IN SENATE OF THE UNITED STATES.

JULY 25, 1848.

Submitted, and ordered to be printed.

MR. ATCHISON made the following

REPORT:

[To accompany bill S. No. 329.]

The Committee on Indian Affairs, to whom was referred the memorial of Benjamin Marshall, Tuckabatcha Micco, G. W. Slidham, and George Scott, delegates of the Creek nation of Indians, report, in part:

That the memorial contains several subjects, embracing claims which the Creek nation prefer against the United States; but they only urge two for the immediate consideration of Congress. These will be noticed in order.

The first demand presented for the consideration of the committee, is for the sum of $141,055 91, the balance of $250,000, reserved in the 4th article of the treaty of Indian Spring, of January 8th, 1821, to pay such claims of citizens of Georgia as the President of the United States should direct to be paid.

The circumstances of this claim may be stated, briefly, thus: Between 1774 and 1802, the Creeks and the State of Georgia had been several times engaged in wars; that five treaties had been made, viz: three between the State of Georgia and the Creeks, viz: at Augusta, 1st November, 1783; at Galphinton, 12th November, 1785, and at Shoulderbone, 3d November, 1786. [*Watkins's Digest Laws of Georgia*, pp. 767, 768, 769.] In these treaties, the Indians cede lands and agree to restore property taken, viz: "cattle, horses, negroes," &c. After the formation of the federal government, two other treaties were made with the Creeks, viz: at New York, 7th August, 1790, and Colerain, 29th June, 1796.—[*U. S. Statutes at Large*, 7 *vol.*, 35, 36, 56.] These treaties contain similar stipulations, for restoring "negroes and prisoners." They contain no stipulations to pay for property destroyed; nor do the Indians receive any pay for several cessions of their lands.

In 1820, Congress appropriated $30,000 to hold treaties with the Creeks and Cherokees, to extinguish the title of the Indians to lands in the State of Georgia, under the compact of 1802. Georgia was invited to send commissioners to the treaty, and sent them accordingly. All the parties, the United States, Georgia, and the

Creek nation, met in council at Indian Spring, in December, 1820. The Georgia commissioners, in their talks, presented demands against the Creek nation for property destroyed in their wars, between 1774 and 1802; and also for negroes, horses, cattle, &c., taken and not restored, amounting to somewhere about $280,000.

The Creeks, in their talk in reply, refused to acknowledge these claims, except so far as they were acknowledged in the treaty of Colerain, under the obligation "to restore negroes and prisoners," but proposed to leave all the claims on both sides to the arbitration of the President. The proposal was acceded to by the commissioners of Georgia, and articles of agreement were signed to submit all claims on both sides, with the talks and documents relating to them, "to the decision of the President of the United States, *by him* to be *decided upon*, *adjusted*, and *settled*, in such manner, and under such *rules*, *regulations*, and *restrictions* as *he* shall prescribe;" and, further, "that the *decision* and *award*, *thus* made, shall be binding and obligatory upon the contracting parties."—[*See appendix A.*]

The agreement thus made became a part of the treaty which was signed between the United States and the Creek Indians, and bound the United States as well as the other two parties. By it, the Indians ceded, for $450,000, a large body of very valuable lands in Georgia, securing to her thereby a very important accession of territory.—[*See appendix B.*] They stipulate for the payment to themselves of $200,000 of the purchase money; and as to the balance, in the 4th article, it is said: "And, as a further consideration for said cession, the United States do hereby agree to pay to the State of Georgia whatever balance may be found by the Creek nation to the citizens of said State, whenever the same shall be ascertained *in conformity with the reference* made by the commissioners of Georgia, and the chiefs, head men, and warriors of the Creek nation; to be paid in five annual instalments, without interest, provided the same shall not exceed $250,000; the commissioners of Georgia executing a full and final relinquishment of all claims of the citizens of Georgia against the Creek nation, for property taken or destroyed prior to the act of Congress of 1802, regulating the intercourse with the Indian tribes."

The President was thus appointed sole arbitrator over the entire subject, both parties giving him full powers to "adjust, liquidate, and settle" all claims on both sides, under "such rules, regulations, and restrictions as he shall prescribe."—[*See Appendix G.*] The President (Mr. Monroe) accepted the trust, and made the rules and regulations for settling these claims, and appointed, first, Governor James P. Preston, of Virginia, and afterwards Stephen Pleasanton, Esq., fifth auditor, to examine and report on the evidence and character of the claims. Governor Preston held his sittings for eight months, at Athens, Georgia; and Mr. Pleasanton, afterwards, in Washington.

These commissioners reported all the claims presented before them, and the evidence.—[*See Ex. Doc., H. R. No.* 268, 1*st sess.*, 20*th Cong.*] They recommended, in the whole, $108,944 09, for

payment, and President Monroe, by three several awards in 1822, 1823, and 1825, "adjudicated and settled" claims to that amount, in favor of the citizens of Georgia, reporting all others as not coming within the case submitted to him. The committee cannot but consider this decision and award of President Monroe as final and conclusive as to the rights of the claimants, and as binding on both parties.

It appears, however, that the claimants were not satisfied, and made repeated efforts to induce President Monroe first, and President Adams afterwards, to re-open and re-adjust the decision and award made by the former. The State of Georgia addressed a memorial on the subject to the President, and the various questions involved in these applications were referred by both President Monroe and President Adams to the Attorney General, Mr. Wirt, who, in their several opinions, [*see Opinions Attorney General*, 411 *to* 423, *and* 618 *to* 653.—*Appendix H.*] sustained the decision of the President, and affirmed not only that they were final and conclusive, but that the balance of $141,055 91, left after paying the awards of President Monroe, belonged to the Creek nation.

The award was not re-opened by President Monroe, nor by President Adams, nor by President Jackson; and, in the second term of the latter President, on application to Congress, that body passed an act, dated the 30th June, 1834, [*see Statutes at Large*, 4 *vol.* 721,] authorizing "the President to cause to be adjusted and paid, to full indemnity, out of any money in the treasury," &c., all claims of the citizens of Georgia, under the 4th article of the treaty of January, 1821, which have not been heretofore adjusted and paid on the following principles: "All claims which have not been heretofore adjusted and paid, founded on the capture and detention, or destruction of property by said (Creek) Indians, prior to the act regulating the intercourse with the Indian tribes, *if satisfactorily* established, shall be allowed and paid." The act further allowed interest on the claims from the date of the origin of the claims, &c.

The committee find that, under this act, the whole sum of $141,055 91 was paid over, in solido, to Wilson Lumpkin, esq., governor of Georgia, on the 2d March, 1835, without any previous examination into the claims, as required by the act, and that no returns of the proceedings, in deciding on these claims, or in distributing the fund, has ever been filed.—[*See appendix C.*]

The committee cannot but regard the $250,000 as the fund of the Creek nation.—[*See appendix B.*] It was a part of the price of their land, and was left in the hands of the government as a trust, out of which such claims of citizens of Georgia as President Monroe might decide to be just, should be paid, and the balance, as a matter of course and common equity, be returned to themselves. No ground can be perceived for believing that any other construction was ever put on it by the Creek nation; and it is so entirely conformable to natural justice and fair dealing that the committee cannot disagree with them, nor with the Attorney General, on this point.

The only person who was clothed with any authority or power to adjudicate and decide on the claims of both parties, in the opinion of the committee, was the President of the United States. He was the sole arbitrator, chosen by both parties, who, by explicit written agreement submitted the whole matter to him with the most unlimited discretion over every point of law, evidence, and right, engaging that his "decision and award thus made and rendered shall be binding and obligatory upon the contracting parties."—[*Appendix E.*] The President, with greatest care and deliberation, established the principles on which the claims were to be investigated, caused them to be carefully examined and reported on with all the evidence, and then made his decision and award. With this the State of Georgia was not satisfied, and by memorial urged the President to re-open and re-examine the subject. The President gave respectful attention to these representations—reconsidered the whole matter, and submitted it for advisement to his law adviser, the Attorney General, and thereupon adhered to and re-affirmed his "decisions and awards." While the committee see no ground to condemn the acts of the arbitrator, or the very able and elaborate opinion of the Attorney General, they are constrained to say that even if the decision of the President had been erroneous, by the terms of the agreement it was final and conclusive, so far as to discharge this balance of $141,055 91 from any liability to these claims. If, without the assent of both parties, his award and decision could be rightfully re-opened, revised, and reversed by his successors or Congress, no act of the Executive, and no decree, decision, or award of any court, referee or arbitrator, could ever be considered final, sacred, or safe; and no engagement of this government with the Indian nations could ever again demand their implicit confidence and trust in our good faith. This balance was discharged clearly and fully from liability for the claims rejected by the decision of the President. If the claimants had any right to be paid, it was not out of this fund; and the committee are clearly of opinion that if the case had occurred between individuals, there is no court of competent jurisdiction in any civilized country that would not unhesitatingly compel the trustee to restore and make good the fund intrusted to his care; and they cannot but recognize the claims of justice to be at least as strong on this government as on individuals.

It further appears, from a letter communicated by President Adams in a message to the House of Representatives of 17th January, 1829, (Ex. Doc. Ho. Reps. No. 80, 2d session 20th Congress,) that the Creek nation claimed this fund from him, by letter from John Crowell, their agent, dated at Washington city, November 18, 1828.—[*Appendix D.*] In that letter Colonel Crowell states that he had demanded it previously from the Secretary of War. It appears, from the journals of the House of Representatives, that at the 1st session 22d Congress, (see document 56,) the Creek nation presented a memorial to that House repeating their claim to it; and by the letter of W. Medill, esq., Commissioner of Indian Affairs, of 21st July, 1848, to a member of this committee, that

they repeated their claim in 1835 and 1843.—[*Also appendix D.*] In the opinion of the committee, these demands should have been complied with, and the balance which was, justly due and ascertained under the awards before any of these demands, should have been paid to them.

On this state of facts the Creek nation claims to have the balance of $141,055 91 restored to them, and that they are also entitled to interest. The committee have already stated their conviction that the balance was justly theirs. That it was repeatedly demanded is clearly proven; that it was not paid to them was no fault of theirs, but an injury; and between individuals, there cannot be a doubt, it would be recovered by law. The committee therefore consider it is justly due them.

The next claim which will be noticed is that for the payment to about thirteen hundred of the McIntosh party of the sum promised them by the ninth article of the treaty of Washington, made the 24th January, 1826.—[*Statutes at Large, vol.* 7, 288.] The ninth article is in the following words: "In consideration of the exertions used by the friends and followers of General McIntosh to procure a cession at the Indian Spring, and of their past difficulties and contemplated removal, the United States agree to present to the chiefs of the party, to be divided amongst the chiefs and warriors, the sum of one hundred thousand dollars, if such party shall amount to three thousand persons, and in that proportion for any smaller number; fifteen thousand dollars of this sum to be paid immediately after the ratification of this treaty, and the residue upon their arrival in the country west of the Mississippi."

The cession procured by General McIntosh and his friends was that of the Indian title to all their lands lying within the State of Georgia; which cession drew upon him and his friends the vengeance of the large majority of the nation, by whose order he and others of his party and friends were killed. The situation of all of them became so full of danger, and they were subjected to such oppression amongst their people, that their condition claimed the sympathy and interference of the United States.

To prevent a continuance of ill feelings and the danger of a civil war, as well as to pay them for ceding their lands and emigrating to the west of the Mississippi, the United States agreed to make them this allowance.

It appears from the statement of Luther Blake, that the friends and followers of Gen. McIntosh were emigrated in three parties or divisions. The two first, not long after the ratification of the treaty, under Colonel David Briarly, numbering less than two thousand.

To these there seems no reason to doubt a fair proportion of the $100,000, above alluded to, was paid, as there is no claim presented for them. But the last detachment, numbering thirteen hundred, were enrolled afterwards, partly by David Briarly, and partly by Luther Blake, and were emigrated, under charge of the latter, in 1829. It appears that this last party were enrolled and encamped in 1828, and kept for eight months or more so encamped,

and removed finally, under Luther Blake, in 1829. That, to induce them to remove, they were promised their full share of the $100,000, viz: thirty-three and a third dollars per head, to be paid to them on their arrival in Arkansas. That, confiding in this promise, they abandoned their improvements, and sold such of their property as they could not carry at considerable sacrifices, and went cheerfully to the west of the Mississippi; but that, on their arrival there, they received no part of the $100,000, and have not received it since.

Of the fact that they have received no part of this $100,000 there cannot be a doubt. Not only is it shown by the affidavits of Luther Blake and of G. W. Slidham, [*appendix H,*] and the letter of Hon. D. H. Lewis, but also by the statement of Jno. M. McCalla, esq., Second Auditor, dated 24th July, 1848, herewith filed.—[*Appendix I.*]

From this latter document, it is manifest that what Blake and Slidham testify to must be correct, for there was no money of the appropriation applicable to it in 1829 without re-appropriation, as all but $46,151 58 had been paid out, and that sum, being the balance of the $100,000 appropriated, had been carried, on the 31st December, 1828, to the surplus fund, and could not be used in 1829 to pay the Indians, or to give to Blake when he demanded it for them.

It is worthy of remark, that of this $100,000, the sum of $53,848 42 had been paid and charged to the Indians; of which $20,726 80 was expended in carrying into effect the 6th, 7th, 8th, 10th, and 16th articles of this treaty, no part of which was chargeable on this fund, and that only $33,121 62 was in reality paid to the Indians according to the terms of this treaty; leaving, in fact, of the $100,000, a balance of $66,878 38, which never has been applied as directed by treaty and the appropriation.

Under this state of facts, there cannot be the least doubt the memorialists are entitled to the relief they pray for, and the committee accordingly provide, in the bill herewith reported, sections for paying the principal and interest at the rate of $33\frac{1}{3}$ per head, with interest at 6 per cent., from the 31st day of December, 1829.

APPENDIX.

A.

Copies of the talks between the Commissioners of Georgia and the Creek chiefs, headmen, and warriors, at treaty of Indian Springs, and of agreement and release.

I.—TALK OF GEORGIA COMMISSIONERS.

INDIAN SPRINGS, *December* 27, 1820.

BROTHERS: Our head-man, the Governor of Georgia, under the authority of our father, the President, has sent myself, General Adams, and General Newman, to meet you here, to draw closer the bonds of friendship which our father, the President, hopes will always exist between his white and red children.

Brothers: in order that the chain of friendship may remain bright between the white and red people, *it is necessary that they should do justice to each other.* This the white people are always willing to do, and expect to meet the same friendly disposition among the red people, their brethren.

Brothers: long before our father, the President, made a treaty with you, the head-men of Georgia and your nation talked together, and agreed to bury all differences, and to have perpetual friendship. We wish these agreements to be fairly and fully complied with on the part of the red people, as they have been, and will be, on the part of the white people.

Brothers: Your head-men and warriors, at a treaty held at Augusta a long while ago, there, at a place called Galphinton, then at Shoulderbone, then at New York, then at Colerain, promised to restore all the property which had been taken from us by your people, and to make good the damage they had done us.

Brothers: your friend, the governor of Georgia, has now sent to lay this business before you, and to listen to what you have to say on the subject. The white people wish to be friends to the red people, and hope that, as good men on both sides, they can agree upon what is right.

II.—COPY OF SECOND TALK.

DECEMBER 28, 1820.

We now, agreeably to our promise of yesterday, lay before you a statement of the claims of the people of Georgia against your na-

tion. These claims you have promised to adjust and settle in all the several treaties which were mentioned to you yesterday. This business has remained so long unsettled, that an adjustment of it now is necessary, for the preservation of friendship between the white and red people.

Look at the accounts; they are proved according to the laws of our country, and we wish to hear what you have to say about them.

The President of the United States and the governor of Georgia expect the red people to do justice to the white people; they ask no more.

3. *Copy of answer of the chiefs to the talk of the Georgia commissioners, delivered by General McIntosh.*

He said he was glad to hear of the friendly disposition of the commissioners on the part of the State of Georgia; that he feels the same disposition himself, and will now proceed to answer them. He then observed that two commissioners on the part of the President of the United States had delivered him the talk of the President, and he hoped the commissioner of Georgia and himself would be able to settle amicably all the differences between them. That he did not know he was called here to answer for the claims of the State of Georgia until he heard the talk of the State commissioners on yesterday; that he had looked over the statement of claims exhibited by the commissioners of the State; that many items in the account he knew nothing about; that thirty years ago, after Gen. McGilvery held the treaty of New York, on his return to the nation, he informed the people that he had promised to deliver up all the prisoners and negroes of the whites then in the nation, but they were not to be liable for any that were dead or removed; and nothing was said about any other claims. That, shortly after the treaty of New York, another was held at Coleraine, before which some of the white and black prisoners were collected, principally from the upper towns, and delivered to Major Seagrove, then the United States agent. At the treaty of Coleraine a similar account with that now exhibited was presented by General James Jackson, and the chiefs then refused to acknowledge it, except so far as the items therein contained were embraced in the provisions of the treaty of New York, in which no other property is promised to be restored than prisoners and negroes. At the treaty of Coleraine they agreed to restore the stolen property in the nation; that, in conformity to the treaty of New York, they have collected and delivered to Colonel Hawkins a number of the negroes alluded to; that Colonel Hawkins in all his talks reminded them of the provisions of the treaty of New York, but never brought forward such a claim as the present one, nor did he insist for any compensation for damages done before the treaty of New York; that Colonel Hawkins once informed them that he had an account in favor of the people of Georgia against the nation; that he never laid it before the nation, but said he had sent it to the President of the United States. These things all passed before he was a

chief; since that, he has himself collected some, and delivered them up. During the late war the British collected many of the negroes of the nation, and carried them off, but left some of them in a fort, with a large quantity of arms and ammunition, and many of the negroes of the country joined them; he took his warriors and joined the American army under Colonel Clinch, attacked the fort, and blew it up; many of the negroes were destroyed in it; those which remained were taken and delivered to Colonel Clinch, for their owners. Some of the negroes yet remained in Florida with the Seminoles. He joined General Jackson's army, went down and took some of them which were reported to the United States agent, and some of them delivered—some of them remained there yet. If the President admits that country to belong to the Creek nation, he will take his warriors, go down and bring all he can, and deliver them up. He thinks the chiefs have complied with the treaties of New York and Coleraine. If, however, any of the negroes remain in the nation, he will hunt them out, and deliver them up, or pay for them.

On looking over the account, he finds many trifling things which he did not expect would be presented. The Indians have also many claims against the white people. He does not think this is the right way to settle them, but is willing to refer all the claims, on both sides, to his father and protector, the President of the United States. He observes that no credit is given upon the accounts exhibited for the property that has been restored. When all the claims are exhibited and examined, he does not think there will be much difference between the Georgians and the Creeks. He will not say there is no property of the Georgians in the nation; but he does not know of any. If there is any he is willing to restore it, or pay its value.

This is all he has to say. If two friends, one owe to the other, even individuals, they should not be too hasty in calling for pay, when the debtor is unable to pay. He is willing to pay whatever is just.

4. *Copy of a talk of Georgia commissioners, December* 29, 1820.

Brothers: We have heard your talk of yesterday, and considered it over. The friendly disposition which it shows leaves little doubt that the friendship which is so necessary to the prosperity of the white and red people may be long preserved, by a mutual disposition to do justice. We are, however, sorry to find that you do not consider yourselves bound to restore to us the property, as well as the negroes, taken or destroyed by your nation before the treaty of New York.

Brothers: We are sorry and surprised to hear that you were not fully informed of the object of this meeting. It has been so long known, that we had no doubt but that you were fully informed as to the business which we had with you.

Brothers: We your friends want nothing but what is right; but that we must insist upon. You were bound to restore all pro-

perty taken from us, even by the common rules of justice, if you had not agreed to do so by treaty. But in the treaty of Augusta, thirty-seven years ago, you agreed to restore "all negroes, horses, cattle, or other property, taken since the late war." By the treaty of Galphinton, thirty-five years ago, you agreed to restore "all the negroes, horses, or other property, that might be among you, belonging to any citizen of this State." In the treaty of Shoulderbone, thirty-four years ago, you made the same promise, in nearly the same words; and none of these promises have been fulfilled with good faith. By the treaty of New York you promised to restore "all the negroes then in the nation, belonging to the Georgians, to the commanding officer at the Rock landing;" and that has not been done. But even that treaty, though it mentioned nothing but negroes, could not discharge you from the obligations you were under to restore "all property," in the previous treaties. By the treaty of Coleraine you entered into the same obligation, and renewed the same promises which you made at Augusta, Shoulderbone, and Galphinton.

Brothers: Knowing that some bad men live on our frontiers who are disposed to do mischief, we are not surprised to hear that you have claims against the white people which have not been exhibited. We, too, have claims which have not been exhibited to you, but which we have always intended to exhibit when a proper move should be agreed upon, by which these respective claims should be adjusted. These claims have not been brought against you in time of your troubles; but the people of Georgia have waited so long now to have these things settled that a speedy adjustment is absolutely necessary.

Brothers: We know, or have heard, of very few negroes having been returned or paid for, except runaways; whilst a number, which have been plundered, and have otherwise got into your nation, never have been accounted for. This state of things has existed too long. As to the negroes that have been carried away by the British, or have been destroyed any other way during the late war, we consider you responsible for such of them as belonged to the people of Georgia. If they had remained here they would have been safe; and it was your act, and not ours, which carried them to the scene of war; and our head-man, the governor of Georgia, has directed us to insist, according to the laws of our country, upon the restoration of, or payment for, the increase of all such negroes, belonging to the people of Georgia, as have increased, and an adequate reward for the use of such negroes and property as may not have increased.

Brothers: As to the negroes now remaining among the Seminoles, belonging to the white people, we consider these people, the Seminoles, a part of the Creek nation, and we look to the chiefs of the Creek nation to cause the people there, as well as the people of the upper towns, to do justice.

Brothers: We know that a final adjustment of these things is extremely difficult; and, for the purpose of avoiding all causes of animosity between us, who are neighbors and friends, we agree to your

proposition to submit all our claims, on both sides, to our common father, the President, whose decision we will conform to on our part, and hope there may never more be any cause of difference between us.

Brothers: It only now remains for us to repeat that we assent to the mode proposed by you for settling these differences, and accordingly will now present an agreement, to be entered into between us, which will put an end, we hope, to all discontents.

5. *Copy of articles of agreement entered into between the undersigned commissioners, appointed by the Governor of the State of Georgia, for and on behalf of the citizens of said State, and the chiefs, head-men, and warriors of the Creek nation of Indians.*

Whereas, at a conference opened and held at Indian Springs in the Creek nation, the citizens of Georgia, by the aforesaid commissioners, have *represented* that they have claims *to a large amount* against the said Creek nation of Indians: Now, in order to adjust and bring the same to a *speedy and final settlement*, it is hereby *agreed* by the aforesaid commissioners and the chiefs, head-men and warriors, of said nation, that *all the talk*, had upon the subject of these claims *at this place*, together with all the claims on *either side*, of whatever nature or kind, prior to the act of Congress of 1802, regulating intercourse with the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be *decided upon, adjusted, liquidated, and settled*, in such *manner* and under *such rules, regulations*, and *restrictions*, as he shall prescribe: *Provided, however*, if it should meet the views of the President of the United States, it is the wish of the contracting parties, that the liquidation and settlement of the aforesaid claims shall be made in the State of Georgia, at such place as he may deem most convenient for the parties interested; *and the decision and award*, thus made and rendered, shall be binding and *obligatory upon the contracting parties.*

Signed by commissioners of Georgia and Creek chiefs, 8th January, 1821.

6.—*Discharge for all claims on the Creeks.*

Whereas a treaty or convention has this day been made and entered into by and between the United States and the Creek nation, by the provisions of which the United States have agreed to pay, and the commissioners of Georgia have agreed to accept, for and on behalf of the citizens of the State of Georgia having claims against the Creek nation prior to the year 1802, the sum of two hundred and fifty thousand dollars:

NOW KNOW ALL MEN BY THE PRESENTS,

That we, the undersigned, commissioners for the State of Georgia, for and in consideration of the aforesaid sum of two hundred

and fifty thousand dollars, secured by said treaty or convention, to be paid to the State of Georgia, for the *discharge of all bona fide claims* which the citizens of Georgia *may establish* against the Creek nation, do, by these presents, release, exonerate, and discharge the said Creek nation from all and every claim and claims, of whatever description, nature, or kind the same may be, which the citizens of Georgia now have or may have had, prior to the year 1802, against the said nation. And we do hereby assign, transfer, and set over, unto the United States, *for the use and benefit of the Creek nation*, for the consideration herein before expressed, all the right, title, and interest of the citizens of said State to all claims, debts, damages, and property of every description and denomination, which the citizens of the said State have or had prior to the year 1802, as aforesaid, against the Creek nation.

Signed, 8th January, 1821, by the commissioners of Georgia.

B.

Copy of a letter from D. M. Forney and D. Merriwether, enclosing a treaty with the Creeks, concluded on the 8th of January, 1821; also talks in relation thereto.

INDIAN SPRING, CREEK NATION, *January* 9, 1821.

SIR: We have the honor, herewith, to enclose a treaty with the Creek nation of Indians. In conformity with our instructions, we proposed to them a cession of country adjoining the Cherokee boundary, but found it impracticable to obtain such a cession at this time.

As an inducement to a cession, we also proposed an exchange of territory, but were informed they were rather disposed to remain where they now are, and gradually turn their attention to husbandry, than cross the Mississippi in search of game; that they made a law by which those who abandoned their country in pursuit of game were deprived of all their rights in the Creek nation; but in the event of any town or towns wishing to cross the Mississippi, the nation would be willing to give up their lands to the United States for lands there. With regard to the cession now made, so far as the wishes of the people of Georgia were to influence our conduct, (for whose benefit we were instructed this treaty was to be held,) we must believe that no tract of country of equal extent, within the Indian boundary, is as fertile or as desirable as the one now ceded. The only difficulty that has presented itself to our minds, in the execution of this business, is the sum stipulated for this cession. We have endeavored to make this as easy as possible for the government, by the extension of the time of payment.

The quantity of land embraced in the cession, by the most accurate calculations we have been able to make, falls but little, if any, short of 5,000,000 acres; for which you will perceive by the treaty

we have engaged the government to pay $250,000, set apart as a fund for the payment of the claims, in full, of the citizens of Georgia against the Creek nation of Indians, must be considered more in the light of a nominal sum than an actual debt, for, from the partial examination we have given this subject, we cannot believe these claims, on a fair settlement, will exceed $100,000, and if they should be restricted to the stipulations of the treaties of New York and Colerain, for which the Indians contend, the amount will be much lessened. Upon this point we forbear to express an opinion, as, under the articles of reference, which accompanies this, it is left with the President to decide upon matters touching these claims, in such manner and under such rules, regulations and restrictions, as he may prescribe. To enable you to judge more correctly on this subject, we enclose the substance of the communications between the commissioners of Georgia and the Indian chiefs; and for more particular information, we beg leave to refer you to General Mitchell, the agent, in whose possession the Indians will deposit a copy of the schedule containing nearly the whole of these claims, collected and embodied under an act of the legislature of Georgia. But independent of this consideration, we believe the whole amount would be only a fair and reasonable consideration for the cession. The annuities were arranged so as to meet the wishes of the nation, communicated to us through the agent, Gen. Mitchell. In order, in some measure to comply with the expectations of the chiefs, which had been improperly and unreasonably excited, we found ourselves compelled to make a payment in hand, or to swell another item in the account of expenditures, which to us was extremely odious and objectionable.

C.

TREASURY DEPARTMENT,
Second Auditor's Office, July 22, 1848.

SIR: Your letter of this date, asking "if any return of the manner in which the sum of $141,055 91, paid to the governor of Georgia, has been made to this office," is received. In reply thereto I have to state, that no such return was made to this office. The sum in question was credited to Governor Lumpkin, under the opinion of the Attorney General of the United States, dated 10th March, 1836, a true copy of which you will receive herewith.

I have the honor to be, very respectfully, your obedient servant,

JNO. M. McCALLA,
Second Auditor.

Hon. D. R. ATCHISON,
Senate United States.

ATTORNEY GENERAL'S OFFICE,
March 10, 1836.

SIR: The advances to the governor of Georgia, under the acts of the 3d of March, 1821, 7th of May, 1822, 26th May, 1824, and the 20th of May, 1826, referred to in your communication of the 16th ultimo, were no doubt made to them as the representatives and rightful agents of *the State of Georgia*, to which, by the treaty of 1821, the moneys in question were to be paid. The payment of the money to those officers was, to the extent of the funds which came to their hands, a discharge of the engagement entered into by the United States, who were not bound to see the application of the moneys so paid. For the like reason, they have no right, in my opinion, to require an account of the disposition of those moneys.

B. F. BUTLER.

The Hon. LEWIS CASS,
Secretary of War.

D.

Copy of letter of John Crowell, agent Creek Indians, to the President of the United States.

WASHINGTON CITY, *November* 18, 1828.

SIR: The chiefs of the Creek nation having learned that the ascertained claims of the citizens of Georgia fell short of the sum set apart for that purpose, by the treaty of Indian Springs, of 1821, charged me to demand the payment to them of the surplus of that provision.

In conformity to their wishes, I did make application to the late Secretary of War. No decision having been made by that officer, I have again been urged by the chiefs to renew the application. I have felt it a duty, which, as agent, I owe this people, and one which their extreme poverty and wretchedness make the more binding, to have the subject looked into, in order that the meaning and intent of the treaty may be carried fully and justly into effect; and feeling my own incompetency to enter into an exposition of the instrument on which the Indian claim rests, I have procured for them the opinion of General Walter Jones, which seems to me to place the subject in so clear a point of view, that no doubt exists as to the justness of the Indian claim to that balance, all of which is herewith respectfully submitted.

I have the honor to be, your obedient servant,

JNO. CROWELL,
Agent for Creek nation.

To the PRESIDENT OF THE UNITED STATES,
Washington city.

E.

Rules and regulations prescribed by President Monroe for Commissioner Preston.

DEPARTMENT OF WAR,
April 5, 1821.

SIR: I am directed by the President to inform you that he has fixed upon the 2d day of July next as the time at which you will commence your duty as commissioner, to decide on the claims of the citizens of Georgia, under the late treaty with the Creek Indians, and has fixed on Athens in that State as the place at which you will hold your sittings for that purpose. The governor of Georgia has been informed of your appointment as commissioner, and the time and place designated for the discharge of your duty, and he has been requested to inform the parties interested of these facts. You will accordingly repair to the place and be prepared to enter on your duties at the time specified. You are authorized by the President to appoint a clerk, with a compensation at the rate of $3 per diem, with his necessary expenses; whose duty it shall be to take charge of and preserve all the documents connected with the claims presented for decision, and to keep a fair record of your proceedings and decisions. When you have made the appointment you will report the name of your clerk to this department.

I enclose you, for your guidance in the discharge of your duties, a copy of the late treaty with the Creek Indians, duly certified, with a copy of the agreement between the commissioners of Georgia and chiefs of the Creek nation, and the relinquishment by the former of the claims of the citizens of Georgia against the said nation.

By reference to the treaty and the agreement between the commissioners of Georgia and the chiefs of the Creek nation, you will perceive that the claims which are to be the subject of your decision are those of the citizens of *Georgia* against the Creek *nation*, and that they are to be decided under such rules, regulations, and restrictions, as the President shall prescribe.

In the discharge of your duty, the first point which will claim your attention is, what are the description of claims which, on a fair and just construction, are comprehended in the provisions of the treaty. To determine which satisfactorily, it will be proper to consider, in the first place, what are the description of claims which, under such a construction, are clearly not comprehended in its provisions.

Of the description of excluded claims, you will consider the following classes:

1st. All claims originating in contract or agreement between individuals of the State of Georgia and of the Creek nation, unless assumed by the latter previous to the signature of the treaty, in full council according to their us age in suchcases.

The propriety of excluding this class must, on a little reflection, be quite obvious. The treaty provides for claims against the nation, and not for claims against individuals belonging to it. A contract or agreement, unless assumed in the manner specified, is a claim against an individual only, and consequently not provided for by the treaty.

2d. All claims against the Seminole Indians.

The Seminole Indians residing in Florida, though connected in some degree with the Creek Indians, do not constitute a part of their nation. They have never been considered as such by the United States. We have been at war with the Seminoles without being at war at the same time with the Creeks, and with the latter without being with the former. In the various treaties which we have held with the Creeks, including the present, they have not been represented. Being a distinct people, claims against them, however originating, are not comprehended in the treaty.

3d. All claims originating subsequent to the 30th March, 1802, the date of the approval of the act regulating trade and intercourse with the Indians, and to which the treaty refers.

The treaty itself having fixed on this period, the reason for the exclusion of this class requires no observation.

4th. All claims originating in depredations committed in a period of hostilities or previous thereto, if not provided for in the treaty which followed such hostilities.

The exclusion of this class rests on a principle perfectly well established between civilized nations, and is believed to be equally applicable to Indian treaties. In its application in this case, it will exclude all claims originating previous to the treaty with the Creek nation, made at New York, the 7th August, 1790, (of which I enclose a copy,) except for slaves provided to be given up by the 3d article of said treaty, and those originating subsequent to the date thereof and previous to the 29th June, 1796, the date of the treaty at Colerain, (a copy is also enclosed,) except for the property provided to be given up in the 7th article.

5th. Claims provided for by the 2d article of the treaty of Fort Wilkinson, (a copy of which is enclosed,) concluded 16th June, 1802.

The 2d article of the treaty provides for that description of claims (originating subsequent to the treaty of Colerain) which the act regulating trade and intercourse with the Indians, to which reference has already been made, had provided for, and stipulated five thousand dollars for the payment of the same. That you may be able to ascertain the extent of this class of claims, I enclose you a copy of the said act, to the 14th section of which I would particularly invite your attention.

It is believed that there cannot be much doubt or hardship in excluding this class of claims; for besides the question whether the operation of the 2d article of the treaty does not wholly release the Creek nation from the claims for which it provides, and the presumption that they must have been long since paid, if there be any which are not paid the provision of the treaty for this purpose

is still in force, and the sum provided for the payment, which is still unexhausted, will prevent any injury from resulting to individuals who may hold such claims. This construction will, in fact, operate to the benefit of the citizens of Georgia, who may have claims against the Creek nation, as it enlarges the fund out of which they are to be paid by adding what may remain of the $5,000 stipulated for that purpose by the treaty of Fort Wilkinson, to the $250,000 stipulated in the late treaty for the same purpose.

6th. Claims originating in acts prohibited by the laws.

It is believed that the propriety of excluding this class of claims will not require any observation. It will be, however, proper to remark that the nature of the claim against the Creek nation, prior to the conclusion of the treaties of New York and Colerain, being determined by those treaties, the effect of this exclusion will only reach such as originated subsequent to the date of the latter, and previous to the passage of the intercourse act, that is, between the 16th June, 1796, and 30th March, 1802. During this period of time, the only acts of Congress in force relating to our intercourse with the Indians, were those of the 19th May, 1796, and 3d March, 1799, both of which contained provisions almost exactly the same, as the act of 30th March, 1802, of which I have enclosed a copy. In the margin of that copy you will see the variations between them noted, by reference to which you will readily perceive what acts were prohibited in relation to the Indians, during the period under consideration, and consequently were such as could give rise to no just claims against the Creek nation.

By referring to the several classes of claims which are not included in the provisions of the treaty, it will appear that the description of claims provided for may be comprised under the following classes:

1st. Claims for negroes belonging to the citizens of Georgia, who were prisoners among the Creeks at the date of the treaty of New York, who were to be delivered up under the said treaty, but have not been surrendered, or satisfaction made for the same.—See 3d article of the treaty.

2d. Claims for negroes and other property taken subsequent to the treaty of New York, and in possession of the Creek Indians at the date of the treaty of Colerain, and not delivered up, or for which satisfaction has not been made.—See 7th article of the treaty.

3d. All claims against the Creek nation originating subsequent to the date of the last treaty and previous to the passage of the act regulating trade and intercourse with the Indians, viz: between the 29th June, 1796, and 30th March, 1802, not falling within the description of claims provided for by the 2d article of the treaty of Fort Wilkinson, or any other of the enumerated classes of claims which are not provided for by the treaty. It is believed that the greater portion of the claims for this period will be found to have originated in the absconding of slaves, or straying away of cattle or horses from the owners into the Creek nation.

4th. Claims of citizens of Georgia of a private nature originally,

but what have been assumed by the Creek nation previous to the date of the late treaty.

When a claim is admitted, you will determine its amount by the value of the property at the time at which the right accrued to the claimant against the Creek nation, which time you will particularly note. Thus the amount of the claims for negroes, or other property, to be surrendered under the treaties of New York or Colerain, will be determined by *the value of the property at the time at which it ought to have been surrendered.* In the same manner the amount of claims originating between the 29th June, 1796, and 30th March, 1802, will be determined by the value of the property *at the time at which the claims originated against the Creek nation.* Take, for example, the case of an absconding slave, or a horse straying into the Creek nation. Neither of these acts of themselves constitutes a claim against the nation. In order to this, the owner must have regularly reclaimed his property from the individual into whose possession it came, and failing to obtain it, must have made his demand, through the agent or government, on the nation for redress. On the refusal or neglect of the nation to give redress, his claim commenced against it, and consequently it is at that time the value of the property ought to be determined.

Claims founded in the assumption of the nation will be determined by such assumption, as to their amount and commencement.

It remains to give you some instruction as to the proof by which claims ought to be sustained, and the mode of your proceeding.

The claims, being of long standing, will require, in the proof and investigation, much caution. If the length of time will make it difficult to establish just claims, it will, at the same time, furnish great facility in passing those that are fraudulent; and if the former consideration calls for liberality, the latter equally demands vigilance in examining the proofs by which the claims are attempted to be substantiated. In this difficulty, much must be left to your sound discretion. The oath of a claimant, to be taken before a justice of the inferior court, or court of ordinary, will, in all cases, be required; in which he will state the time, place and circumstances under which the claim originated, in a manner so specific as to enable you to determine whether it may be embraced in either of the several classes which have been stated to be excluded or comprehended in the treaty. He will also state, in his oath, the value of the property at the time at which the claim originated, and will state that the property has never been returned, or satisfaction received, or reprisal made, for the whole or part, if such should be the fact; or if partially received or made, to what extent. In case of the death of the original claimant, or where the person claiming is not personally acquainted with the facts, the oath will be to the best of his knowledge and belief; and in all cases the court before whom it may be taken will certify the degree of credibility to which he may be entitled. The oath of the claimant, as to the facts constituting the claim, must be supported by at least one disinterested witness, whose oath must be taken in

the same manner as the claimant's, and whose credibility must be certified by the court. In the class of claims originating in the assumption of the nation, should that assumption be of recent date, or being of a long standing, if not made with the knowledge or assent of the agent, it will constitute a strong presumption against its fairness, and will require the strongest and most unquestionable proof to sustain it; and even with this precaution, if the assumption has been recent, the cause of the delay ought to be satisfactorily explained; or if it has been made long since, the cause of the delay of payment ought, in that case, to be explained. The nature of the proof in the case of absconded slaves, or strayed horses or cattle, has been indicated in the example which has been given as to the manner of ascertaining the amount, in value, of that description of claims. I will, however, summarily, state the proof which ought, in these cases, to be furnished: 1st. Proof of ownership. 2d. Of the loss, or absconding. 3d. Of being found in possession of an Indian of the Creek nation. 4th. Of the usual demand in such cases. 5th. Of refusal to surrender. 6th. Of application to the nation, through the government or agent, and refusal or neglect of the nation to cause the surrender or make satisfaction.

After what has been said, it is believed that you will be at no loss as to the points which ought to be proved in each description of claims; always noting that the claimant must have been a citizen of Georgia at the time the claim accrued.

It is probable that the evidence which has been, from time to time, taken to establish the claims, and which has been deposited in the archives of the State, may, though it cannot be admitted to establish them, furnish you with useful information in testing the proof which may be adduced. For that purpose, and in order that it may be open to you, I have written to the governor, requesting him to furnish you with all the aids to be derived from the archives of the State. The records here will probably furnish much light, particularly as to the most important claims; and, in order that you may be put in possession of it, you will weekly furnish a summary of such claims as you may have examined, giving the name of the claimant, the nature of the claim, and the time of its origin, with such remarks as you may think will expedite the investigation here; such as the correspondence which may appear to have taken place with the agent, &c.

As soon as you can determine the time which will be required for the performance of your duty, you will fix on a period for your final adjournment, of which due notice will be given to the citizens of the State, through the governor. You will then close your proceedings, and duly certifying your record and decisions, and transmit them, with the documents and proof adduced in favor of the claims, comprehending both those that may be admitted or rejected, classed under their proper heads, to this department, in order that they may be laid before the President for his approval.

Your compensation and that of your clerk will commence from the time of your respective appointments, and will continue until your final adjournment, allowing you a reasonable time for you to return to your respective homes. Your necessary expenses, including your clerk's, will be paid on an account stated and certified by yourself. Your own compensation will, as I have verbally stated to you, be at the rate of $8 per day, with your necessary expenses.

I have the honor to be, &c.,

J. C. CALHOUN.

Hon. JAMES P. PRESTON,
Richmond, Va.

DEPARTMENT OF WAR,
June 11, 1821.

SIR: At the request of the legislature of the State of Georgia, communicated through the governor, the President has reconsidered the instructions which were originally given you as a commissioner to adjust, under the late treaty, the claims of the citizens of Georgia against the Creek nation, and I am directed by him so to enlarge them that they may embrace the claims provided for by the treaties of Augusta, Galphinton and Shoulderbone, entered into between the State of Georgia and the Creek nation, previous to the year 1790. You will accordingly consider your instructions which limited the claims of the citizens of the State of Georgia, previous to that date, to the provision contained in the article of the treaty of New York, to be so enlarged as to embrace the claims which are provided for by any of the above-mentioned treaties.

The treaties are contained in the Digest of the Laws of Georgia, which you can obtain, I presume, without difficulty.

It is not impossible, from the great length of time which has elapsed from the commencement of these claims, that there are some which are just, but to the support of which the proof required cannot be adduced. Should there be any such, which, on a full examination, you should consider as fair claims, you will arrange them into a distinct class, and transmit them, with your final report, to this department, to be laid before the President for his special decision, accompanied with your opinion and such observations as you may think proper to make. In all cases of this description, the claimant will make oath, as prescribed in the original instructions, that he cannot furnish such proof as is required by the regulations, and that he has produced the best evidence which can be obtained in support of his claim.

To remove the impossibility of mistake, it is proper to observe that it is not intended that the certificate of the court as to the credibility of the claimant, or witness, which is required in the instructions, should be founded on personal knowledge. It will be sufficient if the court is satisfied as to their credibility, whether it rests on personal knowledge or not. A copy of this communica-

tion has been transmitted to the governor, with the request that he would give it the necessary publicity.

I have the honor to be, &c.,

J. C. CALHOUN.

General JAMES P. PRESTON,
Commissioner, &c., Athens, Ga.

DEPARTMENT OF WAR,
January 26, 1822.

SIR: I have received a letter from Governor Clark, enclosing a resolution of the legislature of the State of Georgia, by which he is requested to communicate with the President of the United States, with a view to procure the commission under which you act, *to be continued and kept open until the first day of March next*, and of obtaining a modification of the instructions for authenticating claims, *so as to authorise the taking of evidence before the superior courts of the State, while in session;* which I have laid before the President.

The President deems the request of the legislature reasonable, and directs that the commission be kept open, at least, till the period mentioned in the resolution; and, if the opinion of the governor should prove correct, that the closing of the commission, even at that period, would be attended with inconvenience, the President authorizes you to extend the time to such period beyond it as you may judge proper. You will, accordingly, exercise a sound discretion in closing the commission, on the first day of March next, or extending it to such period thereafter, as may appear to you to be reasonable, and required by a regard to justice. Of the time you may fix on, due notice will be given to the claimants, through the governor, and at the expiration of which you will close your proceedings in the manner prescribed by your general instructions of the 5th April, 1821, and transmit them to this department.

The President assents to the modification proposed by the legislature, in your instructions for authenticating claims, which you will accordingly adopt, and give notice thereof, through the governor of Georgia, to all persons interested.

I have the honor to be, &c.,

J. C. CALHOUN.

General JAMES P. PRESTON,
Commissioner, &c., Athens, Ga.

DEPARTMENT OF WAR, *March* 9, 1822.

SIR: Your letter of the 18th ultimo, enclosing a copy of your letter to Governor Clark, has been received.

The arrangements you have made for continuing open your com-

mission, in pursuance of my letter of the 26th January last, are approved.

I return, herewith, the summary statement of the claims of the citizens of Georgia against the Creek nation, which you have transmitted to this department, without any other remark than that the valuation of the property appears to be too high for the time at which the claims originated.

From the letter of Mr. Henry, which you enclosed to me, and which is herewith returned, I should think that the claim of Seagrove's heirs requires additional evidence to support it.

I have the honor to be, &c.,

J. C. CALHOUN.

General. JAMES P. PRESTON,
Commissioner, &c., Athens, Georgia.

F.

Letter to and answer of W. Medill, esquire, Commissioner of Indian Affairs.

COMMITTEE ROOM ON INDIAN AFFAIRS OF THE SENATE,
July 22, 1848.

SIR: You will oblige the Committee on Indian Affairs, of the Senate, by informing them if any notice was extended to the Creek Indians of the appointment of either James P. Preston or Stephen Pleasanton, esquire, as commissioners, under the fourth article of the treaty of Indian Spring, of 8th January, 1821; or if they were notified of the times and places of holding such commission; or that the Creek Indians were present personally, or by counsel, at the investigation of such claims. Will you also state if any notice was given to said Indians of the awards made by the said commissioners, or either of them, or the President, and when the said notices were given.

Will you also state if any demands or claims have ever been made by John Crowell, esquire, or any other person, on behalf of the Creek nation, or by the Creek nation itself, of the $200,000, or any part of it, which was reserved in the fourth article of the treaty of Indian springs, of 8th June, 1821.

If you cannot have copies of these papers prepared in time, please send a clerk to the committee room of the Senate, with the originals, on Monday morning next, at 9 o'clock, a. m., when the committee meets, and will desire them punctually.

Very respectfully, your obedient servant,

D. R. ATCHISON.

Col. WM. MEDILL,
Commissioner of Indian Affairs.

In reply to this, Mr. Mix, chief clerk of reservations, attended at the committee room, and stated, that by the direction of the Com-

missioner of Indian Affairs he had made an examination of all the letters received and the letters sent, and could find nothing which induced the belief, or from which he could infer, that any notice of the appointment of General Preston or of S. Pleasanton, esquire, had ever been given to the Indian agent, or to the Creek Indians themselves. Neither could he find that they had been notified of the amount of the awards made in favor of the citizens of Georgia. In relation to the demand for the balance, Mr. Mix stated that the first written evidence of demand that he could find on the records was the letter of Colonel Crowell, their agent, dated November 14, 1828, which will be found in the appendix; and that the demand for information about it had been frequently made since.

G.

ATTORNEY GENERAL'S OFFICE,
July 28, 1828.

SIR: The questions submitted for my opinion are—Whether, under the treaty of the Indian Spring in 1821, between the United States and the Creek nation of Indians, the people of Georgia are entitled to claim against that nation—

1. Indemnity for property destroyed;
2. For the increase of living property;
3. For interest?

There is a previous question, to which I beg leave respectfully to invite your attention; because I am under the impression that a rule which you had laid down for yourself in several previous cases would debar you from acting on this; and because, in addition to this rule, I think that there is a peculiar objection to your taking up this subject on the present application.

By the fourth article of the treaty of the Indian Spring, the whole estimated value of the lands ceded by the Indians under the treaty is $450,000, of which $200,000 were stipulated to be paid to the Indians by fourteen instalments, in fourteen successive years; and the residue, of $250,000, was reserved on account of the Georgia claims; the United States agreeing to pay to the State of Georgia "whatever balance may be found due by the Creek nation to the citizens of that State, whenever the same shall be ascertained, in conformity with the reference made by the commissioner of the State of Georgia, and the chiefs, &c., of the Creek nation; to be paid in five annual instalments, without interest, provided the same shall not exceed the sum of $250,000;" and by articles of agreement annexed to the treaty, it was agreed between the commissioners of Georgia and the Creek nation, "that all the talks had upon the subject of these claims, together *with all claims* on *either side*, of whatever nature or kind, prior to the act of Congress of 1802, regulating the intercourse with the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be decided upon, ad-

justed, liquidated, and settled, in such manner, and under such rules and regulations, and restrictions as he shall prescribe;" with a proviso, expressive of the wish of the parties that the liquidation and settlement shall be made at some place in Georgia most convenient for the parties; and closing with the stipulation "*that the decision and reward thus made and rendered shall be binding and obligatory upon the contracting parties.*"

In compliance with the submission thus made to him, President Monroe, in April, 1821, deputed Colonel James P. Preston as a commissioner to proceed to Athens in Georgia, and to take the proofs in support of the claims of the citizens of Georgia on the Creek nation, and to report his opinion upon them, together with the proofs, to the President of the United States, for his final decision.

It may be observed that the reference to the President was of the *claims on both sides.* The several treaties between the State of Georgia and the Creek nation bear evidence that there were claims on both sides, if they had not been extinguished on both sides by subsequent and successive treaties; and this treaty itself, by submitting the claims on both sides to the President, implies necessarily that there were mutual claims. Yet the appointment of Col. Preston, as indicated by his instructions, is to settle the amount of claims of the citizens of Georgia on the Creek nation—not those also of the Creek nation on the State of Georgia. The place of settlement is Athens in Georgia, and care is taken that there shall be full notice to the Georgia claimants. Yet it does not appear that there was any notice to the Creek nation of his proceeding, so as to enable them either to bring forward their own claims, or to oppose, if they thought proper, those of the citizens of Georgia. The Creek nation might well object to the whole proceeding, that it was not according to the submission. The subject submitted was the claims on both sides, so as to lead to the ascertainment of the balance, if any, which might be due to the citizens of Georgia. On such a reference of accounts between individuals, it would be error for the arbitrator to proceed without notice to both parties; and such an award would be set aside on the prayer of the injured party who had not notice, but not on the prayer of the party who had notice.

The instructions to Colonel Preston contain "those rules, regulations, and restrictions" of the President for settling the Georgia claims, which, by the terms of the submission, the President was expressly authorized to prescribe.

By these instructions, the President directs the commissioner to consider as excluded from his jurisdiction several heads of claims which it was anticipated might be made; and, among these excluded claims, the fourth head is, "all claims originating in depredations committed in a period of hostilities, or previous thereto, if not provided for in the treaty which followed such hostilities." Immediately following this head of exclusion, there is, in the original instructions, the following paragraph:

"The exclusion of this class rests on a principle perfectly well

established between civilized nations, and is believed to be equally applicable to Indian nations. In its application in this case, it will exclude all claims originating previous to the treaty with the Creek nation made at New York the 7th of August, 1790, except for slaves provided to be given up by the 3d article of said treaty; and those originating subsequent to the date thereof, and previous to the 29th June, 1796, (the date of the treaty of Colerain,) except for the property provided to be given up in the 7th article."

After presenting six distinct classes of claims that were to be excluded, the original instructions exhibit to the commissioner, under four heads, the claims which were to be allowed; as—1. Negroes that ought to have been delivered up by the Creek nation under the 3d article of the treaty of New York, and which had not been delivered up; 2. Negroes and other property which ought to have been delivered up by the Creek nation under the 7th article of the treaty of Colerain, but which had not been delivered up; 3. All claims originating since the date of the last treaty, (29th June, 1796,) and previous to the passage of the act regulating trade and intercourse with the Indian tribes, (30th March, 1802,) and not falling within the description of claims provided for by the treaty of Fort Wilkinson, (16th June, 1802;) 4. Claims of citizens of Georgia, of a private nature originally, but which had been assumed by the Creek nation previous to the date of the last treaty (8th January, 1821.)

The commissioner was farther directed, in allowing a claim, to consider himself *limited* strictly *to the value of the property at the time at which it ought to have been surrendered.*

These instructions, having been communicated to the Governor of Georgia, were laid by him before the legislature of that State; and resulted in a remonstrance from that legislature, complaining of the instructions, and praying that they might be enlarged so as to embrace, among other things, all claims arising under the treaties of August, (1783,) Galphinton, (1785,) and Shoulderbone, (1786,) between the State of Georgia and the Creek Indians; also, all claims for *property destroyed*, for *the increase of females*, and *hire*. I beg leave to add to the documents which you furnished me for this investigation the letter of the governor of Georgia, of the 19th May, 1821, and the resolutions of the legislature of Georgia to which I have just referred; of which copies have been furnished to me from the War Department.

On this remonstrance to the President, the instructions originally given to the commissioner, Colonel Preston, were so enlarged as to embrace claims under the treaties of Augusta, Galphinton, and Shoulderbone, but no farther. So that the claims for *property destroyed*, and for *increase* or *hire*, were rejected by the President. The demand for interest was also deliberately considered by him, and rejected.

On these principles Colonel Preston closed his report on the 15th March, 1822; and there being alleged claims which had not been settled by Colonel Preston, because the claimants had not had time to mature their proof, they were submitted by the President to S.

Pleasonton, esq., the Fifth Auditor, who closed his first report on the 9th September, 1823. The letter of appointment to Mr. Pleasanton also accompanies this opinion. He afterwards proceeded, under the directions of President Monroe, to audit other claims.

The reports were considered by President Monroe, and approved and confirmed by him. They became thereby his "decision and award" upon the Georgia claims, which, according to the express terms of the submission agreed upon by the commissioners of Georgia and the Creek nation, were to be "*binding and obligatory upon the contracting parties.*"

It is now proposed to you by *one of the contracting parties* to open this award, to alter the rules and regulations prescribed by President Monroe, and to let in several heads of claims which he had deliberately considered and rejected.

The previous question, to which I have already intimated that I wished to call your attention, is, whether you have the power to do what is asked of you; and, as bearing on this question, I beg leave to submit to you the following considerations:

1. Here is a case which arose in the time of your predecessor, and which he deliberately considered, decided, and closed. Every question now submitted to you, was duly submitted to him, and solemnly considered and decided by him; and the whole affair, so far as its principles are involved, was finally and conclusively settled by him eighteen months before the close of his administration. The proposition now made to you is to sit in appeal upon the acts of your predecessor, and to review and reverse a solemn decision regularly made by him in the fair and proper exercise of his functions.

The question is, whether it be constitutionally competent for you to undo what your predecessor has done. If it be, then all the official acts of all your predecessors are open to review and reversal; and you may go back to the foundation of the government, unsettle all that has been done by those who have gone before you, and place those transactions on the basis on which you may think they ought to rest; and your successors, in their turn, may undo all that you have done, and restore the state of things which you have changed. Thus, as long as our constitution shall endure, executive acts, instead of being done when they are done, will be perpetually afloat; and the incumbent of the office for the time being, instead of discharging the current duties which properly belong to him, will have his time consumed by this retrospective action on the acts of his predecessors. I had supposed the rule to be, that, whatever purely executive measure had been *adjudged* and *decided*, and *closed*, during a preceding administration, was considered as withdrawn altogether from the action of the succeeding President; and the rule seems to result naturally and necessarily from the nature of things. Where, indeed, a President has left his action upon any subject incomplete, and it devolves necessarily on his successor to complete it—or where a measure of policy commenced by a preceding President, is necessarily to be continued or discontinued by his successor—the successor must, in both instances,

judge for himself as to the principles on which he will act. But, in relation to a measure which is of such a nature that the action of the preceding President has travelled over the whole subject in all its parts, considered it in all its bearings, and settled and closed it, I am at a loss to understand how such a subject can be opened by a succeeding President, consistently with the theory of our constitution. It seems to me to be inconsistent with the notion of *executive power*, to consider *nothing as executed* which has been done, but every thing afloat and *in fieri*, as long as it is physically susceptible of being acted upon again. Considered as an exercise of appellate and reserving power, it is at war with all the analogies on the subject; for such power is exercised only by a superior over an inferior tribunal—not by the same tribunal over its own past acts, at every change of the members composing the tribunal. Knowing that this subject is not new to you, I forbear to press it farther.

2. The award of President Monroe, in this case, is the award of the judge chosen by the two contracting parties. They did not, indeed, refer it to President Monroe by his individual name. But they referred it to the President of the United States; and, at the time of the reference, it had been ascertained that President Monroe was virtually the President elect for his second term; having four full years to discharge the duties of that office. But, without insisting that a personal preference of that individual led to his selection, it is enough to say, that, being the President of the United States, he met the official description of the reference; and that his award made in that character was, by the express terms of the submission, to be binding and obligatory on the parties. Can such an award be opened on the application of one of the contracting parties, without the concurrence of the other? In a case between individuals, it is well known that this cannot be done. And the reason which forbids it to be done between individuals is equally applicable to nations; because it grows out of the essential nature of a contract, which, as it requires the concurrence of two, at least, to make it, so it requires the concurrence of both to dissolve it.

It will be said that the analogy does not apply, because the Indians have no interest in objecting to the opening of the award; that they have been formally released, by the State of Georgia, from all claims on them; and the augmentation of the award will fall only upon a fund (the $250,000) in which they have no longer any interest. But is this so? Is it not taking for granted a point which the Creek nation have, at least, a fair right to dispute? And if they have a fair right to dispute it, have they not interest enough in the case to authorize them to object to setting aside the award?

To whom will the surplus of the $250,000 belong, after discharging all fair claims of the citizens of Georgia? Certainly not to the citizens of Georgia. It is theirs to the extent of their fair claims upon the Creek nation; but no further. Had the whole fund been intended to be given to the citizens of Georgia, it would

have been given at once, in so many words; and, had such been the intention, it would have been extremely idle (to say the least of it) to set the President to work to settle the accounts between the citizens of Georgia and the Creek nation, for the purpose of ascertaining the balance which should be due by the latter to the former. To what purpose ascertain *this balance*, except for the purpose of its being paid out of this fund? But it is needless to speculate on this subject. The treaty is explicit. It is the balance, thus to be ascertained, which is to be paid out of this fund; and that alone. That balance paid, the State of Georgia has no longer any claim on the fund. The surplus, then, must belong either to the United States or to the Creek nation. To which of them does it belong? The immediate interest which we have in this subject renders it extremely difficult for us to judge aright upon it. If it were possible to refer the question to such a mind as that of Vattel, it may well be questioned whether that which the committee of the Senate admit was their first impression, would not be his last: to wit, that it belongs to the Indians. By the treaty, the Indians were ceding a large body of their lands to the United States. The 4th article of the treaty presents the consideration to be paid by the United States for the lands thus ceded. That article begins: "It is hereby stipulated and agreed, on the part of the United States, *as a consideration for the land ceded by the Creek nation, by the first article*, that there shall be paid to the Creek nation, by the United States, ten thousand dollars," &c.; going on to specify the instalments which are to make the first $200,000, and then proceeding thus: "*And as a further consideration for the said cession*, the United States do hereby agree to pay to the State of Georgia whatever balance may be found due by the Creek nation to the citizens of said State, whenever the same shall be ascertained, &c.: *Provided*, The same shall not exceed the sum of $250,000." Was this $250,000 a part of the estimated value of the land which had been ceded by the Creek nation? If so, would not this sum, in the natural course of things, have been paid to the Indians, had not the Georgia claim stood in the way? Was it not their money—a part of the price of their lands—with a deduction of these claims? and, these claims paid, does not the balance of the fund belong to them? Does the case present any thing more than a reservation of a part of the agreed price of lands, to meet the demand uncertain in amount? and this amount once ascertained and paid, does not the balance of the purchase money belong to the seller of the land?

On what principle of equity can the United States retain the money? Have they run any risk by assuming an unlimited liability? Had their assumption to the State of Georgia been unlimited in amount, there would be reason for saying that, as they took the contingency of debts which might have gone far beyond the value of the lands, it was but fair that they should profit by their falling short of that value; the risk in the former case being sufficient consideration to entitle them to the benefit of the latter. But here the United States run no risk. Their assumption is limited and spe-

cific. It cannot exceed $250,000. And if $250,000 was the price of the lands agreed upon between the contracting parties, $250,000 (part of the price) being retained by the purchaser merely for the purpose of meeting his assumed liability for the Georgia claims, it is not easy to discern, in this view of the subject, on what ground of equity the surplus of the purchase money can be retained by the purchaser after these claims have been paid off.

You will not understand me as expressing, in this place, an opinion on this subject; but as suggesting the topics which forbid us to assume, as a self-evident truth, that the Creek nation are such entire strangers to this fund as to have no right to object to opening the award for the purpose of absorbing more of it. I consider the question a delicate one, and by no means free from difficulty. Like all questions of contract, it certainly depends for its solution on the intention of the parties to the contract. It may be fair to consider it, not as a contract merely between the United States, as the purchasers, and the creek nation, as the venders of lands; but as a contract between three parties—the United States, the State of Georgia, and the Creek nation; in which—1st. In consideration of the assumption, on the part of the United States, of the Georgia claims to the amount of $250,000, the State of Georgia give to the Indians an absolute and final release of all claims and demands upon them, of whatever nature. 2d. The Indians, in consideration of such absolute and final release of all claims and demands upon them by the State of Georgia, surrender absolutely to the United States the $250,000, relinquishing all claim upon any surplus that may remain.

In this view of the subject, the Indians find their equivalent for the surrender of the surplus in the absolute release of all demands on the part of Georgia; and the State of Georgia finds its equivalent for that release on the certainty of payment of all their just claims, to the amount of $250,000. The United States, finding their right to retain the surplus, as against the Indians, on the final and absolute release given to them by the State of Georgia of all demands; and as against the State of Georgia, in the assumption of all just demands which the citizens of that State could establish against the Creek nation, to the amount of $250,000.

3. If you should be disposed to take this last view of the subject, the surplus of this fund which remained after satisfying the amount of President Monroe's award, belonged to the United States by force of the contract; and, as such, became mixed and incorporated with the other funds of the United States. I consider the award of President Monroe as final and conclusive on the subject of the Georgia claims, as a judgment of a court of a last resort would have been. I consider it as deciding, with the authority of such a court, the extent of the Georgia claims; and, by necessary consequence, the extent of the surplus of the $250,000, to which the United States were entitled. And I cannot perceive that you have any more power to surrender this surplus, or any part of it, to the demand of the State of Georgia, than if it had been ascertained by the judgment of a court, and placed in the Treasury of the United

States by an execution. In a word, I consider the power of the President of the United States over this subject as *functus officio*, by the award of President Monroe; and that, if the subject is to be opened and acted upon again, it can be done only by the authority of Congress.

Having thus, according to my own sense of duty, brought to your notice the previous question of the propriety of your disturbing this deliberate and well considered act of your predecessor, I proceed now to express my opinion on the several questions on which you require it.

The complaint is, that President Monroe has done injustice to the Georgia claimants—1st, in not allowing them for property destroyed by the Indians; 2d, in not allowing them for the increase of the female slaves; 3d, in not allowing interest on the sums found by the commissioners.

Although these exceptions to the award are specific, I do not see how we can come to a satisfactory conclusion upon them, without a thorough examination of the character and foundation of the Georgia claims. The exceptions, indeed, are unintelligible without such an examination. They call upon you to place yourself on the ground on which Mr. Monroe originally stood with regard to these claims, and to judge of the whole matter *de novo*, in all its parts and consequences. It is only in this way that we can discover whether any error has been committed by Mr. Monroe, to the prejudice of the claimants.

Let us proceed, then, to examine it as an original subject, and as if you were now, for the first time, to lay down the rules, regulations, and restrictions, by which these claims were to be settled. The treaty of 1821 is the first subject to which we should naturally look, and then the submission to the President's award, which grew out of that treaty.

The United States, as we have seen, stipulate by this treaty to pay to the State of Georgia "whatever balance may be found due by the Creek nation to the citizens of that State." To ascertain this balance was the object of the reference. The document which submits the subject to the President recites, that "whereas the citizens of Georgia, by the aforesaid commissioners, have represented that they have claims to a large amount against the said Creek nation: now, in order to adjust and bring the same to a *speedy and final settlement*, it is hereby agreed, &c., &c., that all the *talks* had upon the subject of their claims at this place, together with all claims on either side, of whatever nature or kind, prior to the act of Congress of 1802, &c., with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be decided upon, adjusted, liquidated, and settled, in such manner, and under such *rules*, *regulations*, and *restrictions*, as he shall prescribe." What these *talks* were, we are not informed; the presumption is that it means, according to its common use in the intercourse with the Indian tribes, as well as among civilized persons, merely conversations or discussions. To attach to it the sense, *admissions* on either side would not be war-

ranted by any known use of the word; and there is no extrinsic evidence of any such admissions. What the *documents* were, is as little explained; except that the documents meant were documents in support of the claims. But be they what they might, nothing is admitted. The talks, the documents, the claims, are all referred to the President, without any other description than that they were those claims, on both sides, which had occurred prior to the act of Congress of 1802, regulating trade and intercourse with the Indian tribes, with full power to the President to *decide upon, adjust, liquidate*, and *settle these claims*, under such *rules, regulations*, and *restrictions*, as he shall prescribe. Power more ample could not be conveyed.

Now, what was the source of these claims by the citizens of Georgia on the Creek nation? The general source was *wrongs done by the Creek nation to the citizens prior to* 1802; and these wrongs are alleged to have consisted *partly in the destruction of their property*, and *partly in the seizure, carrying away, and detention of other property, consisting of negroes, horses, &c.*

It is to be observed that this treaty of 1821 does not propose to create new heads of claim. The subject referred to is the claims existing on the 30th March, 1802, at the time of the passage of the act to regulate trade and intercourse with the Indian tribes, which act had provided for the redress of all subsequent wrongs.

Now, in looking back upon these claims which had arisen prior to the 30th March, 1802, and which had arisen from antecedent Indian spoliations, it becomes necessary for the President, in order to fulfil the duty of prescribing *rules, regulations*, and *restrictions* for the settlement of these claims, to ascertain, in the first place, what claims were still subsisting at the date of the act of Congress, and what part, if any, of those claims had been previously satisfied or extinguished by the acts of the parties themselves.

It is a matter of historical notoriety, that prior to the adoption of the federal constitution, which transferred to the United States the regulation of intercourse with the Indian tribes, and threw upon them the expense of maintaining all future wars that might arise with those tribes, the States had necessarily been their own defenders and avengers of Indian aggressions by the neighboring tribes; that the States had been engaged in frequent wars with these tribes; and that these wars had almost always been wound up by treaties of peace, in which the Indians had been constrained to pay for past wrongs by large cessions of their lands. These lands and their peltries constituted the whole wealth of the Indians in the hunter state, and formed the only fund out of which they could either pay their debts or compensate for their trespasses.

In considering the subject of the Georgia claims, with a view to prescribe rules, regulations, and restrictions for their settlement, it becomes necessary for the President of the United States to inquire whether any, and what, transactions of this nature have occurred between the State of Georgia and the Creek nation, to lessen the amount of these claims; for if any of these claims have been thus

compensated or released, they no longer form claims on the Creek nation.

I proceed, in the first place, to bring before you, briefly, the provisions of all the treaties which appear to me to bear on the subject of these claims; and will afterwards attend to the objections offered on the part of Georgia to the operation of these treaties.

The earliest treaty between the State of Georgia and the Creek nation is the treaty of Augusta, concluded on the 1st of November, 1783, and found in the appendix of Watkins's Digest of the Laws of Georgia, page 767.

This is a treaty of peace.

By the 1st article, it is provided "that all differences between the said parties, heretofore subsisting, shall cease and be forgotten."

By the 2d, "*that all just debts due by any of the said Indians to any of the merchants or traders* of the said State, *shall be fairly and fully paid; and all negroes, horses, cattle, and other property, taken during the late war, shall be restored.*"

By the 3d article, a new line is marked out between the present settlements and the Indian hunting ground.

By the 6th, *the Indians cede to the State of Georgia all the lands, waters, woods, and game, lying and being in the State eastward of the line marked out by the 3d article.*

No consideration is stated for this cession of land. The fair presumption is, that it was to cover all the expenses and losses of the war, and all wrongs and injuries done by the Indians, either prior to the war or in the course of it, except those specially provided for by the 2d article.

The next treaty between the State of Georgia and the Creek nation is that of Galphinton, which took place on the 12th November, 1785.—(Same book, page 768.)

The first articles of this treaty are employed in providing for the punishment of future individual aggressions on either side.

The 8th article stipulates that "the said Indians shall restore all the negroes, horses, or other property, *that are or may be among them*, belonging to any citizen of this State, or any other person or persons whatever, to such person as the governor shall direct."

The 10th article stipulates, on the part of the State of Georgia, that "all horses belonging to any Indian, that shall be found in the said State, shall be restored to such person as the head-man of the tribe where such Indian may reside shall direct."

The 11th article stipulates for a new boundary line, and a further cession of land by the Indians; for which no consideration being assigned, it is subject to the same remark made on the cession under the former treaty.

The next treaty was that of Shoulderbone, made on the 3d November, 1786, between the State of Georgia and the Creek nation. (Same book, page 779.)

The preamble to this treaty has an important bearing on the inquiry before us.

It recites that "whereas, since the signing of the treaty of Gal-

phinton, acts of hostility had been committed by parties of Indians on the inhabitants of the State, in violation of the treaty, whereby the friendship and harmony essential to both had been greatly disturbed; and whereas the said parties are now mutually desirous of renewing a treaty *which may comprehend such articles as will give satisfaction to the party injured*, and restore peace, friendship, and commerce to both."

By the 1st article, the Indians engage for the execution of six of their people, who belonged to the party that murdered six of the whites last spring.

By the 2d, "*that all negroes, horses, cattle, and other property now in the nation, and which were taken from the inhabitants of Georgia, shall be restored to such person or persons as his honor the governor or the commissioners shall direct.*"

The 10th and 11th articles provide that the lines according to the treaties of Augusta and Galphinton shall be run and marked, and shall not be violated.

The 12th stipulates that five hostages shall be delivered up by the Indians for the faithful observance of the treaty.

Here we have a treaty expressly provided *in satisfaction of past injuries;* and as applicable to the head of spoliations of property, the stipulation is, that all negroes, &c., *now in the nation*, shall be restored.

There could not, I think, be a question that, among civilized nations, such a treaty would extinguish all prior claims, whether for property destroyed or taken away; with the exception of the property stipulated to be restored by the 2d article.

So far the treaties of Georgia go; but as Georgia was also a party to those which followed between the United States and the Creek Indians, it is necessary to pursue this subject a few steps further.

In October, 1787, a fresh war broke out between the State of Georgia and the Creek nation; and if we may judge from the temper of the 1st section of the act of the Georgia legislature, of the 31st of October of that year, "for suppressing the violences of the Indians," it would seem to have commenced under unusual excitement, and to wear very much the aspect of a war of extermination. The law is found at page 365 of Watkins's Digest.

The first section is in these words: "*Be it enacted, &c.*, That from and immediately after the passing of this act, the Creek Indians shall be considered as out of the protection of this State; and it shall be lawful for the government and people of the same to put to death or capture the said Indians, wherever they may be found within the limits of the State," &c., &c.

The treaty which put an end to this war was the treaty of New York, between the United States and the Creek Indians, on the 7th August, 1790.

By the 3d article of this treaty, it is stipulated that "the Creek nation shall deliver, as soon as practicable, to the commanding officer of the troops of the United States stationed at Rock landing, on the Oconee river, all citizens of the United States, white inhabitants or *negroes, who are now prisoners in any part of the said*

nation; and if any such prisoners or *negroes* should not be so delivered on or before the 1st of June ensuing, the governor of Georgia may empower three persons to repair to the said nation, in order to claim and receive such prisoners and *negroes*.

By the 4th article the Indians make a large cession of their lands.

By the 5th, the United States guaranty to them the residue of their lands.

By the 13th, it is stipulated that *all animosities for past grievances shall henceforth cease*.

Here is an express amnesty for all past wrongs; and with regard to spoliations, the stipulation of the Creek nation is confined to the restoration of *negroes*, not of other property; and of such *negroes* only as *were then in any part of the said nation*. All prior claims, then, for other property *captured* or *destroyed*, *whether in war or peace*, were hereby extinguished; the fair presumption being that these injuries were compensated by the large cession of lands now made by the Indians. All claims then existing under the prior treaties between the State of Georgia and the Creek nation—those of Augusta, Galphinton and Shoulderbone—were now released and gone. Indeed, I understand it to be admitted that such would unquestionably be the effect of this treaty, had it been a treaty between civilized nations; the objection to such operation in this case being that it is a treaty with Indians, which will be considered by and by.

The next in order was the treaty of Colerain, between the United States and the Creek nation, on the 29th June, 1796, which is also a treaty of peace.

By the 1st article it is provided that the treaty of New York shall remain obligatory on the contracting parties.

By the 6th article, the Creeks relinquish all claims to the lands which had been ceded by the Choctaws and Chickasaws to the United States, by the treaties of Hopewell and Holston, and to which lands, or a part of them, the Creeks had claimed title.

By the 7th article it is stipulated that "the Creek nation shall deliver, as soon as practicable, to the superintendent of Indian affairs, at such place as he may direct, all citizens of the United States, white inhabitants and *negroes*, *who are now prisoners in any part of said nation*, *agreeably to the treaty of New York*; and also all citizens, white inhabitants, *negroes*, *and property taken since the signing of that treaty*: and if any such prisoners, negroes, or property should not be delivered on or before the first day of January next, the governor of Georgia may empower three persons to repair to the said nation in order to claim and receive such prisoners, negroes and property, under the direction of the President of the United States."

By the 9th article it is declared that "all animosities for past grievances shall henceforth cease; and the contracting parties will carry the foregoing treaty into full execution with all good faith: *Provided*, *nevertheless*, That persons now under arrest in the State of Georgia for a violation of the treaty of New York are not enti-

titled to be included in this *amnesty*, but are to abide the decision of the law."

So that, in addition to that amnesty for past wrongs which the law of nations attaches by implication to a treaty of peace, here is an *express* and *positive amnesty* for the past, with the reservations expressed in the treaty itself.

It is proper, also, to observe that by the 3d and 4th articles of the treaty of Colerain, it was stipulated that the President should have the power of establishing trading or military posts within the Indian lines, on the Alatamaha and Oconee rivers, to each of which the Indians agreed to annex a tract of land of five miles square; which lands were thereby ceded to the United States, and declared to be for their use and under their government.

And by the 8th article, in consideration of the friendly disposition of the Creek nation towards the government of the United States, evidenced by the stipulations in that treaty, and particularly the leaving it in the discretion of the President to establish trading or military posts *on their lands*, the United States give to the said nation goods to the value of $6,000, and stipulate to send them two blacksmiths, with strikers, to be employed for the upper and lower Creeks, with necessary tools.

This treaty, having been submitted by the President to the Senate for their approval, was ratified by them, subject to the condition that nothing contained in the 3d and 4th articles should be construed to affect any claim of the State of Georgia to the right of pre-emption to the lands so set apart for military or trading posts; or to give to the United States, without the consent of the said State, any right to the soil, or to the exclusive legislation over the same, or any other right than that of establishing, maintaining and exclusively governing military and trading posts within the Indian territory mentioned in the said articles, so long as the frontier of Georgia may require these establishments.

This was the only objection, on the part of Georgia, to a treaty proclaiming *amnesty to the Indians for all past grievances*, with the exceptions stated in the treaty itself.

This was the last treaty which took place between the United States and the Creek nation prior to the 30th March, 1802, the date of the act of Congress to regulate trade and intercourse with the Indian tribes; at which day the account of the Georgia claims was to stop, according to the terms of the reference made to the President in 1821.

Fresh acts of aggression and spoliation had, however, been committed by the Indians after the treaty of Colerain, and prior to the act; for which that act made no provision, because it was entirely prospective in its provisions. These aggressions seem to have led to further hostilities, which were terminated by the treaty of Fort Wilkinson, on the 16th June, 1802.

By the 1st article of this treaty, the Indians make another cession of lands to the United States.

By the 2d, the United States agree to pay them certain specific sums of money, out of which payments there is a reservation of

$5,000 to satisfy claims for property taken by individuals of the said nation from the citizens of the United States *subsequent to the treaty of Colerain*, which has been or may be claimed and established agreeably to the provisions of the act for regulating trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

I cite this treaty merely because I find it led to the adoption of one of the heads of excluded claims in the instructions to the commissioner (Preston) proceeding from the Department of War on the 5th of April, 1821, to wit: the 5th class, which is thus worded: "5th. Claims provided for by the 2d article of the treaty of Fort Wilkinson, concluded 16th June, 1802."

I cannot discover how the treaty of Fort Wilkinson has any bearing on the question of the claims submitted to the President. The claims submitted to the President are those which existed on the 30th March, 1802. The treaty of Fort Wilkinson is not understood by me to make any provision for those claims, or any part of them. The 2d article of that treaty does not profess to provide for any claims which existed at, and prior to, the 30th March, 1802. It does not provide for all the claims for property taken by the Creeks *since* the treaty of Colerain, (1796,) but for such property only, taken since that date, as has been or *may be claimed and established agreeably to the provisions of the act for regulating trade and intercourse with the Indian tribes.* But the provisions of this act do not look back to any wrong done before its date; they are entirely prospective; the language of the 14th section, referred to by the instructions, is, "that if any Indian or Indians belonging to any tribe in amity with the United States *shall* come over or cross the said boundary-line, and there steal or destroy any horses," &c. And the whole provisions of the article are not only *future*, but inapplicable, in their nature, to antecedent wrongs.

The treaty of Fort Wilkinson, then, *providing* only for such claims *as have been or may be made and established agreeably to the provisions of this act*, is necessarily limited to claims arising posterior to the act; because it is only on these claims that the act operates, and only on these that could be made and established agreeably to the provisions of the act. The treaty of Fort Wilkinson, therefore, looking back only to the date of the act, has nothing to do with the claims on which the President was called to decide, which were the claims existing prior to the act and at the date of its passage. I shall, therefore, dismiss this treaty from my consideration of the subject; regarding the treaty of Colerain as the last which touches the questions before us.

Having thus brought to your view the provisions of all the treaties which can be supposed to affect this inquiry, let us observe more particularly their effect on the Georgia claims.

One head of these claims submitted for my opinion is the claim for *property destroyed*, and which the people of Georgia carry back to 1783, the date of the treaty of Augusta. How stands this claim under these treaties? There is not one treaty which contains any stipulation to answer for *property destroyed*. While they do all

contain stipulations for the redress of other injuries—the restoration, for example, of the spoliated property then in the nation—what is the effect, in a *treaty of peace, of express provisions with regard to some past wrongs, and a total silence as to others?* Is it not a virtual extinguishment of all claims for antecedent wrongs with regard to which the treaty is silent? With regard to *property destroyed in the progress of the war*, is not a treaty of peace a mutual release of all claims on this ground? In our late war with Great Britain, for example, the destruction of property in the course of the war was immense; yet it was never imagined that, after the treaty of peace, we had any claim on Great Britain for *property destroyed in the course of the war;* nor any other claim of any sort, except those which were specifically created by the treaty of peace itself. In Indian wars, as in all other wars, the destruction of property as well as of life is mutual; and the Indians have generally got much the worst of it, in both respects. If they destroy some few dwellings and horses and cattle of the whites, we also burn and destroy their towns, their crops, and their stocks. But when the treaty of peace comes, it puts a seal on all claims of this sort on either side. Such is admitted to be the tacit effect of a treaty of peace among civilized nations, from the very nature and purpose of the instrument itself. Such is the effect which the law of nations ascribes to a treaty of peace, even where the treaty is silent as to all past wrongs.

But this case is even stronger; for here the treaties are not silent in this respect.

The treaty of Shoulderbone (1786) between the State of Georgia and the Creek nation expressly declares, in its preamble, that the articles of that treaty are to *give satisfaction to the party injured;* and by that treaty the single stipulation for past spoliations is, that the Indians will restore all negroes, horses, cattle, and other property, *then in the nation.*

The subsequent treaty of New York (1790) supersedes the treaty of Shoulderbone; it contains *an express amnesty for all past grievances;* and as to property plundered, stipulates only that the Indians shall restore *all the negroes who were then prisoners in any part of the nation;* thus merging and extinguishing all future claims and complaint, not only for property previously *destroyed*, either in war or peace, but for plundered *property of all other descriptions, save only negroes.*

Nor is this omission of *all other property* to be considered as *mere inadvertence;* because the subsequent treaty of Colerain, (1796,) *containing another express amnesty for the past*, clearly recognizes and marks the distinction between *negroes separately* and *negroes and other property conjointly;* by the stipulation of its 7th article, that the Creek nation shall deliver *the negroes* who are *now* prisoners in any part of the nation, *according to the treaty of New York;* and *also all negroes and other property* taken since the signing of that treaty.

In considering the force of these treaties, we must continually bear in mind the important fact that they contain successive grants

and concessions of large portions of the Indian lands, which can be regarded in no other fair light than as so many atonements, expiations, and compensations for past outrages; which, having been once paid and satisfied, and thus formally and repeatedly released, ought never to have been called up in judgment again for a second payment and satisfaction.

Had these been treaties between civilized nations, it would never, I think, have been questioned that the claims of Georgia would have been reduced to the following heads:

1. To a claim for the negroes which ought to have been restored under the treaty of New York, (1790,) to wit: the negroes *then in the Creek nation.*

2. To a claim for the *negroes and other property* taken between the date of that treaty and the date of the treaty of Colerain, (1796,) and which ought to have been restored under the latter treaty.

3. To a claim for all *negroes and other property taken and destroyed* between the date of the treaty of Colerain and March 30, 1802, the period at which the accounts between the parties were to stop. I extend this third head to negroes and other property taken *or destroyed*, because there is no treaty to restrain this third head of claims, as there are with regard to the two former; and therefore I consider it open to every just claim, of whatever description, that can be sustained by satisfactory proof.

I do not understand it to be denied that such would have been the effect of these treaties had they been treaties between civilized nations. Why are they not to have the same effect in this case? The reasons set forth in the memorial and remonstrance of the senate and house of representatives of the State of Georgia to the President of the United States, in 1824, are:

1. That they are not treaties *with an independent nation:* that is, not with a nation of unlimited and absolute independence, but with a nation locally resident within the limits of another and paramount sovereignty—to wit, the State of Georgia; and with a nation, therefore, at best, of *limited independence.*

2. That if independent, the Indians are *uncivilized;* and not being bound by the rules *adopted by civilized nations* for the construction of treaties, they cannot demand the benefit of those rules in their own behalf, for the purpose of setting up an implied exemption from the otherwise plain import of their express stipulations.

3. That if these treaties did amount to a release of all prior claims, the circumstances attending the execution of the treaty of Indian Spring in 1821, and the terms of the reference to the President of the United States, being "of all claims of whatever nature," was a *waiver* of that release.

I proceed to consider these objections in the order in which they have been presented.

1. That the Indians are not an independent nation.

I do not distinctly perceive the conclusion to which this objection is supposed to point. Indeed, I do not perceive any sound

conclusion of any use in this discussion, which it has a *tendency* to establish. Is it meant to say that the Indians, not being an independent nation to all intents and purposes, have not a capacity to treat? But their capacity to treat has been uniformly admitted in practice, and has never been denied in theory. It was practically admitted by the British government in Georgia, prior to the revolution; of which there is proof in Watkins's Digest, appendix, page 763. It was admitted by the State of Georgia itself, after the revolution, and prior to the adoption of the federal constitution; of which Watkins's appendix furnishes abundant proof, besides the treaties of Augusta, Galphinton, and Shoulderbone, which have been cited. It has been constantly admitted by the United States, since the adoption of the constitution down to this day; and has never, so far as I am informed, been denied. It is admitted by the State of Georgia, in the very claims which she now rests on these treaties, and on the treaty of Indian Spring in 1821. It cannot be possible, therefore, that this objection means to deny the capacity of the Indian nations to treat.

If it be meant to say that, although capable of treating, their treaties are not to be construed like the treaties of nations absolutely independent, no reason is discerned for this distinction in the circumstance that their independence is of a limited character. If they are independent to the purpose of treating, they have all the independence that is necessary to the argument. If they are competent parties to this species of contract called a treaty, the construction of the contract must be governed by the same rules of reason which govern the contracts of all other competent parties. For the rules which govern the construction of treaties are not *technical* and *artificial*, as seems to be assumed by the Georgia memorial: on the contrary, they are the mere dictates of reason and common sense which apply to the transaction of all rational beings, of whatever nation, color, or religion. The point, then, once conceded, that the Indians are independent to the purpose of treating, their independence is, *to that purpose*, as *absolute* as that of any other nation. Being competent to bind *themselves* by treaty, they are equally competent to bind *the party who treats with them*. Such party cannot take the full benefit of the treaty with the Indians, and then deny them the reciprocal benefits of the treaty, on the ground that they are not an independent nation to all intents and purposes. It would require no technicality to perceive and to expose the injustice of such an attempt. It would lie open to the reprehension of the plainest understanding. Such could never have been the view with which this objection was urged by the State of Georgia. And yet I confess myself unable to discover any other conclusion connected with the argument, to which the objection does point.

A limited capacity to contract is no anomaly in the law. Infants have this limited capacity to contract for necessaries; beyond this limit, their contracts are void. Married women have also a limited capacity, under certain circumstances, to contract; beyond which limit, their contracts are also void. Yet it was never imagined

that, because their independence or competency was not absolute and universal, but limited, that therefore their contracts *within the sphere of their competency* were to be differently construed from those of other persons. Such, however, I understand to be the argument proposed with regard to the construction of Indian treaties, founded on this notion of their limited independence. Nor can it be conceded that their independence as a nation is a limited independence. Like all other independent nations, they are governed solely by their own laws. Like all other independent nations, they have the absolute power of war and peace. Like all other independent nations, their territory is inviolable by any other sovereignty. Questions have arisen as to the character of their title to that territory; but these discussions have resulted in this conclusion: that, whether their title be that of sovereignty in the jurisdiction or the soil, or a title by occupation only, it is such a title as no other nation has a right to interfere with, or to take from them; and which no other nation can rightfully acquire, but by the same means by which the territory of all other nations, however absolute their independence, may be acquired—that is, by cession or conquest. It is true, we have held that they cannot alienate their lands to an individual against the consent of the State which holds the eminent domain; and that the State holding the eminent domain may grant the lands yet in the Indian occupancy. But it is equally true that we have held that the Indian possession cannot be rightfully disturbed without their consent; and that the State which holds the eminent domain of the Indian lands has no other right to it than the right of pre-emption from the Indians. Their title, then, is a reality, and a valuable reality; and whenever it is to be acquired, it is acquired by purchase, and for a valuable consideration. The British government in Georgia, by their treaty of Augusta, in 1773, (Watkins's Digest, appendix, p. 763,) acquired from the Creeks a portion of their land by purchase, and were scrupulously tender upon the subject; and so solicitous to exclude the idea of compulsion on the Indians, that they take special care to state, and to repeat in the treaty again and again, that the purchase was made on the voluntary, and even importunate, application of the Indians themselves, in order to put them in funds to pay off their debts to their traders. The State of Georgia and the United States have continually acknowledged this title, and purchased and paid for it, and hold under such purchases. But again: admit the power of alienation over their lands to be thus limited to those who hold the pre-emption; this, surely, does not affect their independence as a nation. It affects *their wealth*, but not their national independence As a nation, they are still free and independent. They are entirely self-governed—self-directed. They treat, or refuse to treat, at their pleasure; and there is no human power which can rightfully control them in the exercise of their discretion in this respect. In their treaties, in all their contracts with regard to their property, they are as free, sovereign, and independent as any other nation. And being bound, on their own part, to the full extent of their contracts, they are surely entitled, on every principle of reason, justice, and equity, to hold

those with whom they thus treat and contract equally bound to them. Nor can I discover the slightest foundation for applying different rules to the construction of their contracts, from those which are applied to all other contracts, *because they reside within the local limits of the sovereignty of Georgia.*

2. The next objection to construing these treaties by the same rules which apply to the treaties of civilized nations, is, "that *the Indians are uncivilized;* and that, not being bound by the rules *adopted by civilized nations* for the construction of treaties, they cannot demand the benefit of those rules in their own behalf, for the purpose of setting up an implied exemption from the otherwise plain import of their express stipulation."

The matter of this objection requires to be coolly analyzed.

First, they are *an uncivilized nation.* And what then? Are not the treaties which are made with them obligatory on both sides? It was made a question in the age of Grotius, whether treaties made by Christians with heathens were obligatory on the former. "This discussion," says Vatel, (book ii, chap. xii, sec. 161,) "might be necessary at a time when the madness of party still darkened those principles which it had long caused to be forgotten; but we may venture to believe it would be superfluous in our age. *The law of nature alone regulates the treaties of nations.* The difference of religion is a thing absolutely foreign to them. Different people treat with each other *in quality of men*, and not under the character of *Christians or of Musselmans.* Their common safety requires that they should treat with each other, and treat with security. Every religion that should, in this case, clash with the law of nature, would bear upon it the marks of reprobation; and it could not come from the Author of Nature, who is always constant and faithful. But if the maxims of religion tend to establish by violence, and to oppress all those who will not receive it, the law of nature forbids the favoring of that religion, or our uniting ourselves, without necessity, to its inhuman followers: and the common safety of mankind invites them rather to enter into an alliance against madmen, and to repress the bigotted fanatics who disturb the public repose and threaten all nations."

What Vattel says of different religions, is equally applicable to this objection of the different stages of civilization to which the contracting parties may have advanced. Treaties have been made in all ages between nations, both of whom were barbarians, as well as between civilized and uncivilized nations. Yet the idea is perfectly novel, that such treaties are either less obligatory, or to be differently construed from treaties between civilized nations. Different people treat with each other in quality of *men*, and not under the character of civilized or uncivilized men. "*Their common safety requires that they should treat with each other*, and treat with security." "*The law of nature alone regulates the treaties of nations:*" the difference of civilization "is a thing absolutely foreign to them." And that civilization which should claim an exemption from the full obligation of a treaty, or seek to narrow it by construction, on the ground that the other party to the treaty was uncivilized,

would be as little entitled to our respect as the religion which should claim the same consequences on the ground that the other treating party was a heathen.

Uncivilized as the Creek nation confessedly are, have they not always been held bound by their treaties? Can they recall the vast cessions which they have made of their lands by treaties, on the ground that they are an uncivilized people? Are not these lands held by the people of Georgia under the assumed and admitted validity of these treaties? Have these uncivilized people ever claimed a release from these treaties on the ground that they were an uncivilized people? Have they even set up the plea of duress, which, though it would not be listened to on earth, might perhaps find a listener, and an attentive one, elsewhere? And, since they do not take the ground of their being uncivilized, to claim an exemption from their treaties, shall the civilized party take that ground against them, to deprive them of the reciprocal benefits of these treaties? It is urged, however, that, being an uncivilized people, they are not bound by the rules adopted by civilized nations for the construction of treaties, and so cannot demand the benefit of these rules in their behalf.

By which of the rules adopted by civilized nations for the construction of treaties are they not bound? Let the rule be specified. It is as true in logic as in law, that *dolus latet in generalibus*. I am not aware of any such exemption; and the premises must be established before the conclusion can be admitted. As the proposition stands, it is what logicians call a *petitio principii*. What is this body of rules which has been *adopted by civilized nations* for the construction of treaties? I know of none such. I know of no convention of nations by which any such body of rules has been adopted. *Grotius*, and the writers on the law of nations who have followed in his train, do not profess to give any such rules, *as resting on the adoption of nations*. These writers are of very recent origin, compared with the age of treaties and their construction. It is only about two hundred years since *Grotius*, the first of them, published his work: whereas treaties and their construction are almost coeval with the world. And what are the rules which these writers propose for the construction of treaties? Are they *technical, artificial, abstruse, and fit only to be applied to the contracts of nations in an advanced stage of civilization*? On the contrary, they are as simple as nature itself: they are drawn from nature; are nothing more than the plain and obvious suggestions of reason, truth, and justice: they grow out of the very nature of human intercourse; and are equally applicable to the treaties of all nations, whether civilized or uncivilized, wherever men and treaties exist. Vattel says, "*the law of nature alone regulates the treaties of nations*." The remark is certainly correct; and this law being of universal obligation, on what ground can any nation, which has formed a treaty, claim an exemption from any one of its principles? The position, then, that Indian nations, which have formed a treaty, are not bound by those rules which govern the construction of treaties made by civilized nations, is not admitted.

It is insisted, on the contrary, that they are bound by the same rules, and have, therefore, a right to the benefit of the same rules.

The further proposition, on the other side, is, that they cannot demand the benefit of these rules for the purpose of setting up an *implied exemption from the otherwise plain import of their express stipulations.*

The *implied exemption* which is understood to be here intended, is the release of the Creek nation from all claims prior to the treaties of New York and Colerain, by virtue of the provisions of these treaties, considered as treaties of peace. The principle that a treaty of peace merges all prior wrongs, the reparation of which is not provided for by the treaty, is considered as a refinement applicable merely to treaties among civilized nations; and it is insisted that the *implied release* resulting from this rule does not grow out of a treaty with an *uncivilized nation of Indians*, in favor of such a nation, *against the otherwise plain import of their express stipulations.*

The proposition is not distinct. The truth is, that such an implied release never results in favor of *any nation, civilized or savage, against the plain import of their express stipulations.* In this respect, there is no distinction between nations. As to all nations, express stipulations silence all conflicting implications. *Expressum facit cessare tacitum.* It is only in the absence of express stipulations to the contrary, that any nation can claim this tacit inference from a treaty of peace. The proposition, in order to be thoroughly sifted, requires again to be analyzed.

And, 1st. It is insisted that, in the absence of all express stipulation to the contrary, a treaty of peace with an Indian nation as effectually extinguishes all claim for prior depredations not provided for by the treaty, as such a treaty with a civilized nation would do; because the principle out of which the implied release grows is not a technical refinement, applicable only to civilized nations, but is an obvious conclusion from common sense, growing out of the very nature of the transaction, which is equally applicable to all nations; for what is a treaty of peace, in its nature, but a compromise and settlement of all past differences, on the terms set forth in the instrument itself? Is not this the true and simple character of the instrument? and does it not retain this character, whoever may be the parties to it? If this be so, as it seems to me it manifestly is, then, if the *implied release* were all that this case presented, that implied release would result in favor of the Creek nation from the treaties of New York and Colerain.

But, 2d. It is not, as the Georgia memorial assumes, a case of mere *implied release* only. The treaty of Shoulderbone contains an *express acknowledgement* that the articles of that treaty were in *satisfaction* of past injuries; while the treaties of New York and Colerain contain an *express amnesty* for all past grievances, with the reservations set forth in these treaties. It is not, then, the case of an *implied release*, but of an *express release* of all claims prior to the treaty of New York.

And, 3d. It is not a case in which an implied release is set up in

favor of the Creek nation, "*against the otherwise express stipulations of their treaties*," because there are no express stipulations in conflict with the implication; but, on the contrary, the only express stipulations in the treaties which bear on the implication, go to confirm it, and to change it *from implication to express agreement*, as in the treaties just mentioned of Shoulderbone, New York, and Colerain.

But, thirdly, it is insisted by the Georgia memorial, that, even if these treaties had the effect of releasing all prior claims, that release was *waived*, on the part of the Creek nation, by the circumstances which attended the negotiation of the treaty of Indian Spring, by the terms of that treaty, and the terms of the reference to the President of the United States.

The argument, constructed of these materials, is understood to be as follows: At the negotiation of this treaty, the commissioners on the part of Georgia exhibited a particular account of these claims, which reach back to the treaty of Augusta, in 1783, and which covered claims for *property destroyed*, as well as for property taken—which account amounted, in round numbers, to $280,000; that this account was shown at the time to the commissioners who formed the treaty, as well as to the Creek nation; that the reference to the President of the United States is of "all claims, of whatever nature;" that the commissioners of Georgia were required to stipulate, and the treaty did stipulate, for a relinquishment of all claims "for property taken or destroyed;" that they did execute a release according to the stipulation; and, finally, that the Indians left in the hands of the United States the sum of $250,000, to cover these claims; whereas, if they had not intended to make themselves liable for *property destroyed*, as well as *property taken*, the claims of Georgia would have been reduced to an amount not exceeding $150,000.

On these grounds it is asked, why were the terms of reference to the President so large, if its objects were so limited?

Why were the commissioners of Georgia required to relinquish that to which the citizens of Georgia had no claim?—to release the Indians from claims from which they were already absolved, according to the rule contended for, by the force of preceding treaties?

Why did the Creek nation leave in the hands of the United States $250,000 to cover claims, (which, according to the rule that would exclude claims for *property destroyed*, could not exceed $150,000,) without any stipulation for the payment over to themselves of the large surplus which must inevitably remain?

This argument is supposed to prove that, if a release for property destroyed had arisen in favor of the Creek nation from former treaties, that release was *waived* by these proceedings at the Indian Spring in 1821.

Before I proceed to examine the force of this argument, I must be permitted to remark, that I know nothing of the transactions which occurred at the Indian Spring, except so far as they appear on the treaty itself and the documents annexed to it.

It is said that a particular ac count was then and there exhibited of Georgia claims, which amour ited, in round numbers, to $280,000. Without intending to controve t this fact, I must be permitted to remark, 1st, that there is no proof of it before me; 2d, that, ac cording to the reports of the t wo commissioners, the whole amount of claims submitted *to them* w as about $248,000—being upwards of $30,000 less than the amoun t said to have been exhibited at the Indian Spring; and this, aft er full notice had been given to the claimants, through the gove nor of Georgia, to bring forward their claims before the commissi oner Preston, at Athens, where he sat from the 2d July, 1821, to t he 15th March, 1822; and after a second and a third reference to t he commissioner Pleasonton, extending down into the year 1825, made at the request of the governor of Georgia, in order to have a decision on the remaining claims, the proofs of which could not be matured in time to submit them to the commissioner Preston d uring the eight months that he sat at Athens.

The difference betwee n the two sums (the amount of claims exhibited at the Indian S pring, and the amount exhibited before the commissioners) is so considerable, that I cannot forbear calling your attention to it, fo r the purpose of showing that the case is one which calls for cautio n on the part of the President. The differ ence may be suscepti ble of explanation by circumstances unknown to me; bnt, without such explanation, it is certainly, of itself, "an awakening circumst ance."

Coming from so r espectable a source, the fact must be admitted that a particular a ccount of the Georgia claims was exhibited by the commissioners of that State at the Indian Spring, amounting to $280,000, and tha t this account comprised claims for *property de stroyed*, as well as for *property taken;* and then the question is, whether this cir cumstance, connected with the provisions of the treaty of Indian Spring, and the terms of the reference to the President, amo unt to a *waiver*, on the part of the Creek nation, of the release whi ch had been given to them by former treaties?

I confess m yself wholly unable to discover how these circumstances can le ad us, even *plausibly*, much less *necessarily*, to this conclusion. To me it seems that every circumstance relied on by the State of Georgia as leading to this conclusion, was the natural and unavoi dable consequence of her having made the demand; without in volving, in the slightest degree, any admission of the validity of that demand.

It is ask ed why the reference to the President was in terms so broad as t o cover the demand for *property destroyed*, and all other claims—t he reference being of "all claims of whatever nature"—if its obj ects were so limited?

The a nswer is, that *the objects of the reference were not limited.* It has n ever been pretended *that the subjects submitted to the Presi dent w ere limited.* "All claims, of whatever nature or kind," were intend ed to be submitted to his judgment; and therefore the sub missio n *is* of "all claims of whatever nature or kind." Georgia had, among other claims, demanded a compensation for *property*

destroyed, insisting that she had a right to such compensation; and the object being to submit the whole case to the arbitrament of the President, the terms were broad enough to include that demand, as well as others, in the submission. But does it follow from this that the claim for property destroyed, or for any other item of the account, was admitted? Is an agreement to submit the justice of an account to arbitration an admission of the justice of such account? Is it not rather a denial of its justice; and the selection of the tribunal to decide upon its justice? For if the account was admitted, where was the necessity of an arbitration? But I understand the argument in support of this claim for property destroyed to be, that the *sole object* of the reference to the President was to authorize him to *fix the amount* of each item contained in the account which had been exhibited by the commissioners of Georgia; that the President transcended his power *when he struck out any item* (*e. g.* the item *for property destroyed*) *wholly from the account*, his functions being limited *to the examination of the evidence which should be offered in support of each item, for the mere purpose of ascertaining its amount.* This cannot be admitted. The agreement of submission is in writing, and must speak for itself. Its construction depends upon its own terms, and not on the parol assertion of either party. What is it that is submitted by the written instrument? and what is the power given to the President over the subject by that instrument? The subject submitted is, "*all claims on either side, of whatever nature or kind, prior to the act of Congress of* 1802." The claims are "*referred to the decision of the President of the United States, by him to be decided upon, adjusted, liquidated, and settled in such manner, and under such rules, regulations, and restrictions as he shall prescribe.*" Can words be devised which would give larger powers to an arbitrator? Does not the mere submission of claims to arbitrators, without more saying, submit their *legality* and *justice, as well as their amount?* It is the *claims*, and not *their amount*, which is referred to the President. *The claims* are referred to his decision, "*by him to be decided upon.*" Is not the *legality, the justice, the validity of the claims*, then, a part of this inquiry?

These claims are "to be decided upon, adjusted, liquidated, and settled, *in such manner*, and *under* such *rules, regulations*, and *restrictions*, as he shall prescribe." What is the meaning of these words, and particularly of the word "restrictions?" He is authorized to prescribe such *restrictions* upon *these claims* as he shall think proper; not upon the *amount of the claims*, but *upon the claims themselves.* Was not the duty inevitably thrown upon him, then, to examine the foundations of the claims; and, by this power of *restriction*, to exclude all that were *unfounded*, and *restrain* the award to such as were well founded? Again, there is no specification of the claims which were referred; there is no schedule annexed to the article of submission; no reference to any account which had been exhibited of the claims which were to be arbitrated. The submission is of "*all* claims of whatever nature or kind." Nor is it the claims of Georgia alone which are submitted; it is a

submission of "all claims, on *either side*, of whatever nature or kind." The parties, then, on both sides were at liberty to exhibit any claims they pleased, of *whatever nature or kind;* and according to the argument on the other side, which denies the President the right to exclude any claim whatever, on the ground of its invalidity, and limits his functions to the mere ascertainment of its amount, he must have admitted all the claims that should be submitted, however unfounded or preposterous, and have set himself gravely to work to ascertain their amount.

Then, what was to hinder the people of Georgia from claiming for their time lost in the wars with the Creeks; for limbs lost in battle; for the expenses of these wars? What was to hinder the widows of Georgia, widowed by these wars, from claiming damages for the loss of their husbands, and the consequent loss of their means of support? and what was to hinder the Indians, on the other side, from advancing claims of a similar character? These are surely claims of *some nature or kind;* and as "*all claims of whatever nature or kind*" are referred, and the President has no power, according to the argument, to exclude any claim *in toto*, on the ground of its invalidity, but is confined, by his duty as an arbitrator, to the mere ascertainment of the amount, he must have admitted these, and all other claims that human ingenuity could devise, and receive the evidence to fix the amount. This conclusion, absurd as it is, cannot be escaped, except upon the assumption that the universality of the terms "*all claims of whatever nature or kind*" were restricted, *as to the State of Georgia*, by the account of particulars which she had exhibited on the treaty ground; and that the citizens of that State would not, therefore, have been at liberty to present any other claims than those which had been so exhibited.

But this cannot be admitted, because the agreement of submission makes no reference to that account; and it cannot, therefore, be considered as a part of the submission, or used in explanation of it. And I hold it clear that, on that submission, any citizen of Georgia who had a well-founded claim would have had a full right to submit it for decision, whether it had been listed on that account or not. But suppose, *e. g.*, the universality of the terms of submission to be restrained, *as to the State of Georgia*, by the account which she had exhibited: what was there to restrain these terms on the part of the Indians? It is not alleged that they also had exhibited a particular of their claims. They were then perfectly at large as to the claims which they should offer; and if the argument be equally true on both sides, that the President has no power to inquire into the validity of a claim presented, but only to settle its amount, then the Indians would have the advantage of the people of Georgia, in this respect; the Indians being entirely unrestrained in the demands they should make, and the people of Georgia restrained by their account of particulars. If, to escape this conclusion, it should be said that the Indians, not having tied themselves up by a bill of particulars, the President would have a right to investigate *the validity* of *their*

demands, *as well as the amount;* though, with regard to *the Georgia claims*, his power would be confined to the *liquidation of the amount;* the effect of this course of reasoning would be, that the *same submission, using precisely the same words* with regard to *both* parties, is to receive a different construction as it shall be applied to the one or the other of these parties; *that the same words* give the President the *full power* of an arbitrator *over one* of the parties, and a *limited power* only *over the other.*

The error of the argument on the other side appears to me to arise from considering the arbitration as instituted for the sole benefit of the citizens of Georgia; and that, because the account of these claims, exhibited at the formation of the treaty, furnished the occasion of the arbitration, that therefore the business of the arbitration was confined to the liquidation of the amount of these claims. But it is only to read the submission itself, to see the error of this reasoning. The exhibition of the Georgia claims, and the resistance of those claims on the part of the Creek nation, very probably *suggested the necessity of the arbitration.* But when the submission came to be drawn up, it naturally and properly submitted, not the claims which had been exhibited by the commissioners of Georgia, but "*all claims on both sides, of whatever nature or kind.*"

And had the submission even expressed upon its face that it was a submission of the claims which had been exhibited by the commissioners of Georgia, for the purpose of being decided by the President, under such rules, regulations and restrictions as he should prescribe, I should have considered it not merely in the power, but within the clear duty of the President, to have decided upon the *validity* as well as the *amount* of these claims. It cannot be otherwise, unless an agreement to submit claims to arbitration be an admission of their justice.

Another error of the argument proceeds from confounding the submission with the award. The submission was unlimited; it is the award which has limited these claims. When the submission was made, it could not be foreknown by the parties what judgment the President might pass upon these claims; but it was necessary that the submission should be broad enough to bring all the claims before him. Being thus brought before him, he has, in the exercise of his functions of an arbitrator, thrown out several of these claims as wholly unfounded; and now it is asked "why the commission was so broad, if its objects were so limited?" thus manifestly confounding the *purpose of the submission with the operation of the award.* The question, accurately put, is this: "Why were *all* the claims *submitted,* if some of them only were to be allowed?"—a question which might be put in every case of arbitration that has ever occurred, and which, if it be of force to overturn this award, would produce the same effect on every award that has ever been pronounced. In the terms in which the question *is* put, it proposes a difficulty which does not exist: "why were the terms of the reference to the President so large, if *its objects* were so limited?" The expression, "*its objects,*" means the

objects of the reference; and the question, extended accor
its sense, is, "why were the terms of the reference to the President so broad, if the objects of the reference were so limited?" To which the answer is, that it was never supposed by President Monroe that *the objects of the reference* were limited; on the contrary, it has always been admitted that *the objects of the reference* were as broad as *the terms of the reference;* and the President acted upon the reference in this sense of it. "All the claims of Georgia, of whatever nature or kind," were drawn into judgment before him, and received the decision of his judgment, according to the terms of the submission. There was no difference, therefore, between the President and the State of Georgia, as to the extent of the terms of the submission. By both it was admitted that these terms are unlimited. The only real difference between them was, as to the extent of the claims which ought to have been allowed; the State of Georgia (very strangely, it appears to me) contending, that because all her claims were submitted to arbitration, with the consent of the Creek nation, they were all, therefore, admitted, and that all that remained was to liquidate the amount; while the President, on the other hand, thought that the submission of claims to arbitration was a submission of their *validity* as well as their *amount;* and that the agreement of the Creek nation to submit their claims to arbitration was no admission either of their *validity* or *amount*, but a denial of both; and I think he was right.

I can perceive nothing in the agreement of the Creek nation to submit these claims to arbitration, which implies a *waiver* of the release by prior treaties. On the contrary, their contestation of these claims was perfectly consistent with the claim of that release, and the expectation that it would be allowed, as it was allowed, by the President.

The next question asked in the Georgia memorial is: why were the commissioners of Georgia required to release the Creek nation from all claims *for property destroyed*, if the State of Georgia had no claim *for property destroyed;* to release the Indians from claims, from which they were already absolved, according to the rule contended for, by the force of preceding treaties?

The answer is perfectly obvious. It was because the State of Georgia had again made this claim, insisting, *on her part, that it was a valid claim;* and because the purpose of the treaty and the submission was to prevent the renewal of this claim against the Creeks in all time to come. How often has *peace been purchased* by paying for a release of all *rights of action*, while the purchaser was perfectly convinced that there was *no right of action*, but chose rather *to buy peace* than to have the trouble and vexation of contesting an unjust claim, especially against an adversary more powerful and wealthy than himself? This occurrence is quite familiar in legal proceedings; and our books abound with cases in which the attempt has been made to insist on *an overture to buy peace* as *an admission of the claim;* but the attempt has always been repelled, and justly repelled.

It is but to look to the circumstance of this case, to see that nothing was more natural and proper than that this release should be required; and yet nothing more inconclusive, either as an admission of the claim, or as a *waiver* of the prior release.

The objects of the treaty of Indian Spring, and the reference to the President which grew out of it, were twofold: 1st, to gain a large cession of lands from the Creek nation to the United States; 2d, to settle all existing disputes between the State of Georgia and the Creek nation, by releasing the Indians from all *claims* on the part of the State of Georgia, the United States agreeing to pay all such of their claims as should be decided by the President to be just, to the amount of $250,000; and the Indians agreeing to leave in the hands of the United States a fund sufficient to meet the contingency of an award to that amount. The arrangement thus being, that the United States should take the place of the Indians as to "all claims of whatever nature or kind" that should be decided by the President to be well founded. Nothing was more natural, proper, and necessary to the very purpose of the arrangement, than that the State of Georgia should give to the Creek nation a *quietus* against all future demands of the kind then set up; and the demands which had been set up being for *property taken and destroyed*, the release was required to be for *property taken and destroyed*. To render this release proper, it was necessary that the demand should be just: it was enough that it had been made and insisted on by the commissioners of Georgia. The object of the release was to prevent its ever being made again. Requiring a release of these claims, therefore, was no admission that they were just: it was an admission merely that they had been made and pressed; and an admission of a desire on the part of the Creek nation that they should never be troubled with them again. With regard to the validity and justice of these claims, that was a distinct question, which was provided for by their submission to the decision of the President.

This reference was a part of the arrangement connected with the release given to the Creek nation; and while the latter measure argued nothing more than that these claims had been made and pressed, the former denied their validity and justice, and submitted the decision of this question to the President.

I confess that I can discover nothing in the requisition of this new release—more especially when connected with the reference of these claims to the President—which admits the validity of these claims, or their exemption from the bar of the former release, or which implies in any manner a *waiver* of that bar on the part of the Creek nation. It was a mere measure of precaution against the reassertion of claims, the validity of which was denied by the reference to the President. It was a *precaution for peace*, which any prudent individual, situated as the Creek nation was, would have required; pledging, as they did, a large fund to meet the contingency of the former bar being decided to be ineffectual.

But *even if the State of Georgia had admitted* that the treaties of New York and Colerain had released all *prior* claims *for property destroyed*, this new release would still have been necessary,

because there was a period of time—to wit: the time after the date of the last treaty (1796) and before the 30th March, 1802—on which these treaties did not operate; as to which, therefore, *all claims for property destroyed were open on the part of Georgia*, and from which it was essential that the Creek nation should be now released; there being no previous release, by treaty or otherwise, applicable to this period. Whether any claims for property destroyed within this period did in fact exist, was, I presume, unknown at the time of the reference; nor is it material to the discussion. It was enough that this period was open to such claims, and that they might exist, to render the release called for by the treaty of the Indian Spring necessary; although it should have been, at the time, conceded on all hands that the treaties of New York and Colerain had already released all antecedent claims. There being, then, a distinct subject-matter on which the release called for by the new treaty was to operate, and for which it was necessary, there seems to be no color for considering the question of this release as an implied waiver of the former release, which had looked to a different period—to wit: the period antecedent to the treaty of Colerain. So that, in both respects, I consider the argument which would infer a *waiver* of the former release by the requisition of the latter, as wholly inconclusive.

The next question in the Georgia memorial is—

Why did the Creek nation leave in the hands of the United States $250,000 to cover claims which, according to the rule that would exclude claims for property destroyed, could not exceed $150,000, without any stipulation for the payment over to themselves of the large surplus which must inevitably remain?

The answer is, that as the amount which might be awarded on account of the Georgia claims was at that time uncertain; and as the United States had, by the treaty, assumed the responsibility of the Creek nation to the amount of $250,000—if claims to that amount should be adjudged valid, it was proper and necessary that the Creek nation should deposite with the United States (who had thus taken their place) a fund sufficient to indemnify them to the full amount of this assumed responsibility. The claims exhibited by the State of Georgia, in the first instance, amounted, we are told, to $280,000; but in consideration that the United States would assume the payment, she was willing that the *maximum* of her whole demand should be considered as standing at $250,000, the validity of the claims composing it being, at the same time, submitted to the decision of the President. But she was not willing to release the Creek nation without this conditional assumption on the part of the United States of her claims to the amount of $250,000, if so much should be found due. The United States were not willing to undertake even this conditional and contingent responsibility without a guaranty to the full extent of it. Hence it would have been impossible to close the negotiation without a deposite of the whole $250,000 on the part of the Creek nation. The amount deposited, then, was measured and regulated by the amount which the State of Georgia demanded to be put in arbitration, and the

United States contingently to assume, and which the United States would not assume without the guaranty of the deposite.

It is further asked, why the Creek nation did not stipulate for the payment over to themselves of the large surplus that must inevitably remain, upon the supposition that the claim for *property destroyed* was not to be allowed? The question supposes that the Creek nation had gone into a calculation upon the ground, to ascertain what surplus would remain, upon the hypothesis of the disallowance of this or that claim; but this is by no means according to Indian habits. Besides, they had been recently subdued in a war with the United States, and had been obliged to submit to a treaty dictated to them in the most imperious terms—I mean the treaty of 1814. They were at the feet of the white people, with whom they were treating. They saw a formidable array of claims, amounting to $280,000—a great part of which had been buried under successive treaties for nearly forty years—and of the circumstances attending which, the living race of Creeks must have been wholly ignorant—and now dug up from the dead, by the State of Georgia, and presented and pressed as living and valid claims. These claims, thus made by one part of the whites, were to be decided and settled by another part of the whites, the friends and brothers of the claimants; while the alleged debtors were Indians, a conquered and despised race, for whom it was natural for them to suppose that no sympathy was left either by the creditor or the judge. Is it not probable that, under these circumstances, they were ignorant enough to think it probable that no surplus would remain, and that they were willing enough to surrender to the United States the whole $250,000, on the condition of their relieving them from claims to which there seemed to be no end, but which threatened to be immortal? I confess that I see nothing in the omission to provide for the return of the surplus, more than was to have been expected from the character, the state of information, and the relative inferiority, dependence, and prostitution of the Creek nation.

But what is the conclusion, on the other hand, to which this question points? It is, that the Creek nation admitted the sum of $250,000 to be due to the State of Georgia, and therefore made no provision for the return of the surplus; and that, by this admission, they waived the release as to property destroyed; which release, if they had meant to insist on it, would have reduced the Georgia claims to $150,000. But the reference to the President repels this inference with conclusive force; for, if the $250,000 was admitted either by the Creek nation or the United States, what occasion was there for a reference to the President at all? Why not dedicate the whole $250,000 at once to the State of Georgia, without this unmeaning and aimless submission of these claims to arbitration?

I have now examined, perhaps with needless prolixity, all the grounds that have been taken for denying the treaties of New York and Colerain the same effect of extinguishing all claims for property destroyed in war, which they would confessedly have had if

they had been treaties between civilized nations. The result of the investigation has satisfied me that there is no foundation for the distinction.

My answer to your first question, therefore, is, that the State of Georgia has no claim on the Creek nation for *property destroyed* prior to the date of the treaty of Colerain; but that it has a claim for property destroyed between the date of that treaty and the 30th March, 1802, so far as such claim may not have been satisfied under the provisions of the act of Congress of the 19th May, 1796, "to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," (§ 14;) and the act of March 3, 1799, under the same title, (§ 14;) subject to any set-off for claims of the same description within the same period, which the Creek nation may be able to establish on their part, and which may not in like manner have been satisfied under the provisions of the acts which have just been cited.

You will be pleased to observe that President Monroe, in his original instructions to commissioner Preston, took the same ground which I have taken as to the effect of the treaties of New York and Colerain to extinguish *all prior demands of every description*, with the exception of those only which were recognised and provided for by those treaties. Afterwards, on the remonstrance of the State of Georgia against the instructions, he relaxed them so far as to let in claims under the old State treaties of Augusta, Galphinton, and Shoulderbone. In doing this, however, no claims were let in but claims for property not restored according to those treaties. The denial of claims for property destroyed was just as effectual under those treaties as under the subsequent treaties of New York and Colerain, and rested on precisely the same grounds of reason; and, therefore, whether you adopt my opinion, or that implied by the enlarged instructions of President Monroe, the claim for property destroyed is still an inadmissible claim. Nor is it possible to admit it on any ground but that taken in the Georgia memorial—that the treaty of Indian Spring, and the reference to the President, threw aside all the bars of previous treaties, and opened the door to all claims of every nature and kind, of whatever age and standing, and however they may have been supposed to have been once already satisfied by the cessions of lands in the preceding treaties.

I have been perhaps unnecessarily prolix on this subject, but it has been my aim to bring the subject fully and fairly before you, in order that by comparing the reasoning of the Georgia memorial with that which I have had the honor to submit, you might, with less trouble to yourself, form your own judgment upon the claim, and correct any error that I may have committed to the prejudice of the Georgia claimants.

2. The next question is, Whether the people of Georgia have a right to claim for the increase of the females?

I consider the claims of the people of Georgia as resting on three foundations—

I. On the treaty of New York, of 1790.

II. On the treaty of Colerain, of 1796.

III. As to the period between the date of the treaty of Colerain and the 30th March, 1802, on the ground of natural equity and justice.

I. The treaty of New York, as we have seen, stipulates for "the delivery of all negroes who were then prisoners in the Creek nation." If there were female negroes who were then prisoners, and who had issue, my opinion is, that the issue ought to have been delivered up with their mothers; and, not having been delivered up, that an allowance ought to have been made for such issue as well as for the mothers. But I speak of issue proved to have had a real existence at the time at which it ought to have been delivered up, not of speculative or possible issue; for the treaty extends to none but those who were actually prisoners—not to such as might have been prisoners if they had been born.

II. The treaty of Colerain provides for the delivery of all negroes who are now prisoners in any part of the Creek nation, agreeably to the treaty of New York; and also all negroes taken since the signing of that treaty. I make the same answer to this question under this treaty as under the former.

III. The period between the treaty of Colerain and 30th March, 1802, standing clear of all restrictions by treaty, the claims during this period rest on principles of natural equity; and if, during this period, the Indians unlawfully took female negroes from the possession of the people of Georgia, which females had issue while in the possession of the Creeks, I think the people of Georgia entitled to claim the issue as well as the mothers, without any allowance for the support of that issue during infancy, because that incumbrance was the consequence of the voluntary and unlawful act of the Indians themselves.

But with regard to female negroes absconding from their masters and taking refuge in the Indian nation: the right to claim damages for such *from the nation* did not arise until demand had been made of the nation. On such demand, the Indians were bound to have surrendered them, together with any issue that might have been born in the Indian nation, on the same principles on which a court of equity would have directed their surrender; that is to say, with a reasonable allowance for the expense of raising the infants, and for the support of the aged and infirm, with a correspondent charge for the use of the adults, if the Indians had had any such profitable use of them.

3. The last question is for the claim of interest on the sums awarded.

On this question, and on this alone, I was consulted by President Monroe; and the question propounded to me was, whether *in the particular case, and on the sums awarded by the commissioner Preston, the claimants were entitled to interest as a matter of right?* I thought they were not, for the reasons set forth in my opinion; and such, I believe, was the opinion of the President and all the members of the administration—with the exception, perhaps, of one gentleman.

You will be pleased to observe that the question put to me on that occasion was not the abstract question—whether, on a stipulation to release property, and a breach of that stipulation, the injured party was not entitled, on the principles of natural equity, to claim both the value of the property, and a compensation for the use of which he had been deprived, or interest in lieu of such compensation? On such an abstract question between individuals there could scarcely be two opinions. Every one must have answered in the affirmative. But the question put to me applied to that particular case; the circumstances of which took it entirely from the ground of the abstract question, and presented not only legal considerations, but rebutting equities; which made it a *peculiar question*, and called for a decision peculiar to itself.

The peculiarities of the case are enumerated in that opinion, and it is therefore needless to repeat them here. The opinion rests chiefly on these peculiarities.

There is only one feature of that opinion which I will now recall to your recollection, for the purpose of throwing on it the additional light which has been furnished by this more extended examination of the subject on which your questions have put me.

After taking the ground that interest is not a matter of absolute right, but rests in the discretion of the judge in every case, and depends, therefore, on the peculiar circumstances of each case, I proceeded to examine the report of commissioner Preston; the precise question before me being, whether interest ought to be allowed *on the sums which had been awarded by him.* My impression was, that if he had been strict and severe in the exaction of proof, and had given the people of Georgia stinted measure in fixing the *ratio* of value of each article, there would be the more reason for allowing the claim of interest. And in this view of the case the grounds taken, in my opinion, were—1. That while the treaties bind the Indians to restore *only the property which was in the nation, and therefore capable of restoration at the respective dates*, commissioner Preston had, most liberally, taken it for granted that every negro, horse, cow, and even hog, that had ever been taken from the people of Georgia by the Indians, was *still within the nation at the dates of the treaties;* and this, without any notice to the Indians of the cession of the commissioner; consequently without any opportunity afforded to them to dispute the fact. 2. That, so far from having given the people of Georgia stinted measure in fixing the *ratio* of price, he had fixed the price of every article at nearly double its value.

I have now to add, that $10,000 worth of claims, not allowed by commissioner Preston for want of proof, but reported by him as appearing to be fair, were allowed by President Monroe, *without proof*, at the same time that he disallowed the interest; and it is highly probable that the disallowance of interest had some effect on producing the allowance of these claims. But—what is more important, if my opinion as to the effect of the treaties of New York and Colerain be correct—all the old claims under the State

treaties of Augusta, Galphinton, and Shoulderbone, were extinguished and gone; yet *more than one-third of the whole amount of all the claims allowed was founded on those old and abrogated treaties*. Nay, if the last of these old State treaties (the treaty of Shoulderbone) be expounded, according to its clearly expressed meaning, as being *in satisfaction of all prior injuries*, then there was no longer a claim under the two previous treaties of Augusta and Galphinton. Yet the sums allowed under these two treaties alone, thus abrogated by the treaty of Shoulderbone, amount to nearly one-third of the whole amount of claims allowed.

If this be a case in which *equity* called upon the President to superadd interest, as a matter of right, *to a capital so founded and allowed*, it is a species of equity which I do not understand.

I perceive, by one of the documents accompanying your questions, which is an address to you by a portion of the delegation of Georgia, that an opinion which I had the honor to give to the Secretary of State on the construction of the award of the Emperor of Russia under the treaty of Ghent, is supposed to be in conflict with my opinion on the Georgia claims; that enlightened and honorable delegation contenting themselves with briefly referring to my opinion in the former case as answering my own argument in the latter. My opinion is certainly in favor of interest in the one case, and against it in the other; and the honorable delegation had only to show (what it seems to have been thought more convenient to take for granted) *that the cases were the same*, to prove the conflict of opinion which they have assumed. All tribunals are in the habit of allowing interest in some cases, and refusing it in others. Are these tribunals, therefore, necessarily in conflict with themselves? Surely not; unless these opposite opinions have been pronounced in cases similarly circumstanced. In the present instance, that on which alone the question of conflict turned—to wit, *the identity of the cases*—instead of being *proved*, is *assumed;* which certainly has the merit of being, at least, a very compendious and convenient mode of establishing a difficult proposition.

Are the cases the same?

What was the question propounded to me from the Department of State? "Is interest a part of the indemnity awarded by the Emperor of Russia?"—not, is this a case in which, on the principles of equity, interest *ought to be allowed?* but is it a case in which interest *has been allowed* by the award of the Emperor? You must perceive that in that case the only *question* submitted to me was the construction of the Emperor's award, for the purpose of ascertaining whether that award did not, *per se*, include the allowance of interest. What were the terms of the award? That the United States were entitled to a *just indemnity* for "the slaves and other property carried away by the British forces, in violation of the first article of the treaty of Ghent." Then all that remained for inquiry was, the extent of the expression, "*a just indemnification;*" and my whole reasoning in that case turns *on the force of that expression*, as used in the award; and this, for the single purpose of ascertaining *the true construction of the award.* Now, what was the ques-

tion referred to me by President Monroe? Was it the construction of any one instrument? Was it the construction of the treaty of Indian Spring? Was it the construction of the agreement of reference to the President? Was it the construction of both these instruments together? No, it was not; but the question was, *whether, under all the circumstances of the case, interest ought to be superadded, as a matter of right, to the sums which had already been awarded by commissioner Preston.* And in forming an opinion on this question, I had not merely to construe the treaty of Indian Spring, and the agreement of reference to the President, but my chief labor was in considering the report of commissioner Preston, the evidence on which he had admitted the claims, and the rate of allowance which he had already made for each article; and to show how properly and essentially this latter view of the subject entered into the inquiry, it is observable that the committee of the Senate have seized upon it as that part of the opinion which, in their judgment, bore with the most power on the question of interest. Now this important (and, in my opinion, decisive) view was peculiar to the question of interest submitted to me by President Monroe, and may be truly said to be the hinge on which the question turned. Where is there anything analogous to this in the question submitted to me on the Emperor's award, and in which I had only to consider the force of the language employed by the Emperor himself?

If commissioner Preston's award had not existed; or if, before the appointment of that officer, and while the President was yet employed in digesting his rules, regulations, and restrictions, for the guidance of the commissioner, he had asked me the abstract question: "What claim the people of Georgia had upon the Creek nation for negroes and other property stipulated by treaty to be restored, but which, in violation of the treaty, had not been restored?"—such a question as that, put in these circumstances, would have presented a case very similar to that which the Emperor had to decide; and I might have answered, as he did, that they were entitled to a just indemnification for the wrong. But that, as I have shown, was not the question that was put to me. The question that was put to me turned materially on what the commissioner had already done, the evidence on which he had acted, and the amounts which he had already allowed.

The view which the Georgia delegation take of the case is, that, as the treaty of Indian Spring stipulates, *in effect*, a just indemnity for the slaves which had not been restored according to former treaties, and the Emperor's award decrees a *just indemnity* for the slaves which had not been restored according to the treaty of Ghent, the cases are the same, and the measure of the indemnity ought to be the same; and that if interest entered properly into the indemnity in the one case, it entered with equal propriety into the indemnity in the other. This, too, is the view of the Georgia memorial; and the case, as thus stated, looks so plausible and fair, that there are few, perhaps none, who would not assent to their proposition, and conclude that there had been a glaring inconsis-

tency in demand of interest in the one case, and the refusal of it in the other.

And yet such conclusion would be entirely erroneous and unjust; for even if the treaty of Indian Spring, and the agreement of reference under it had, *in the very terms of the Emperor's award*, stipulated *a just indemnification*, (which, by the by, they have not, though the effect may be admitted,) although it may be conceded that the questions were originally the same, and that the measure of indemnity ought to be the same—interest forming as much a part of the indemnity in the one case as in the other; yet, at the point of time at which the question was submitted to me, the basis of the Georgia claims had been shifted from its original ground to the new and peculiar ground which it occupied by the commissioner's (Preston's) report; and the question now was, whether equity, in measuring out *a just indemnification*, called for the superaddition of interest to the sums which he had allowed? The representatives of Georgia persist in arguing the original and abstract question, as if it were still the only subsisting question; and, having established the identity of this original and abstract question, with the same question as it arose under the Emperor's award, they seem to think that the argument is concluded, and that the allowance of interest in one case follows its demand in the other with mathematical certainty. Their reasoning, in effect, is, that if interest would have been due as a part of the indemnity on the sums *which ought to have been allowed*, it was due as a part of the indemnity on the sums which had been allowed; and that if, by a relaxation of the rules of evidence, and by doubling the value of every article, the measure of *just indemnification* was already full to overflowing, *under the name of value*, interest ought still to be added to the superflux, as a necessary part of the *just indemnification*, because interest, *eo nomine*, had not been allowed.

If, in the Ghent case, the question of interest had been put to me, not on the construction of the Emperor's award, but on the report of the commissioners made under that award; and, on inspecting the report, it had been manifest that one-half the claims which have been allowed were wholly invalid, and, that in all the claims allowed, the property had been rated at double its value, then the cases would have been identical; and if I had given an opinion that interest ought to be allowed *as a matter of equity* on the one report, and not on the other, the inconsistency would have been gross and palpable. But you perceive that in the Ghent case, the question put to me was the pure and abstract question of the construction of the Emperor's award, under which everything yet remained to be done by a mixed and jealous commission; while, on the other, the question was put to me *on the report which had actually been made*, and this report by a merely subordinate and ministerial agent of the President; no *prima facie* conclusive, therefore, like the sentence of a court, but perfectly open to the canvass of the President on every *item*; and, indeed, made to him for the very purpose of such a canvass, in which it was impossible to decide the question of interest on the amount of that report, as an

equitable question, without examining the elements of which the report was composed; and it was this examination which led me to the conclusion that equity did not call for the allowance of interest on that report, as a just measure of indemnity, but that it forbade such allowance.

The two cases appear to me so far from the same, that the very purpose of a *just indemnity*, which called for the allowance of interest as a part of the emperor's award, would have been defeated by allowing it on the amount of commissioner Preston's report.

Under the emperor's award, at the time at which my opinion was given, the values were to be fixed, and the claims adjudged, as I have already said, by a mixed and jealous commission; and it was not to be anticipated that any invalid claim would pass the ordeal, or that any article would be allowed to be overvalued. On the contrary, the fair presumption was, that no claim would pass without the strictest proof; and that the standard of value would be fixed with the most rigid severity. This having been done, an allowance, for the use of which the owner had been deprived by the wrong of Great Britain, would have been indispensible to the measure of *a just indemnification.*

But in the Georgia case, *the report had been made;* claims had been allowed which did not belong to the case at all; others had been allowed on the loosest and most inconclusive proof; a large amount was about to be allowed without any proof at all; *and every article had been nearly double valued.* Is it not manifest that the allowance of interest on a capital like this would not have been *a just indemnification*, but a most unjust one, with regard to those who had to pay the amount of the award?

What degree of liberality, of generosity, of profusion, it was proper to exercise towards the Georgia claimants, on the supposition that the United States were the owners of the surplus of the fund which was to pay the award, was a question with which I had nothing to do, and with which this argument has nothing to do; which looks to the standard of *justice* and *right* as the measure of indemnification; and, to me, it is very clear that, while this standard called for the allowance of interest on the amounts which remained to be adjusted under the Emperor's award, it forbade it on the amounts which had been actually allowed by the report of commissioner Preston.

I humbly apprehend, therefore, that the enlightened representatives of the State of Georgia have not exercised their wonted discrimination, when they refer to the opinion of the Attorney General on the Emperor's award, as an answer to his argument on the Georgia claim of interest on commissioner Preston's report.

With regard to President Monroe, there were but two courses before him, on the return of the commissioner's report:

1. Either to allow the amount of that report without interest; or,

2. To have set aside the report *in toto*, and directed the commis-

sioner to proceed anew, under such instructions and *such notifications to the adverse parties*, as would have prevented a recurrence of the same mistakes; and, having thus reduced the capital of the claims to their just standard, to have allowed interest on the amount.

He adopted the former course. Had he adopted the latter, after the time and labor which had already been consumed, and when the claimants were at the treasury doors pressing for payment, there is no hazard in the prediction, that he would have created far more discontent than he did by the course which he adopted.

I will now, under your permission, suggest the course which, I think, ought *originally* to have been pursued under the agreement of reference made to the President.

I have already suggested all the topics which appear to me to bear upon the different opinions that may be entertained with regard to the right to the surplus of the $250,000 that will remain, after satisfying the Georgia claims. To me it is manifest that it is a part of the estimated price of the lands sold by the Creek nation to the United States, for their assumption of the debts of that nation to the people of Georgia. It is true, there is no stipulation for the payment over of the surplus to the Creeks. This may have proceeded either from the cause that has already been suggested—the despair of these people, under the circumstances of the case, that any surplus would remain; or from their expectation that the natural justice of the case would prompt the payment of the surplus to them, if any should remain. Be this as it may, does it comport with the dignity and magnanimity of the United States —does it consist with their enlightened justice—to retain any portion of this fund, after it shall have answered the only purpose for which it was left in their hands; that is, to indemnify them against the responsibility for the Creeks, which they had assumed, to the State of Georgia? On the contrary, after it shall have completely fulfilled this purpose, by the payment of all the fair claims of Georgia, and thus exonerated the United States from all further responsibility, ought not the surplus to go to those to whom it would have gone at once, but for this temporary impediment? My opinion is, that it ought; and that if it were possible to constitute a disinterested, equitable tribunal, with power to try and decide this question, the decree would infallibly be in favor of the Creeks.

The course, then, which, in my opinion, ought to have been taken in the case, is this:

The Creeks ought to have been informed that the President of the United States considered them entitled to any surplus of the $250,000 that might remain, after discharging all the fair claims of the citizens of Georgia.

The parties, *on both sides*, ought to have been required to furnish each other, mutually, with a list of all the claims which they respectively intended to lay before the President for his decision, with a distinct specification of articles, ownership, and dates.

They ought to have been instructed, distinctly, that they would be required, not only to support their own claims by affirmative

proof, but that they would be at liberty, *on both sides*, to furnish rebutting proof against the claims of the other.

In order to assist and guide them in this process of collecting and arranging their proofs, the President ought also to have been furnished with a list of all the claims, *on both sides*, which it was proposed to bring before him. These claims ought to have been compared with the antecedent treaties, and the lists *on both sides* purged of all claims which had been barred by those previous treaties.

If the President thought it proper, as he might well have thought it, to hear any objections from the parties on the principles on which he had performed this process of expurgation, copies of the lists thus expurgated should have been furnished to *both sides*, and each should have been required to furnish the other with copies of the objections and arguments in regard to such expurgation, in order to a fair and impartial hearing on both sides.

The President's final decision should then have been made known to both the parties, by lists of the claims which, alone, he considered open to proof under the operation of pre-existing treaties.

The parties should have been furnished, at the same time, with his rules and regulations as to the kinds and forms of evidence which would be expected; the time and place at which the commissioner would sit ought to have been announced *to both sides*, and that time ought to have been distant enough to have enabled all the parties on both sides to have collected both the supporting and rebutting proof which they were expected to produce, and which it should have been announced that they were expected to produce.

Under the head of rules and regulations touching proof, the parties ought to have been, among other things, distinctly admonished—

1. That where the supporting proof created a fair presumption in favor of a claim which the other party must, in the nature of things, possess the means of repelling by proof—if the presumption were not true, the presumption, unless repelled, would be relied on as full proof.

2. That where proof traced property within the limits of the other, which property had been stipulated by a treaty to be delivered *if within the nation*, or within the power *of the other*, it would be *presumed* to be still *within their power at the date of the treaty*, unless the contrary were shown by proof direct or circumstantial. These rules might be unnecessary to the people of Georgia, who are to be presumed to be acquainted with the rules of evidence; but they would be highly necessary with regard to the Indians, in relation to whom no such presumption could exist.

With regard to the final list of claims on which the commisioner should have been authorized to act, they ought, in my opinion, to have thrown off all claims, on both sides, arising under the treaties of Augusta, Galphinton, and Shoulderbone; and to have commenced with the claims arising under the treaty of New York.

And these claims ought to have been reduced, on the part of the State of Georgia, to the three following heads:

1. For negroes stipulated to be restored by the treaty of New York, and not restored.

2. For negroes and other property stipulated to be restored by the treaty of Colerain, and not restored.

3. For negroes and all other property *taken* or *destroyed* between the date of the treaty of Colerain and the 30th March, 1802, when, by the agreement and submission, the accounts were to stop; and also for all runaways harbored in the Creek nation, during this period, and not restored on demand made of the nation.

The issue in all these cases to follow the mother, on the principles already stated.

On the part of the Creek nation, the claims would, so far as my examination has gone, have been reduced to the single head of property taken and destroyed by the people of Georgia between the date of the treaty of Colerain and the 30th March, 1802; and as a check on both sides, under this head, the superintendent of the Indian Department should have been directed to ascertain what property taken or destroyed, if any, had been paid for under the provisions of the acts of 1796 and 1799, to regulate trade and intercourse with the Indian tribes, which have been already mentioned.

The President having laid down these restrictions on the claims, the commissioner ought to have been instructed to keep himself strictly within them; and he should have been further instructed, in fixing a value on the property, to take *the fair average value*, as existing at the time at which it ought to have been restored; disregarding the value affixed by the claimant himself, or sustained by those *ex parte* affidavits, which it is known can be so easily commanded on any such occasion, and of which the office of the Third Auditor furnishes so many melancholy proofs in support of military claims.

After the report of the commissioners had been completed, within these limits and on these principles, I should have thought it proper that a copy of that report should have been furnished to each of the parties, with liberty to except to the report; each party furnishing the other with a copy of his exceptions and arguments, with the liberty of reply.

When all these precautions had been taken, the President would have had before him all the materials necessary for a full, fair, and final decision; and after the balance between the claims had been fairly struck, there would have been good color for the allowance of interest on that balance.

Although it may seem, at first view, that the course of proceeding which I have described would have been objectionable on the score of time, I believe that it would not have consumed more than has in fact been consumed by the two commissioners. But had it been otherwise—if accurate justice required the course, it ought to have been pursued, let the consumption of time have been what it may.

You will perceive that every departure from this course has been in favor of the Georgia claimants, and to the prejudice of the Creek nation, if they be, as I conceive they are, the owners of the residuary fund.

But what is now to be done? For, although you may concur with me as to the manner in which the agreement of submission to the President ought to have been executed, the condition in which Mr. Monroe was placed by the return of the first report, and the importunity of the claimants under the report, have led to measures which cannot be recalled. The sums awarded have been actually paid; and now the question of interest addressed to you, is precisely the question of interest which was presented to Mr. Monroe:

"Shall interest be paid on the sums which have been allowed by the commissioners?"

My opinion is in the negative, for the reasons already stated; and the subject is now so fully before you, that I think you will have no difficulty in coming to your own decision upon it.

You will observe that, under your first question, I express the opinion that the people of Georgia were entitled to claim for *property destroyed* between the date of the treaty of Colerain and the 30th March, 1802.

And under your second question, that they were entitled to claim for the issue of all the females whose mothers ought to have been delivered up.

In order to ascertain whether any claim has been rejected which ought to have been allowed, according to this opinion, I have requested the commissioner who acted last on the subject to examine the several reports and give me the result. He reports that no claim was preferred for *property destroyed* between the date of the treaty of Colerain and the 30th March, 1802. And that one case only *for issue*, was presented; which was for the issue of absconding females, who ran away in 1797, after the date of the treaty of Colerain, and were not demanded of the Creek nation until 1809; and that the proof of issue in this case was loose and unsatisfactory. With a view to satisfy myself of the character of these claims for issue, I have asked for this proof, but it is not to be found. If the fact of issue was clearly made out, it ought, I think, to have been allowed on the principles stated in a former part of this opinion, as applicable to claims between the date of the treaty of Colerain and the 30th March, 1802.

WM. WIRT.

To the PRESIDENT OF THE UNITED STATES.

P. S.—I find my opinions in the two cases of the Georgia claims and the award of the Emperor of Russia, so inaccurately printed in the pamplet you have sent me, that I beg leave to furnish you with correct copies of them; which you will find herewith.

H.

DISTRICT OF COLUMBIA, } ss.
County of Washington. }

Before me, John D. Clark, a justice of the peace, in and for the county aforesaid, this day personally appeared Luther Blake, who, being duly sworn, made the following statement:

That in the latter part of 1827, and beginning of 1828, the friends and followers of General William McIntosh, who were promised $100,000 by the 9th article of the treaty of Washington, as a consideration for emigrating west of the Mississippi, commenced removing. Two parties, less in number than two thousand, went under charge of Colonel David Brearley, agent of the McIntosh party.

After the emigration of these, a third party was enrolled for emigration, under the direction of Colonel Brearley, who were assembled in the latter part of 1828 in camp in the Creek nation, where they were kept for about eight months before removal. They were detained, as I understood, in consequence of a want of funds to remove them. Colonel Brearley came to Washington, leaving the Indians in charge of his deputies. The department at Washington did not send Colonel Brearley back, but directed Col. John Crowell, Creek agent, to put the emigrating Creeks under charge of a deputy agent, to remove them to Arkansas. Colonel Crowell appointed this deponent to perform that service. I was directed to enrol all others willing to go, and directed also to promise each one emigrating a full and fair proportion of the one hundred thousand dollars agreed to be paid to them, for emigration, by the treaty of Washington.

The sum to be paid each one was stated to be thirty-three and a third dollars, besides blankets, rifles, beaver traps, axes, knives, &c., &c.

The party thus emigrating under me numbered about thirteen hundred. I was with them before they removed, and until after they arrived at Arkansas, and remained with them twelve months as their acting agent. It is known to me that they received no part of the $100,000 during that time, nor do I believe they have received a cent of it to this day. I have so understood repeatedly.

I know that the promises made to them, that this money would be paid to them on their arrival in Arkansas, was implicitly relied on, and induced them cheerfully to surrender their lands, and sell off their property which could not be removed, and go to the west. I know also that, in the sale of their property, losses were sustained in not getting for it any thing like its value.

This deponent, during the year, returned to Washington, to urge the claim of these 1,300 Indians for their head money. The department admitted they were entitled, but said it had no more money for the purpose; but that there was little doubt Congress would appropriate enough to pay each one what he was entitled to.

The deponent was authorised to distribute amongst them the

rifles, blankets, &c., which was done, and also to purchase iron and axes, and distribute them, which was done.

LUTHER BLAKE.

Sworn to, and subscribed before me, this 21st day of July, 1848.

JOHN D. CLARK, *Justice peace.*

DISTRICT OF COLUMBIA, *County of Washington.*

Personally appeared before me, John L. Smith, one of the justices of the peace for the county of Washington aforesaid, George W. Stidham, one of the delegates of the Creek nation, now in Washington, and also one of the thirteen hundred Creek Indians who emigrated, in 1829, under the 9th article of the treaty of Washington, of 24th January, 1826, and makes oath: That he was one of the party of the friends and followers of General McIntosh, who were enrolled and emigrated, in 1829, to the west of the Mississippi; that this was the third and last part of the McIntosh party, emigrated under the 9th article of the treaty of 24th January, 1826; that he and the others were induced to enrol their names and emigrate on the repeated and solemn promise of being paid, on arriving in Arkansas, their full and fair shares of the one hundred thousand dollars promised in that part of the treaty; that, to comply with the obligation of removal, many of them sold considerable amounts of cattle, hogs, poultry, household and farm furniture, &c., &c., at far below their value, and made sacrifices, in many respects, both of property and feelings.

This deponent further declares, on oath, that, on their arrival in Arkansas, they received no part of the one hundred thousand dollars promised them, nor has any part of it been paid to them since. This fact is well known to this deponent.

G. W. STIDHAM.

Subscribed and sworn to, this 21st day of July, 1848, before

J. L. SMITH, *J. P.*

SENATE CHAMBER, *July* 24, 1848.

SIR: At the request of the Creek Indian delegation, now in this city, I state that, in 1829, I saw the party of Creek Indians, known as the friends and followers of General McIntosh, on their way to the west of the Mississippi, under the lead of Luther Blake. They camped in the vicinity of my residence, and I was much among them for a day or two. I do not recollect their exact number, but suppose there were about thirteen hundred, the number stated by Blake.

After the return of some Indian countrymen, (whites,) who had gone out with the emigrating party to their abode west of the Mis-

sissippi, I was told, in reply to inquiries how they liked their new homes, that they were very much dissatisfied with the country and the government, as they had been promised a certain sum of money *per capita*, a rifle, and several other articles, which they did not receive on their arrival. I recollect to have heard, afterwards, that they received their rifles, &c., but never heard that the money promised them had been paid.

I am, very respectfully, your obedient servant,

DIXON H. LEWIS.

Hon. DAVID R. ATCHISON,
Chairman of the Committee of Indian Affairs of the Senate.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
July 24, 1848.

SIR: In your letter of this date, you desire to be informed "to whom, and at what times, was the $100,000, promised the friends and followers of McIntosh by the 9th article of the treaty of Washington, made with the Creek Indians in January, 1826, paid; and what evidence has the department of its disbursement to the Indians."

The committee has already been furnished with an extract from the report of my predecessor, Mr. Crawford, to the Secretary of War, on the 26th July, 1843, in which the fact is stated that the amount was paid; but the evidence of payment, and when and to whom it was paid, is on file with the accounts in the Second Auditor's office.

There is nothing in this office to enable me to identify who, of the emigrant Creek Indians, were known as "the friends and followers of McIntosh, and their numbers;" what portion of them were emigrated under charge of Luther Blake, and when; or to ascertain whether any portion of the $100,000 was paid to the latter, &c. This information can be obtained only from the rolls, accounts, and vouchers on file in the Auditor's office, and hence I have been compelled to refer your letter to that officer.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. D. R. ATCHISON,
Chairman Committee on Indian Affairs, Senate.

I.

TREASURY DEPARTMENT, 2D AUDITOR'S OFFICE,
July 24, 1848.

SIR: In reply to your letter of this date, inquiring "how and in what manner the $100,000 provided to be paid to the friends and followers of General McIntosh by the ninth article of the treaty of the 24th January, 1826, between the United States and the Creek tribe of Indians, was paid?" I beg leave to state that it appeared to

have been drawn from the treasury as follows, viz: On the 24th of May, 1826, by David B early, $15,000; on 31st May, 1827, by Joel Baley, $5,564 75; on 2d June, same year, by John H. Brodnax, $1,821 25; and on the 2d January, 1828, by General Alexander Ware, $10,735 62; making altogether the sum of $33,121 62.

It likewise appears, that, in addition to the above, $20,726 80 was expended in carrying into effect the stipulations of the 6th, 7th, 8th, 10th, 11th, and 16th articles, and in defraying other expenses attending the provisions of this treaty, and the balance of $46,151 58, which makes up the amount of $100,000 appropriated, was carried to the surplus fund on the 31st December, 1828.

Very respectfully, your obedient servant,

JOHN M. McCALLA,
Second Auditor.

Hon. D. R. Atchison,
U. S. Senate.

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APPROPRIATION.

No. 5,316.

To carry into effect Creek treaty, per act 22d May, 1826, $1,821 25.

Treasury Department,
Second Auditor's Office, June 2, 1827.

I certify that there is due from the United States to John H. Brodnax, the sum of $1,821 25, being the amount of his account for provisions and forage furnished the friends and followers of the late General McIntosh, between the 3d of May, 1825, and 31st of October, 1825, allowed him in pursuance of the decision of the Secretary of War, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

W. LEE, *Second Auditor.*

To Richard Cutts, Esq.,
Second Comptroller of the Treasury.

Second Comptroller's Office.

I admit and certify the above this 2d day of June, 1827.

RICHARD CUTTS,
Second Comptroller.

Treasury Department,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA,
Second Auditor.

APPROPRIATION.

No. 5,311.

To carry into effect Creek treaty, per act 22d May, 1826, $5,564 75.

TREASURY DEPARTMENT,
Second Auditor's Office, May 31, 1827.

I certify that there is due from the United States to Joel Baley, the sum of $5,564 75, being the amount of his account for provisions and forage furnished the friends and followers of the late General McIntosh, between the 17th July, 1825, and the 19th June, 1826, allowed him in pursuance of the decision of the Secretary of War, and to be paid to Bollin Smith, in virtue of a power of attorney filed in this office, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

WM. LEE, *Second Auditor.*

To RICHARD CUTTS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 31st day of May, 1827.

RICHARD CUTTS,
Second Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Offi e, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA,
Second Auditor.

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APPROPRIATION.

No. 5,869.

For carrying into effect 6th, 7th, 8th, and other articles of the late Creek treaty, per act 22d May, 1826, $10,735 62.

TREASURY DEPARTMENT,
Second Auditor's Office, December 31, 1837.

I certify that there is due from the United States to General Alexander Ware, of Georgia, the sum of $10,735 62, being the amount of his account for provisions issued by him to the destitute Creek Indians of the McIntosh party, from the 25th of August, 1825, to the 20th August, 1826, allowed him in pursuance of the decision of the Secretary of War, as appears from the statement

and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

W. LEE, *Second Auditor.*

To RICHARD CUTTS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 2d day of January, 1828.

RICHARD CUTTS,
Second Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JNO. M. McCALLA,
Second Auditor.

DEPARTMENT OF WAR,
Office of Indian Affairs, May 28, 1827.

SIR: I have examined the report of Thomas M. Randolph, esq., on the claim of Joel Baley, for supplies issued to the friends and followers of the late General McIntosh, of the Creek nation, which was referred to him by your order. Mr. Randolph, after assigning his reasons at length, expresses his opinion in favor of the claim in the following words: "I conclude with declaring myself to be decidedly of the opinion, and as a juror I should concur in such a verdict in a similar case, that *Colonel Baley's claim ought to be paid forthwith*, at the prices charged and by the accounts rendered, leaving to the proper officers the rectification of his statements and the arithmetical results which it becomes me not to make, although it would take me but a few minutes to do it."

I have the honor, therefore, to recommend that the report of Mr. Randolph be approved, and that the claim of Joel Baley be referred to the Second Auditor, to be settled according to the opinion which Mr. Randolph has expressed thereon in his report, and that the amount found due on such settlement be charged to the appropriation per act 22d May, 1826, for carrying into effect the stipulations of the 6th, 7th, 8th, and other articles of the Creek treaty.

Very respectfully, sir, I have the honor to be, your most obedient servant,

SAML. S. HAMILTON.

Hon. JAS. BARBOUR,
Secretary of War.

Let it be done.

J. B.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA,
Second Auditor.

Extract of report of T. Hartley Crawford, Commissioner of Indian Affairs, dated July 26, 1843.

"The treaty of 1825 was declared to be null and void by that of 1826. The 9th article of the latter provided that, in consideration of the exertions used by the friends and followers of General McIntosh, to procure a cession of the Indian Spring, and of their *past difficulties and contemplated removal*, the United States would present to the chiefs of the party, to be divided among the chiefs and warriors, $100,000, if the party should amount to 3,000, and in that proportion for any smaller number, of which $15,000 were to be paid immediately after the ratification of the treaty, and the residue on their arrival west. The restriction to 3,000 emigrants was removed by the law of 26th May, 1826, and payments under this article authorized to any number over and above said limit.

"This sum was paid; for, on 26th June, 1834, a law was passed appropriating $11,160, to be distributed to the Creek Indians, friends and followers of General McIntosh, who emigrated under the treaty of 12th January, 1826, 'and who have not received the proportions of the sums stipulated to be paid under the 9th article of the said treaty.' The same law contained an appropriation of $5,136 93 'for the payment of claims ascertained, upon settlement, to be due for provisions and bounty money, for Indians emigrating west under the treaty with the Creeks.'"