidham and Sanford W. Perryman Witness that.

Whereas it is represented by the delegates above named that great dissatisfaction exists among the Creek people on account of the terms and provisions of the Treaty of June fourteenth One thousand eight hundred and sixty six, in which the United States in view of a certain alleged liability to forfeiture by reason of their having made a treaty with the so called Confederate States require of the Creeks a portion of their lands to the extent of an absolute unconditional surrender and cession of one half of their entire domain, notwithstanding the fact that previously to wit on the twenty eighth April One Thousand eight hundred and sixty six a Treaty had been made with the Choctaws and that subsequently, to wit on the nineteenth July One thousand eight hundred and sixty six a Treaty was made with the Cherokees in neither of which Treaties was any such liability to forfeiture asserted, nor any such absolute cession required or made, although the same alleged cause existed in both case[s], inasmuch as both Choctaws and Cherokees had in like manner made Treaties with and had moreover served in the armies of the said so called Confederate States. And whereas it is also alleged that such absolute cession was made in the face of an earnest protest in behalf of the Creek people, a majority of whom were represented by the protesting delegates, who only signed the said Treaty to avoid a collision with the delegates claiming to represent that part of the tribe known as the Loyal Creeks, whose delegates assented to such absolute cession not from choice but in ignorance of the terms obtained by other tribes, and under an erroneous impression that their country would be forfeited to the United States unless they yielded to the prescribed terms. And whereas it is further alleged that the Creek people of all classes feel that great injustice has been done them in fixing the price allowed by the said Treaty of June fourteenth One thousand eight hundred and sixty six for the lands therein ceded, inasmuch as all of said land is valuable for stock raising purposes, part of it in that way actually yielding at the time of cession a revenue greatly beyond the interest on the purchase money, to be paid for such part, and

another part thereof having been already sold by the United States at a much higher price before the Treaty of cession was concluded. And whereas it is further alleged that, that portion of the Creek people which remained loyal to the United States during the late war, constituting nearly half the tribe feel that in thus obtaining from their delegates on the ground of alleged forfeiture an absolute cession, and in exacting such cession at a price far below its real value, being less than one third of the price named for inferior land in the above named Treaty with the Choctaws, thus discriminating in favor of those who were hostile and against those who were faithful to the United States, the Government has not treated them with that degree of fairness which their conduct during the war entitled them to expect. And whereas it is further alleged that dissatisfaction also exists among those Creeks who remained loyal as aforesaid on account of the unjust character and wholly inadequate amount of the provision made for losses sustained by them since the commencement of the rebellion in the sum of One hundred thousand dollars (\$100,000) stipulated in the third article of said Treaty of June fourteenth One thousand eight hundred and sixty six to be paid to them out of the proceeds of the land ceded by the same Treaty which provision they regard as merely nominal inasmuch as it bears a very small proportion to the amount well known to have been actually lost and is also a proposal to pay under the head of losses money which is really due for land.

Now therefore in order to remove so far as it may be practicable under existing circumstances these various causes of complaint which the Government of the United States is satisfied have grown out of serious misapprehension on both sides, the Commissioner on the part of the United States and delegates on the part of the Creek Nation in a spirit of mutual concession and compromise have agreed upon the following articles, namely: Article 1. The price agreed to be paid for the land ceded by the third article of the Treaty of June fourteenth One thousand eight hundred and sixty six shall be increased from thirty (30) cents per acre to fifty (50) cents per acre one half of which increased price shall be applied to the payment of claims for losses as directed in article second of this Treaty. The other half shall be paid in money in such manner as the Creek Council shall direct, provided that not less than One hundred thousand dollars (\$100,000) thereof shall be distributed per capita in money. Article 2. The losses sustained by that portion of the Creek people who remained loyal to the United States, and by the soldiers of said tribe who served in the Union Army during the late war shall be ascertained by the Superintendent of Indian Affairs for the

Southern Superintendency who shall first cause to be prepared a roll or census of such soldiers, and of the loyal refugee Indians and freedmen of the Creek tribe, and shall report to the Commissioner of Indian Affairs for his approval and that of the Secretary of the Interior his award in each case to the persons so enrolled, with the reasons therefor. And such awards as may be so approved shall be paid to the proper claimant so far as it may be practicable, by a pro-rata distribution for that purpose of the sum of Three hundred and twenty five thousand and fifty six dollars (\$325,056) being the one half of the increased price stipulated to be paid in Article No. 1 of this Treaty.

Article 3. The value of the improvement, belonging to citizens of the Creek Nation within the Territory ceded by the 3rd article of the Treaty of June fourteenth One thousand eight hundred and sixty six at the date of said cession shall be ascertained and paid to the owners by the United States.

Article 4. The damage done to the Mission School buildings near the Arkansas river by the United States soldiers after the close of the war shall be ascertained and paid by the United States to the Treasurer of the Creek Nation.

Article 5. The several annual payments provided in former Treaties as specified in the 5th article of the Treaty of One thousand eight hundred and fifty six and revised by the 12th article of the Treaty of One thousand eight hundred and sixty six with the exceptions therein provided, shall continue to be made without any abatement or deduction, and the interest that may accrue under the 3d article of said Treaty of One thousand eight hundred and sixty six shall be paid in money as heretofore to the National Treasurer. Article 6. The sum of four thousand nine hundred and twenty eight dollars and seventy cents (\$4,928.70) withheld from the annuity moneys for the year ending thirtieth June One thousand eight hundred and sixty seven shall be refunded and paid to the Creek Treasurer and the sum of six hundred and fifty dollars (\$650) in the hands of the late William H. Garrett, as United States Agent for the Creeks at the time of his death, belonging to Creek reservees under the Treaty of One Thousand eight hundred and thirty two, shall be paid to the proper claimants.

Article 7. The sum of One hundred thousand dollars (\$100,000) required by the 4th article of the Treaty of One thousand eight hundred and sixty six to be paid for losses out of the proceeds of land ceded by said Treaty, shall not be so paid, but shall be retained by the United States and together with the bounties and arrears of pay due to such Creek sol-

diers of the Army of the United States as have died without heirs, shall constitute a fund, the interest of which shall be applied and used for the benefit of the Orphan children of the Creek Nation in such manner as the Council shall direct. And out of the Four hundred thousand dollars (\$400,000) payable per capita under the 3d article of said Treaty the sum of One hundred thousand dollars (\$100,000) shall also be paid in such manner as said Council shall direct as soon as practicable after the ratification of this Treaty.

Article 8. Nothing contained in the Treaty of One thousand eight hundred and sixty six shall be so construed as to annul or abridge the various rights and privileges guaranteed to the Creek Nation by the 15th article of the Treaty of one thousand eight hundred and fifty six. It is also hereby agreed and understood by and between the contracting parties that nothing in this Treaty shall in any manner or degree be so construed as to alter[,] avoid, abridge, annul or abrogate any of the rights, privileges or immunities of the freedmen or other persons granted and acquired by said Treaty of June fourteenth One thousand eight hundred and sixty six. Article 9. Every citizen of the Creek Nation shall have the right to sell any products of his farm including his live stock or any merchandise or manufactured products and to ship or drive the same to market without restraint, or payment of any tax thereon to the United States or any one of them, and no license to trade in goods, wares, or merchandise shall be granted by the United States to trade in the Creek Nation unless approved by the National Council of said Nation. Article 10. The expenses incurred by the delegates representing the Creek Nation in negotiating this Treaty shall be paid by the United States not to exceed ten thousand dollars (\$10,000)[.] In testimony whereof, we, the Commissioner representing the United States and the delegates representing the Creek Nation have hereunto set our hands and seals at the place and on the day and year above written.¹⁰

N. G. Taylor L.S
U. S. Commissioner

G. W. Stidham L S
S. W. Perryman L S
Delegates of the Creek Nation

Done in the presence of
Lewis S. Hayden
Thos. E. M. Grand

¹⁰ Dr. Berlin B. Chapman is Professor of Economics at the Fairmont State College, Fairmont, West Virginia.