

not to exceed 150 bushels from a salt spring which the Indians had ceded.

The next year another large area was secured from the Delawares.³⁰⁹ In this treaty the United States expressly recognizes the Delaware Indians "as the rightful owners of all the country" specifically bounded (Art. 4).

Since the Piankeshaw Tribe refused to recognize the title of the Delawares to the land ceded by this treaty,³¹⁰ Harrison negotiated a separate treaty.³¹¹ It provided for land cessions and reserved the right to the United States of apportioning the annuity, "allowing always a due proportion for the chiefs."³¹²

Harrison went to St. Louis to meet the chiefs of the Sacs and Foxes, and bargain for their land, which was rich in mineral deposits of copper and lead. There he succeeded in getting, on November 3, 1804,³¹³ as has been noted by his biographer Dawson, "the largest tract of land ever ceded in one treaty by the Indians since the settlement of North America * * *."³¹⁴

In this agreement it is stipulated (Art. 8) that "the laws of the United States-regulating trade and intercourse with the Indian tribes, are already extended to the country inhabited by the Saukes and Foxes." The tribes also promise to put an end (Art. 10) to the war which waged between them and the Great and Little Osages. Article 11 guarantees a safe and free passage through the Sac and Fox country to every person travelling under the authority of the United States.³¹⁵

The conclusion of the treaty at St. Louis brings to an end for several years negotiations with the Indians of the West. However, treaty-making in other quarters continued and Jefferson was able to inform Congress in 1805:

Since your last session, the northern tribes have sold" to us the land between the Connecticut Reserve and the former Indian boundary, and those on the Ohio, from the same boundary to the Rapids, and for a considerable depth inland. The Chickasaws and the Cherokees have sold to us the country between and adjacent to the two districts of

right to locate three tracts of land as sites for houses of entertainment, However, if ferries are established in connection therewith, the Indians are to cross said ferries toll free.

Six other treaties which need not be examined at length were negotiated during the first years of Jefferson's Administration: Chickasaws, Treaty of October 24, 1801, 7 Stat. 65; Choctaws, Treaty of December 17, 1801, 7 Stat. 66; Creeks, Treaty of June 16, 1802, 7 Stat. 68; Senecas, Treaty of June 30, 1802, 7 Stat. 72; Choctaws, Treaty of October 17, 1802, 7 Stat. 73; Choctaws, Treaty of August 31, 1803, 7 Stat. 80. These included two treaties for the building of roads through Indian territory, two treaties relinquishing areas of land to private individuals under the sanction of the United States, and two treaties for running boundary lines in accordance with previous negotiations, and two treaties providing for cessions of territory to the United States.

³⁰⁹Treaty of August 18, 1804, 7 Stat. 81.

³¹⁰See Art. 6, Treaty of August 18, 1804, with the Delawares, 7 Stat. 81.

³¹¹August 27, 1804, 7 Stat. 83.

³¹²*Ibid.*, Art. 4.

³¹³Treaty of November 3, 1804, 7 Stat. 84, construed in *Sac and Fox Indians of the Mississippi in Iowa v. Sac and Fox Indians of the Mississippi in Oklahoma*, 220 U. S. 481 (1911).

³¹⁴Oskison, *op. cit.* p. 105.

³¹⁵An additional article provided that under certain conditions grants of land from the Spanish Government, not included within the treaty boundaries should not be invalidated. This particular provision was given application in a decision by the Supreme Court of the United States in *Marsh v. Brooks*, 14 How. 513 (1852).

³¹⁶Treaty with the Wyandots, Ottawas, etc., of July 4, 1805, 7 Stat. 87. Treaty with the Delawares, Pottawatomies, etc., of August 21, 1805, 7 Stat. 91. In this last-mentioned treaty the United States agreed to consider (Art. 4) the Miamis, Eel River, and Wea Indians as "joint owners" of a certain area of land and for the first time agreed not to purchase said land without the consent of each of said tribes. In early treaties the Chippewas were dealt with as a single tribe. *Chippewa Indians of Minnesota v. United States*, 301 U. S. 358 (1937).

³¹⁷Treaty with the Chickasaws of July 23, 1805, 7 Stat. 89; Treaty with the Cherokees of October 25 and 27, 1805, 7 Stat. 93, 95.

Tennessee, and the Creeks³¹⁸ the residue of their lands in the fork of Ocumgee up to the Ulfouhatche. The three former purchases are important, inasmuch as they consolidate disjoined parts of our settled country, and render their intercourse secure; and the second particularly so, as, with the small point on the river, which we expect is by this time ceded by the Piankeshaws,³¹⁹ it completes our possession of the whole of both banks of the Ohio, from its source to near its mouth, and the navigation of that river is thereby rendered forever safe to our citizens settled and settling on its extensive waters. The purchase from the Creeks too has been for some time particularly interesting to the State of Georgia.*

A treaty negotiated with the Choctaws in November 16, 1805,³²⁰ contained the first reservation of land for the use of individual Indians.³²¹

Article 2 carries the significant provision of

Forty eight thousand dollars to enable the Mingoes to discharge the debt due to their merchants and traders * * *

The treaty with the Great and Little Osages of November 10, 1808,³²⁴ provided in addition to land cessions, the pledge (Art. 12) that the Osages would not furnish "any nation or tribe of Indians not in amity with the United States, with guns, ammunitions, or other implements of war."

In one of his last official messages to Congress on November 8, 1808, Jefferson observed:

With our Indian neighbors the public peace has been steadily maintained. Some instances of individual wrong have, as at other times, taken place, but in no wise implicating the will of the nation. Beyond the Mississippi, the Iowas, the Sacs, and the Alabamas, have delivered up for trial and punishment individuals from among themselves, accused of murdering citizens of the United States. On this side of the Mississippi, the Creeks are exerting themselves to arrest offenders of the same kind; and the Choctaws have manifested their readiness and desire for amicable and just arrangements respecting depredations committed by disorderly persons of their tribe. * * * one of the two great divisions of the Cherokee nation have now under consideration to solicit the citizenship of the United States, and to be identified with us in laws and government, in such progressive manner as we shall think best.³²²

During this time there had come into power and influence among a great number of Indian tribes a Shawnee, Tecumseh, and his brother Laulewasikau called "The Prophet." When disturbing reports of the behavior of the two Shawnees reached Harrison, he resolved to press further before all Indian tribes were rendered unwilling to part with their land. Accordingly in September 1809, he convened the head men of the Delawares, Pottawatomies, Miamis, and Eel River Miamis and requested some 2,600,000 acres.³²⁷ This they yielded.³²⁸ A month later

*Treaty of November 14, 1805, 7 Stat. 96, construed in *Coffee v. Groover*, 123 U. S. 1, 14 (1887).

³¹⁹Treaty of December 30, 1805, 7 Stat. 100.

³²⁰Message of December 3, 1805, in *Debates and Proceedings* (1805-7), vol. 15, p. 15.

³²¹Treaty of November 16, 1805, 7 Stat. 98.

³²²*Ibid.*, Art. 1. A tract of land was reserved for the use of Alzira and Sophia, daughters of a white man and Choctaw woman.

³²³This is not the first time that allusion to the distressed financial situation of the Indians was made in a treaty. Both the Treaty with the Creeks, June 16, 1802, Art. 2, 7 Stat. 68, and the Treaty with the Chickasaws, July 23, 1805, Art. 2, 7 Stat. 89, make mention of debts owed by the natives. No see Chapter 8, sec. 7C.

³²⁴Treaty of November 10, 1808, 7 Stat. 107, construed in *Hot Springs Cases*, 92 U. S. 404 (1875).

³²⁵*Debates and Proceedings* (1808-9), vol. 19, p. 13.

³²⁶*Ibid.* By the Treaty of Detroit, November 17, 1807, 7 Stat. 105, and the Treaty of Brownstown, November 25, 1808, 7 Stat. 112, less important territorial concessions were secured.

³²⁷Oskison, *op. cit.*, p. 106.

³²⁸Treaty of September 30, 1809, 7 Stat. 113.

Harrison concluded an agreement with the Weas recognizing their claim to the land just ceded and extinguishing it for an annuity and a cash gift; and promised additional money if the Kickapoos should agree to the cession.³²⁰ Shortly thereafter, December 9, 1809, the Kickapoos capitulated and ceded some 256,000 acres for a \$500 annuity plus \$1,566 in goods.³²⁰

These cessions soon occasioned dissatisfaction among the Indians and, in the summer of 1810, with Indian war imminent in the Wabash valley, Harrison summoned Tecumseh and his warriors to a conference at Vincennes.³²¹ Here the Shawnee Chief delivered his ultimatum. Only with great regret would he consider hostilities against the United States, against whom land purchases were the only complaint. However, unless the treaties of the autumn of 1809 were rescinded, he would be compelled to enter into an English alliance.³²²

Upon being informed by the Governor that such conditions could not be accepted by the Government of the United States, Tecumseh proceeded to merge Indian antagonisms with those of a larger conflict—the War of 1812 with Great Britain. The only treaty of military alliance the United States was able to negotiate was that with the Wyandots, Delawares, Shawanoese, Senecas, and Miamies on July 22, 1814.³²³

In 1813 war broke out among the Upper Creek towns that had been aroused by the eloquence of Tecumseh several years before. Fort Mims near Mobile was burned, and the majority of its inhabitants killed.³²⁴ Andrew Jackson, in charge of military operations in that quartet, launched an obstinate and successful campaign, leveling whole towns in the process.³²⁵

Since the Creeks were a nation, and the hostile Creeks could not make a separate peace, Jackson met with representatives of the nation, friendly for the most part, and presented his "Articles of Agreement and Capitulation."³²⁶

The General demanded the surrender of 23,000,000 acres,³²⁷ half or more of the ancient Creek domain,³²⁸ as an indemnity for war expenses. Failure to comply would be considered hostile.³²⁹ A large part of this territory belonged to the loyal Creeks, but Jackson made no distinction. Under protest, the "Articles of Agreement and Capitulation" were signed August 9, 1814.³³⁰

³²⁰ Treaty of October 26, 1809, 7 Stat. 116.

³²¹ Treaty of December 9, 1809, 7 Stat. 117. Acreage from Oskison, *op. cit.*, p. 107.

³²² "Adams. History of the United States of America During the First Administration of James Madison (1890). vol. VI, p. 85.

³²³ *Ibid.*, pp. 87-88.

³²⁴ Treaty of July 22, 1814, 7 Stat. 118.

³²⁵ Adams, *op. cit.*, vol. VII, pp. 228-231.

³²⁶ *Ibid.*, vol. VII, pp. 255-257.

³²⁷ *Ibid.*, vol. VII, pp. 259-260.

³²⁸ James, Andrew Jackson (1933), p. 189.

³²⁹ Adams, *op. cit.* vol. VII, p. 260. Adams estimates that two-thirds of the Creek land was demanded; James estimates one-half (*op. cit.* p. 189).

³³⁰ James, *op. cit.* p. 190; Adams, *op. cit.* p. 260.

³³¹ 7 Stat. 120. "Title of the Creek Nation" to lands in Georgia "war extinguished throughout most of the southern part of the state by the treaties made with the nation in 1802, 1805, and 1814, 7 Stat. 68, 96, 120." *Coffee v. Groover*, 123 U. S. 1, 14 (1887). This land cession was the subject of much controversy for more than a century. After the passage of the so-called jurisdiction act (Act of May 24, 1924, 43 Stat. 139), giving jurisdiction to the Court of Claims to render judgment or claims arising out of Creek treaties, the Creek Nation filed a petition seeking payment for the twenty-three millions and more acres of land with interest, averring that—

• the representatives of the Creek Nation met, all of them, with one exception, being friendly and not hostile to the United States, and protested to General Jackson that the lands were perpetually guaranteed to the Creek Nation by treaty, that the hostile Creeks had no interest in the fee to the lands, and that the treaty as drawn did not provide any compensation for the lands required to be ceded. • • • "that said Jackson represented to said council that he was without power to make any agreement to compensate them for their lands and that unless

Certain other provisions indicate the spirit of capitulation in which the treaty was negotiated. For example, Article 3 demands that all communication with the British and the Spanish be abandoned, and Article 6 provides that "all the prophets and instigators of the war * * * who have not submitted to the arms of the United States * * *" be surrendered.

The terms of the peace which brought to an end the War of 1812 provided for a general amnesty for the Indians,³³¹ and the Federal Government proceeded to come to terms of peace with the various tribes. Twenty treaties were negotiated in 2 years, providing chiefly for mutual forgiveness, perpetual peace, and delivering up of prisoners, the recognition of former treaties, and acknowledgment of the United States as sole protector.³³²

E. INDIAN REMOVAL WESTWARD: 1817-46

With the increasing reluctance of Indians to part with their lands by treaties of cession, the policy of removal westward was accelerated. The United States offered lands in the West for territory possessed by the Indians in the eastern part of the United States. This served the double purpose of making available for white settlement a vast area, and solving the problem of conflict of authority caused by the presence of Indian nations within state boundaries.

Although the program had been considered in certain quarters for some time, it was not until after the close of the War of 1812 that the first exchange treaty was concluded.³³³ Then for al-

they signed the treaty as he had drawn it he would furnish the whole tribe with provisions and ammunition and that they could go down to Pensacola and join the Red Sticks and British and that, by the time they got there, he would be on their tracks and whip them and the British and drive them into the sea," and that driven to this extremity they submitted and signed the treaty. (Pp. 271-272.)

This petition was dismissed on March 7, 1927, the Court of Claims holding that the jurisdictional act does not give jurisdiction over a claim, the allowance of which involved the setting aside of a treaty on the ground that it was entered into under fraud. *Creek Nation v. United States*, 63 C. Cls. 270 (1927), cert. den. 274 U. S. 751.

³³³ Ninth Article, Treaty of Ghent of December 24, 1814, 8 Stat. 218.

³³⁴ Poutawatamie, July 18, 1815, 7 Stat. 123; Plankishaw, July 18, 1815, 7 Stat. 124; Teeton, July 19, 1815, 7 Stat. 125; Sioux of Lake, July 19, 1815, 7 Stat. 126; Sioux of the River of St. Peters, July 19, 1815, 7 Stat. 127; Yankton, July 19, 1815, 7 Stat. 128; Mahas, July 20, 1815, 7 Stat. 129; Kickapoos, September 2, 1815, 7 Stat. 130; Delawares, Wyandots, Senecas, etc., September 8, 1815, 7 Stat. 131; Great and Little Osage, September 12, 1815, 7 Stat. 133. The Supreme Court in construing the treaty with the Great and Little Osages, September 12, 1816, states: "peace was reestablished between the contracting parties, and former treaties were renewed * * * ." *State of Missouri v. State of Iowa*, 7 How. 559, 668 (1849). See, September 13, 1815, 7 Stat. 134; Fox, September 14, 1815, 7 Stat. 135; Iaway, September 16, 1815, 7 Stat. 136; Kansas, October 28, 1815, 7 Stat. 137; Sacs of Rock River, May 13, 1816, 7 Stat. 141; Sioux of the Leaf, Sioux of the Broad Leaf, and Sioux Who Shoot in the Pine Tops, June 1, 1816, 7 Stat. 143; Winnebago, June 3, 1816, 7 Stat. 144; Menominee, March 30, 1817, 7 Stat. 153; Otoes, June 24, 1817, 7 Stat. 154; Poncarar, June 25, 1817, 7 Stat. 155.

Five other treaties negotiated during this period provided for cessions of territory: Cherokees, March 22, 1816, 7 Stat. 138; Ottawas, Chipawas, etc., August 24, 1816, 7 Stat. 146; Cherokee, September 14, 1816, 7 Stat. 148; Chickasaws, September 20, 1816, 7 Stat. 150; Chactaw, October 24, 1816, 7 Stat. 152.

The Treaty of September 20, 1816, 7 Stat. 150, with the Chickasaws, made provision (Art. 6) for liberal presents to specified chiefs and individual Indians. Article 7 provided that no more licenses were to be granted to peddlers to traffic in goods in the Chickasaw Nation.

³³⁵ Treaty of July 8, 1817, 7 Stat. 156. Construed in *Cherokee Nation v. Georgia*, 5 Pet. 1, 6 (1831); *Marsh v. Brooks*, 8 How. 223, 232 (1850); *Holden v. Joy*, 17 Wall. 211, 212 (1872). The Supreme Court again construed this treaty in *Heckman v. United States*, 224 U. S. 413, -129 (1912). "In 1817 * * * the Cherokee Nation ceded to the United States certain tracts which they formerly held, and in exchange the United States bound themselves to give to that branch of the Nation on the Arkansas as much land as they had received, or might thereafter

most 30 years thereafter Indian treaty making was concerned almost solely with removing certain tribes of natives to the vacant lands lying to the westward. The first and most significant of these treaties was concluded with the southern tribes later known as the "Five Civilized Tribes."

1. *Cherokees*.—In 1816 Andrew Jackson as Commissioner for the United States met with the Cherokees to discuss the proposition of exchanging lands. Many influential Cherokees were bitterly opposed to it, and the great majority of Indians were extremely dubious of the value of removing elsewhere.

However, the next year a treaty, prepared by Andrew Jackson, was accepted by representatives of the Cherokee Nation.³⁴³ Its recitals include (Art. 5) a cession of the land occupied by the Cherokee Nation in return for a proportionate tract of country elsewhere, a stipulation (Art. 3) for the taking of a census of the Cherokee Nation in order to determine those emigrating and those remaining behind and thus divide the annuities between them; compensation for improvements (Arts. 6 and 7), and (Art. 8) reservations of 640 acres of Cherokee land in life estate with a reversion in fee simple to their children, to "each and every head of any Indian family residing on the east side of the Mississippi River . . . who may wish to become citizens" ³⁴⁵ These "reservations" were the first allotments, and the idea of individual title with restrictions on alienation, as a basis of citizenship, was destined to play a major role in later Indian legislation.

When the attempt to execute the treaty was made, its weaknesses came to light. Removal was voluntary, and the national will to remove was lacking. In 1819 a delegation of Cherokees appeared in Washington and negotiated with Secretary Calhoun a new treaty,³⁴⁶ which contemplated a cessation of migration.

The Cherokee Nation opposed removal and further cession of land, but once more the Federal Government sought to persuade them to move west. By the treaty of May 6, 1828,³⁴⁷ made with that portion of the Cherokee Nation which had removed across the Mississippi pursuant to earlier treaties, another offer was made. Article 8 provides:

. . . that their Brothers yet remaining in the States may be induced to join them . . . it is further agreed, on the part of the United States, that to each Head of a Cherokee family now residing within the chartered limits of Georgia, or of either of the States, East of the Mississippi, who may desire to remove West, shall be given, on enrolling himself for emigration, a good Rifle, a Blanket, and Kettle, and five pounds of Tobacco: (and to each member of his family one Blanket,) also, a just compensation for the property he may abandon, to be assessed

receive, east of the Mississippi. . . . " The tribe (Cherokee) was divided into two bodies, one of which remained where they were, east of the Mississippi, and the other settled themselves upon United States land in the country on the Arkansas and White rivers.

The effect of reserves to individual Indians of a mile square each secured to heads of families by the Cherokee treaties of 1817 and 1819 is directly decided in the case of *Comet v. Winton's Lessee*, 2 Yerger, Ten. Rep. 143 (1826). The division of the Cherokee Nation into two parties is also discussed in *Old Settlers v. United States*, 148 U. S. 427 435-436 (1893).

³⁴⁴ Treaty of July 8, 1817. 7 Stat. 156. It is to be noted that in the preamble of the treaty the following quotation of President Madison is cited with approval:

. . . when established in their new settlements, we shall still consider them as our children, give them the benefit of exchanging their peltries for what they will want at our factories, and always hold them firmly by the hand.

³⁴⁵ For opinions of the Attorney General on compensation provided by the sixth and seventh articles on rights of reservees and on descent of lands, see 3 Op. A. G. 326 (1838); 3 Op. A. G. 367 (1838); 4 Op. A. G. 116 (1842); 4 Op. A. G. 580 (1847).

³⁴⁶ Treaty of February 27, 1819. 7 Stat. 195.

³⁴⁷ 7 Stat. 311.

by persons to be appointed by the President of the United States.³⁴⁸

This treaty was negotiated to define the limits of the Cherokees' new home in the West-limits which were different from those contemplated by the treaty of 1817 and convention of 1819 and included the following promise:

The United States agree to possess the Cherokee, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land,
* * *

Also interesting is the preamble wherein is stated:

* * * the anxious desire of the Government of the United States to secure to the Cherokee nation of Indians . . . a permanent home, and which shall, under the most solemn guarantee of the United States, be, and remain, theirs forever—a home that shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the Jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any-existing Territory or State; . . . (P. 311.)

Article 6 provided that whenever the Cherokees desired it, a set of plain laws suited to their condition would be furnished.

Confidential agents were then sent to the Cherokee Nation to renew efforts to secure immigrants to the west, but these efforts met with little success.³⁴⁹ Obviously more forceful measures would have to be used, and the expansionists awaited eagerly the replacing of John Quincy Adams with a Chief Executive who would not hesitate to take such action."

The election of 1828 supplied just such a President. Despite a conciliatory inaugural address,³⁵⁰ Andrew Jackson immediately made it clear that the Indians must go West.³⁵¹ In this he was

³⁴⁸ The term "property which he may abandon" is construed as fixed property, "that which he could not take with him; in a word, the land and improvements which he had occupied" in 2 Op. A. G. 321 (1830).

³⁴⁹ Treaty of May 6, 1828, Art. 2, 7 Stat. 311.

³⁵⁰ This treaty was ratified with the proviso that it should not interfere with the lands assigned or to be assigned to the Creek Indians nor should it be construed to cede any lands heretofore ceded to any tribe by any treaty now in existence.

On February 14, 1833, a treaty (7 Stat. 414) to settle disputed Creek claims was negotiated with the Cherokee Nation west of the Mississippi. In addition to certain amendments to the preceding agreement, an outlet described as a

. . . perpetual outlet West, and a free and unmolested use of all the Country lying West of the Western boundary of the above described limits, and as far West as the sovereignty of the United States, and their right of soil extend.

which had been guaranteed in Treaty of May 6, 1828, Art. 2, 7 Stat. 311, was reaffirmed.

³⁵¹ This article was canceled, at Cherokee request, by Treaty of February 14, 1833, Art. 3, 7 Stat. 414.

³⁵² Foreman, *Indian Removal* (1932), pp. 21, 231; Abel, *Indian Consolidation*, in *Annual Report, American Historical Association* (1906), vol. 1, p. 361.

³⁵³ Abel, *op. cit.*, p. 370.

³⁵⁴ In his speech of March 4, 1829, Jackson said:

It will be my sincere and constant desire to observe toward the Indian tribes within our limits a just and liberal policy, and to give that humane and considerate attention to their rights and their wants which is consistent with the habits of our Government and the feelings of our people. (H. Misc. Doc. 53d Cong. 2d sess. (1893-94), vol. 37, pt. 2, p. 438.)

³⁵⁵ See Abel *op. cit.*, p. 370, 378; Foreman, *op. cit.*, p. 21. In his first message to Congress of December 8, 1829, Jackson urged voluntary removal as a protection to the Indians and the states. (A. Misc. Doc., 53d Cong. 2d sess. (1893-94), vol. 37, pt. 2, p. 458.) On May 28, 1830, the Indian Removal Act (4 Stat. 411, 25 U. S. C. 174, R. S. § 2114) was passed. (Amendments guaranteeing protection to the Indians from the states and respect for treaty rights until removal were defeated (Abel, *op. cit.*, p. 380).) It gave to President Jackson power to initiate proceedings for exchange of lands. This was begun, with requests for conferences, in August of 1830 (Foreman, *op. cit.*,

aided by the legislature of Georgia which had enacted laws to harass and make intolerable the life of the Eastern Cherokee.³⁰⁴

When the objectives of the hostile legislation became evident the chief of the Cherokee Nation, John Ross, determined to seek relief and filed a motion in the Supreme Court of the United States to enjoin the execution of certain Georgia laws. The bill reviewed the various guarantees in the treaties between the Cherokee Nation and the United States and complained that the action of the Georgia legislature was in direct violation thereof.

While the jurisdiction of the Supreme Court was denied on the grounds that the Cherokee Nation was not a foreign state within the meaning of the Constitution, Chief Justice Marshall nevertheless gave utterance to a highly significant analysis—the first judicial analysis of the effect of the various treaties upon the status of the Indian nation:

* * * The numerous treaties made with them by the United States, recognise them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States, by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognise the Cherokee nation as a state, and the courts are bound by those acts.³⁰⁷

Shortly thereafter, two missionaries, Worcester and Butler, were indicted in the Superior Court of Gwinnett County for residing in that part of the Cherokee country attached to Georgia by recent state laws, in violation of a legislative act which forbade the residence of whites in Cherokee country without an oath of allegiance to the state and a license to remain.³⁰⁸ Mr. Worcester pleaded that the United States had acknowledged in its treaties with the Cherokees the latter's status as a sovereign nation and as a consequence the prosecution of state laws could not be maintained. He was tried, convicted and sentenced to 4 years in the penitentiary.

On a writ of error the case was carried to the Supreme Court of the United States, where the Court asserted its jurisdiction and reversed the judgment of the Superior Court for the County of Gwinnett in the State of Georgia, declaring that it had been pronounced under Color of a law which was repugnant to the constitution, laws and treaties of the United States. Chief Justice Marshall in delivering this opinion examined the recitals of the various treaties with the Cherokees and proceeded to point out:

* * * They [state laws] interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the government of the Union. They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise the pre-existing power of the nation to govern itself. They are in hostility with the acts of congress for regulating this intercourse, and giving effect to the treaties. . . .³⁰⁹

PP. 21-22). The Indians were advised that refusal meant end of federal protection and abandonment to state laws (Abel, op. cit., p. 332; Foreman, op. cit., pp. 231-232.)

³⁰⁴ See *Worcester v. Georgia*, 6 Pet. 515 (1832). See also, Foreman, op. cit., pp. 229-230.

³⁰⁷ *Cherokee Nation v. Georgia*, 5 Pet. 1, 16 (1831). See Chapter 14, sec. 3.

³⁰⁸ Foreman, op. cit. p. 235.

³⁰⁹ *Worcester v. Georgia*, 6 Pet. 515, 561, 562, (1832). On the failure of Georgia to abide by the Supreme Court decision, see Chapter 7, sec. 2.

In September 1831, the President sent Benjamin F. Currey of Tennessee into the Cherokee country to superintend the work of enrolling the natives for the journey to the west.³¹⁰ Currey found the task difficult and, slow, only 51 families enrolling by December." The Cherokees were divided on removal. one group headed by John Ridge favorable to emigration, another faction remaining loyal to their chief, 'John Ross, and opposed to the program.'" In 1834 the Ridge faction negotiated a sweeping treaty for removal which failed of ratification by the Cherokee council.

In 1835, delegates from both factions were sent to Washington. After the Ross group had refused the President's terms, negotiations were opened with the opposing party, and on March 14 an agreement was drawn up which was not to be considered binding until it should receive the approval of the Cherokee people in full council.

At a full council meeting in October 1835, at Red Clay, Tennessee, both factions, temporarily abandoning their quarrels, united in opposition to this treaty and rejected it.³¹¹ Another meeting was then called at New Echota, and a new treaty was negotiated and signed.³¹²

By Article 1. the Cherokee Nation ceded all their land east of the Mississippi River to the United States for \$5,000,000.

Article 2 of this instrument recites that whereas by treaties with the Cherokees west of the Mississippi, the United States had guaranteed and secured to be conveyed by patent a certain territory as their permanent home, together with "a perpetual outlet west," provided that other tribes shall have access to saline deposits on said territory. It is now agreed "to convey to the said Indians, and their descendants by patent, in fee simple . . ." certain additional territory.

The estate of the Cherokees in their new homeland (by Art. 2, 7,000,000 acres, and an additional 800,000 acres) has been variously called a fee simple,³¹³ an estate in fee upon a condition subsequent,³¹⁴ and a base, qualified or determinable fee.³¹⁵

Article 5 provides that the new Cherokee land should not be included within any state or territory without their consent, and

³⁰⁹ The methods which were employed at this time have been described thus:

Intrigue was met by intrigue. Currey secretly employed intelligent mixed-breeds for a liberal compensation to circulate among the Indians and advance arguments calculated to break down their resistance. . . . Pled with liquor. The Indians were charged with debts for which their property was taken with or without process of law. (Foreman, op. cit., p. 236.)

³¹⁰ Ibid., p. 241.

³¹¹ Abel, op. cit. fn. 352 p. 403.

³¹² Treaty of June 19, 1834 (unratified). This treaty ceded to the United States all the Cherokee land in Georgia, North Carolina, Tennessee, and Alabama, and the Indians agreed to move west. Abel, op. cit., p. 403; Foreman, op. cit., pp. 264, 265.

*Treaty of March 14, 1835 (unratified). By this treaty the tribe ceded all its eastern territory and agreed to move west for \$4,500,000. Foreman, op. cit., p. 266; Abel, op. cit. pp. 403, 404.

³¹³ Foreman, op. cit., pp. 266-267.

³¹⁴ December 29, 1835, 7 Stat: 478, 488 (Supplement). The events leading to this treaty are analyzed in L. K. Cohen, The Treaty of New Echota (1936). 3 Indians at Work, No. 19.

³¹⁵ *Cherokee Nation v. Southern Kansas Railway Co.*, 135 U. S. 641 (1890). In *United States v. Rogers*, 23 Fed. 658, 664 (D. C. W. D. Ark. 1885), the court insisted:

* * * By looking at the title of the Cherokees to their lands, we find that they hold them all by substantially the same kind of title, the only difference being that the outlet is incumbered with the stipulation that the United States is to permit other tribes to get salt on the Salt plains. With this exception, the title of the Cherokee Nation to the outlet is just as fixed, certain, extensive, and perpetual as the title to any of their lands.

The President and Senate in concluding a treaty. Can lawfully covenant that a patent should issue to convey lands which belong to the United States. *Holden v. Joy*, 17 Wall. 211 (1872).

³¹⁶ *Holden v. Joy*, 17 Wall. 211 (1872).

³¹⁷ *United States v. Reese*, 27 Fed. Caa. No. 16,137 (D. C. Mass. 1868).

that their right to make laws not inconsistent with the Constitution or intercourse acts should be secured.³⁷⁰

The New Echota treaty also provided (Art. 12) under certain conditions, reservations of 166 acres for those who wished to remain east of the Mississippi³⁷¹ and for settlement of claims (Art. 13) for former reservations. In addition a commission was established (Art. 17) to adjudicate these claims.³⁷²

2. *Chickasaws*.—Although the domain of the Chickasaw Nation was considerably restricted by the treaties of 1816³⁷³ and 1818³⁷⁴ it was not until 1836 that the subject of "removal" was given serious consideration. During the summer of that year, the President met the principal chiefs of the Chickasaw Nation and warned them that they would be compelled either to migrate to the west or to submit to the laws of the state.³⁷⁵ After several days of conference a provisional treaty³⁷⁶ was signed. However, performance was conditional upon the Chickasaws being given a home in the West on the lands of the Choctaw Nation, and as the two nations could come to do agreement the treaty remained unfulfilled.³⁷⁷ Nevertheless, white infiltration into Chickasaw land east of the Mississippi was accelerated, and the problem of removal became a pressing government problem.³⁷⁸

On October 20, 1832,³⁷⁹ another treaty for removal was negotiated in which all of the land of the tribe east of the Mississippi

³⁷⁰ In *Cherokee Nation v. Southern Kansas Railway Co.*, 135 U. S. 641 (1890), the Supreme Court commented on this clause:

• • • By the Treaty of New Echota, 1835, the United States covenanted and agreed that the lands ceded to the Cherokee Nation should at no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory, and that the government would secure to that nation "the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them." • • • But neither these nor any previous treaties evinced any intention, upon the part of the government, to discharge them from their condition of pupillage or dependency, and constitute them a separate, independent, sovereign people, with no superior within its limits. (P. 654.)

³⁷¹ The Indians who remained behind under this provision dissolved their connection with the Cherokee Nation (*Cherokee Trust Funds*, 117 U. S. 288 (1886)), without becoming citizens either of the United States or North Carolina. *United States v. Boyd*, 83 Fed. 547 (C. C. A. 4, 1897).

In later years some of the ceded Cherokee lands were bought back by Cherokees who resisted removal. In 1925 this land was reconveyed to the United States in trust by Indians for disposition under the Act of June 4, 1924, 43 Stat. 376. See Historical Note, 25 U. S. C. A. 331.

³⁷² That the President has power to appoint new commissioners there being no limitation to this authority, except the fulfillment of its purposes, but that the expenses cannot be defrayed out of the Cherokees' fund is the advice of the Attorney General. 16 Op. A. G. 300 (1879); 4 Op. A. G. 73 (1842). See also 5 Op. A. G. 268 (1850); H. Rept. No. 391, 28th Cong., 1st sess. (1844).

³⁷³ Treaty of September 20, 1816, 7 Stat. 150. For certain ceded lands north and south of the Tennessee River, the Indians received \$12,000 per annum for 10 years (Arts. 2 and 3).

Article 7 prohibits the licensing of peddlers to trade within the Chickasaw Nation and describes the activities of the trader as a disadvantage to the nation.

³⁷⁴ Treaty of October 19, 1818, 7 Stat. 192, construed in *Porterfield v. Clark*, 2 How. 76, 83 (1844). All Chickasaw land north of the south boundary of Tennessee was ceded for \$300,000—\$20,000 annually for 15 years (Arts. 2 and 3).

³⁷⁵ Foreman, *op. cit.*, p. 193. Each of the Chickasaw chiefs was to receive four sections of land if the treaty were ratified.

³⁷⁶ Treaty of September 1, 1830 (unratified).

³⁷⁷ Several official attempts were made by the Government to persuade the Chickasaws of the desirability of amalgamating with the Choctaws. Foreman, *op. cit.*, pp. 193-196.

³⁷⁸ *Ibid.*, p. 197.

³⁷⁹ 7 Stat. 381. Supplementary and explanatory articles (7 Stat. 388) adopted October 22, 1832. Art. 9 is of interest. The Chickasaws

"• • • will always need a friend to advise and direct them. • • • There shall be an agent kept with the Chickasaws as heretofore, so long as they live within the jurisdiction of the United States as a nation • • • And whenever the office of agent shall be vacant, • • • the President will pay due respect to the wishes of the nation • • •"

was ceded to the United States³⁸⁰ to be sold at public auction." Article 4 provides:

• • • that the Chickasaw people shall not deprive themselves of a comfortable home, in the country where they now are, until they shall have provided a country in the west to remove to • • • It is therefore agreed • • • that they will endeavor as soon as it may be in their power, after the ratification of this treaty, to hunt out and procure a home for their people, west of the Mississippi river, • • • they are to select out of the surveys, a comfortable settlement for every family in the Chickasaw nation, to include their present improvements, if the land is good for cultivation, and if not they may take it in any other place in the nation, which is unoccupied by any other person. • • • All of which tracts of land, so selected and retained, shall be held, and occupied by the Chickasaw people, uninterrupted until they shall find and obtain a country suited to their wants and condition. And the United States will guaranty to the Chickasaw nation, the quiet possession and uninterrupted use of the said reserved tracts of land, so long as they may live on and occupy the same. • • •

Despite the guarantee of the United States to the Chickasaws of the "quiet possession and uninterrupted use" of the reserved tracts,³⁸¹ white settlers continued to overrun and occupy their country unlawfully.³⁸² Furthermore, the problem of finding land in the West proved a difficult one. Finally convinced of the need for amending the treaty in certain particulars, the Government consented to the conclusion of another treaty on May 24, 1834.³⁸³ This altered the program of removal, granted in fee certain reservations, while asserting that the Chickasaws "still hope to find a country, adequate to the wants and support of their people, somewhere west of the Mississippi" • • •

By Article 2, the Chickasaws on their removal west were to be protected by the United States from the hostile prairie tribes. They pledged themselves never to make war on another tribe, or on whites, "unless they are so authorized by the United States." Article 4 set up a commission of Chickasaws to pass on the competency of members of the tribe to handle and sell their land. Articles 5 and 6 listed the cases in which reservations could be granted in fee, and determined the amount of land in each case.³⁸⁴ Article 9 provided that funds from the sale of Chickasaw lands be used for schools, mills, blacksmith shops, etc.³⁸⁵

3. *Choctaws*.—By 1820 it was evident that the Choctaws, disturbed by the number of settlers who were pouring into the rich valleys of the Mississippi, would consent to "removal." Ac-

³⁸⁰ *Ibid.*, Art. 1.

³⁸¹ *Ibid.*, Art. 2.

³⁸² *Ibid.* See Arts. 4 and 15.

³⁸³ Foreman, *op. cit.* p. 199.

³⁸⁴ Treaty of May 24, 1834, 7 Stat. 450. It is of interest that in previous treaties the word "cede" was used. In this the phrase "abandon their homes" is used (Art. 2).

³⁸⁵ Art. 2. Such land was not found until 1837, when the Chickasaws purchased a large tract of land from the Choctaws. Foreman, *op. cit.* p. 203.

³⁸⁶ For opinion that a widow keeping house and having children or other persons residing with her, except slaves, is the head of a family unless said children or other persons are provided for under the sixth and eighth articles; that as many Indian wives as were living with their children apart from their husbands (though wives of the same Indian) are "heads of a family" within the meaning of the fifth article of the treaty, see 3 Op. A. G. 34, 41 (1836). And see, on the scope of investments under Art. 11, 3 Op. A. G. 170 (1837).

Title to reservations was complete when the locations were made or identified them. *Best v. Polk*, 18 Wall. 112 (1873).

For details concerning the number of claimants for lands; the number approved; and the names of the assignees of those Indians who obtained lands pursuant to the provisions of the Chickasaw treaty made at Washington in 1834, see H. Rept. No. 190, 29th Cong. 1st sess., vol. VI (1846).

³⁸⁷ Also see sec. 3C3 of this Chapter.

cordingly negotiations were begun and on October 13, 1820,³⁰⁰ the Indians ceded to the United States the "coveted tract" in Western Mississippi³⁰¹ for land west of the Mississippi between the Arkansas and Red rivers.³⁰²

Article 4 of the treaty contains the guarantee that the boundaries established should remain without alteration

* * * until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation.

Article 12 gives the agent full power to confiscate "all whiskey except that brought under permit into the nation. This appears to be the first attempt by treaty to regulate traffic in liquor.

Shortly after the treaty was signed it was discovered that a part of Choctaw's new country was already occupied by white settlers.³⁰³ The President called to Washington delegates from the Choctaw Nation to reconsider the matter and negotiate another treaty. This was done on January 20, 1825,³⁰⁴ and the Choctaws for \$6,000 a year for 16 years (Art. 3), and a permanent annuity of \$6,000 (Art. 2), ceded back all the land lying east of a line which today is the boundary between Arkansas and Oklahoma. By Article 4 of the 1825 treaty it is also agreed that all those who have reservations under the preceding treaty "shall have power, with the consent of the President of the United States, to sell and convey the same in fee simple." Article 7 calls for the modification of Article 4 of the preceding treaty so that the Congress of the United States shall not exercise the power of allotting lands to individuals without the consent of the Choctaw Nation.

A few years later, federal agents, anxious to speed up the migration program under the Removal Act of 1830³⁰⁵ held another series of conferences in the Choctaw Nation.

At Dancing Rabbit Creek, at a conference characterized by generous present-giving,³⁰⁶ a treaty was signed on September 27, 1830.³⁰⁷ By this agreement the Choctaws ceded the remainder of their holdings east of the Mississippi to the United States Government in return for

* * * a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, * * *³⁰⁸

³⁰⁰ Treaty of Doak's Stand of October 18, 1820, 7 Stat. 210. Construed in *Choctaw Nation v. United States*, 119 U. S. 1 (1886); *United States v. Choctaw Nation*, 179 U. S. 494; 507 (1900); *Mullen v. United States*, 224 U. S. 448, 450 (1912). In *Elk v. Wilkins*, 112 U. S. 94, 100 (1884), this treaty was cited in support of the statement that the alien and dependent condition of the members of the Indian tribes could not be put off at their own will without the action or assent of the United States. In *Fleming v. McCurtain*, 215 U. S. 56, 59 (1909), the Supreme Court declared that by this treaty the United States ceded certain lands to the Choctaw Nation with "no qualifying words."

³⁰¹ Abel, *op cit.* fn. 352, p. 286. The tract was coveted particularly by the state of Mississippi. See Art. 1.

³⁰² Art. 2.

³⁰³ Abel, *op cit.*, pp. 286-287.

³⁰⁴ Treaty of January 20, 1825, 7 Stat. 234, construed in 2 Op. A. G. 461 (1831), and 3 Op. A. G. 48 (1836).

³⁰⁵ Act of May 28, 1830, 4 Stat. 411, R. S. § 2114, 25 U. S. C. 174.

³⁰⁶ The expense account for the negotiations of Dancing Rabbit Creek submitted by the federal commissioners included items of \$1,409.84 for calicos, quilts, razors, soap, etc. Sen. Doc. No. 512, 23rd Cong. 1st sess., pp. 251-255.

³⁰⁷ 7 Stat. 333. This was the first treaty made and ratified under the Removal Act of May 28, 1830, 4 Stat. 411.

³⁰⁸ Art. 2. In 1903 the United States Supreme Court examined this particular provision and ruled that this was a grant to the Choctaw Nation and was not to be held in trust for members of the tribe, which upon dissolution of the tribal relationship would confer upon each individual absolute ownership as tenants in common. *Fleming v. McCurtain*, 215 U. S. 56 (1909). See Chapter 15, sec. 1A.

This tract was the same as that in the Treaty of January 20, 1825.³⁰⁷

Provision is also made for reservations of land to individual Indians in Articles 14³⁰⁸ and 19." In Article 14, it is also stipulated that a grant in fee simple shall issue upon the fulfillment of certain conditions.⁴⁰⁰

Whether a true construction of Article 14 created a trust for the children of each reservee was one of the questions before the United States Supreme Court in *Wilson v. Wall*. Said the Court:

The parties to this contract may justly be presumed to have had in view the previous custom and usages with regard to grants to persons "desirous to become citizens." The treaty suggests that they are "a people in a state of rapid advancement in education and refinement." But it does not follow that they were acquainted with the doctrine of trusts * * *⁴⁰¹ (P. 87.)

The following provisions of Article 4 of the Treaty of Dancing Rabbit Creek deserve to be noted:

The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the Government of the Choctaw Nation of Red People and their descendants: and that no part of the land granted them shall ever be embraced in any Territory or State; but the U. S. shall forever secure said Choctaw Nation from and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; * * *⁴⁰²

³⁰⁷ 7 Stat. 234.

*Article 14 provided reservations of land for those electing to remain and become citizens of the states. Such persons retained their Choctaw citizenship, but lost their annuity if they removed. That in the event of the death of reservees under the fourteenth article of the treaty of 1830, before the fulfillment of the condition precedent, to the grant in fee simple of the reserve, the interest thereby acquired passes to those persons who, under state laws, succeed to the inheritable interest of the individual in question. See 3 Op. A. G. 107 (1836).

If an Indian was prevented by the force or fraud of individuals having no authority from the Government from complying with the conditions of Article 14 of the treaty of Dancing Rabbit Creek, it is considered by the Attorney General that the remedy was against such individuals, although if permanent dispossession was produced by the sale of the land by the Government (even though he might have temporarily lost possession by such tortious acts) his claim is still valid. 4 Op. A. G. 513 (1846). And see, on eligibility to receive reservations, 5 Op. A. G. 251 (1850).

³⁰⁹ No forfeiture has resulted from the fraudulent acts of the agent of the Government who induced claimants to apply for reserves under the nineteenth article, land which were located for them, but for which patents have not been demanded, nor issued. See 4 Op. A. G. 452 (1845).

To the effect that the essential provisions of the Choctaw treaty of 1839 must take precedence over any rights claimed under the preemption laws, but that regulations to carry treaty into effect need not be inflexible and may be modified in any way not inconsistent with the treaty. See 3 Op. A. G. 365 (1838).

⁴⁰⁰ Residence for 5 years after ratification of the treaty with the intention of becoming a citizen, is a condition.

⁴⁰¹ *Wilson v. Wall*, 6 Wall. 83, 87-90 (1867).

⁴⁰² In a negligence action brought in error to the United States Court in the Indian Territory, the defense advanced was a general denial and a plea of the statute of limitations which, it was claimed, was in force in the Indian Territory when that country was a part of the territory of Missouri, and remained in force notwithstanding the separation of the territory. This Circuit Judge Caldwell denied, calling attention to the treaty with the Choctaw Nation of September 27, 1830, 7 Stat. 333, by which the United States Government "bound itself in the most solemn manner to exclude white people from the territory, and never to permit the laws of any state or territory to be extended over it." *St. Louis 6 S. F. R. Co. v. O'Loughlin*, 49 Fed. 440, 442 (C. C. A. 8, 1892).

That this does not empower the Choctaws to punish by their own laws white men who come into their nation, see 2 Op. A. G. 693 (1834). And see Chapter 7, sec. 9.

The nature and extent of the jurisdiction of the Choctaw Nation were reviewed by Attorney General Caleb Cushing in 1855:

Now, among the provisions of the treaty of Dancing Rabbit Creek are several of a very significant character having exclusive reference to the question of criminal jurisdiction.

In the first place, it provides that any Choctaw committing acts of violence upon the person or property of "citizens of the United States," shall be delivered up for trial and punishment by the laws of the United States; by which also are to be punished all acts of violence committed upon persons or property of the Choctaw nation by "citizens of the United States." Provision less explicit, but apparently on the same principle, is made for the repression or punishment of theft. General engagement is made by the United States to prevent or punish the intrusion of their "citizens" into the territory of the nation. (Arts. 6, 7, 9, 12.)

In the second place, the Choctaws express a wish in the treaty that Congress would grant to the Choctaws the right of punishing, by their own laws, "any white man" who shall come into the nation, and infringe any of their national regulations (art. 4.) But Congress did not accede to this request. On the contrary, it has made provision, by a series of laws, for the punishment of crimes affecting white men, committed by "or on them in the" Indian country, including that of the Choctaws, by the courts of the United States. (See act of June 30, 1834, iv Stat. at Large, p. 729, and act of June 17, 1844, v Stat. at Large, p. 680.) These acts cover, so far as they go, all crimes except those committed by Indian against Indian.

But there is no provision of treaty, and no statute, which takes away from the Choctaws jurisdiction of a case like this, a question of property strictly internal to the Choctaw nation: nor is there any written law which confers jurisdiction of such a case on any court of United States. * * * (Pp. 174, 178-179.)

Before the Treaty of Dancing Rabbit Creek was proclaimed, whites began to move into Choctaw country illegally,⁴⁰⁸ and Indians, "ill-organized and inadequately provisioned" began to move west⁴⁰⁹ under the aegis of Greenwood Le Flore, a mixed blood and former Choctaw chief. President Jackson then ordered that removal be supervised by the Army.⁴¹⁰ Removal began on a large scale in the fall of 1831.⁴¹¹ It had not been entirely completed at the end of the century.⁴¹²

4. Creeks.-The cession⁴¹³ of land by the Creeks after the uprising of the "hostiles" in 1812 "was the first step in the direction of systematic removal."⁴¹⁴

The Compact of 1802⁴¹⁵ became the source of constant agitation in Georgia for change in the Creek boundary line. On January 22, 1818, a redefinition of the boundary of the Creek Nation was secured,⁴¹⁶ but the lands obtained by this agreement were less fertile⁴¹⁷ than had been anticipated and another treaty

was negotiated January 8, 1821.⁴¹⁸ Part of the consideration tendered the Creeks on this occasion (Art. 4) was the payment to the State of Georgia of " * * * whatever balance may be found due by the Creek nation to the citizens of said state * * ." The value of the ceded land was placed at \$450,000, of which not more than \$250,000 was to be paid to settle the claims of Georgia citizens against the Creek Nation,⁴¹⁹ the exact amount of which is left to the decision of the President of the United States.

After the award had been made, Georgia asked that it be enlarged to cover other claims. The Attorney General, after advising that the award of President Monroe must be considered final and conclusive, reviewed the contents of the treaties between the United States and the Creek Nation and asserted:

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 his claim under these treaties? There is not one treaty which contains any stipulation to answer for property destroyed. * * * 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?

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? * * * They were at the feet of the white people, with whom they were treating. They saw a formidable array of claims, * * * 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. * * * 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? * * *

In 1824 commissioners from the United States Government arrived in the Creek Nation to negotiate for still another session. At Broken Arrow, in Alabama, they met with the Creeks and told them that the President had extensive holdings beyond the Mississippi which he wished to give them in exchange for the land they then occupied.⁴²⁰

The Creek chiefs replied:

* * * ruin is the almost inevitable consequence of a removal beyond the Mississippi, we are convinced. It is true, very true, that "we are surrounded by white people," that there are encroachments made--what assurances have we that similar ones will not be made on us, should we deem it proper to accept your offer, and remove beyond

⁴⁰⁸ 7 Op. A. G. 174, 178-179 (1855). See Chapter 7, sec. 9.

⁴⁰⁹ February 24, 1831.

⁴¹⁰ Foreman, op. cit. p. 31.

⁴¹¹ Ibid., p. 38.

⁴¹² Ibid.

⁴¹³ Ibid., p. 42.

⁴¹⁴ Ibid., pp. 48-48.

⁴¹⁵ Ibid., p. 104.

⁴¹⁶ Treaty of August 9, 1814, 7 Stat. 120.

⁴¹⁷ Abel, op. cit. fn. 352, p. 278. See sec. 4D, supra.

⁴¹⁸ By that compact, Georgia ceded territory now part of Alabama and Mississippi in consideration of which the United States agreed to extinguish Indian title within the limits of Georgia as soon as it could be done "peaceably and on reasonable terms." Abel, op. cit., pp. 322, 323.

Ordinarily lands ceded to the United States become part of the public domain. By the Georgia pact, it became the property of the state. Hence, Georgia felt her failure to share sufficiently in previous land cessions was the result of national selfishness (Abel, op. cit., p. 322).

⁴¹⁹ Treaty of January 22, 1818, 7 Stat. 171.

⁴²⁰ Indian Office Latter Books. Series I. D., p. 224, cited in Abel op. cit., pp. 322, 323.

⁴²¹ Treaty of January 8, 1821, 7 Stat. 215. Subsequent to this treaty, the question of whether the United States was keeping her part of the Georgia compact arose. A House committee reporting on January 7, 1822 (American State Papers, "Indian Affairs," II, p. 259), held that it was not. According to Abel, (op. cit., p. 323), the constitutional significance of removal dates from that report.

⁴²² By the Treaty of August 7, 1790, 7 Stat. 35, the Creeks had undertaken responsibility to return prisoners, white or Negro, in any part of the nation (Art. 3). By that article, the Treaty of Indian Springs of January 8, 1821 (Art. 4), 7 Stat. 215, held them responsible for claims not exceeding \$250,000 by the citizens of Georgia, for runaway slaves. Foreman, op. cit., p. 317.

⁴²³ 2 Op. A. G. 110, 129, 150-151 (1828).

⁴²⁴ Talk, December 7, 1824, Journal of Proceedings at Broken Arrow (Indian Office MS. Records) cited in Abel, op. cit. fn. 352, p. 337.

the Mississippi: and how do we know that we would not be encroaching on the people of other nations?⁴²⁰

Finally after days of unavailing speech-making the conference was adjourned. However, one Commissioner, Duncan G. Campbell, aware that one faction in the Creek Nation headed by William McIntosh⁴²¹ favored migration, brought about the resumption of treaty negotiations at Indian Springs, its stronghold in Georgia.⁴²²

Significantly the Great Chief of the Creeks, Little Prince, and his second in command; Big Warrior, were absent, having dispatched a representative to the treaty council to protest against the lack of authority of those in attendance.⁴²³ Undiscouraged, Campbell continued the negotiations and on February 12, 1825,⁴²⁴ a treaty was concluded providing for the surrender of certain Creek holdings for \$400,000 for lands of "like quantity, acre for acre, westward of the Mississippi."⁴²⁵

A year later a new treaty⁴²⁶ was negotiated and referred to the Senate which refused its "advice and consent."⁴²⁷ A few days later a supplementary article⁴²⁸ providing for an additional cession of land was submitted and with this alteration, the treaty received Senate confirmation.⁴²⁹

Here, however, the matter did not end. Georgia now denied that treaties with the Indians had the same effect as those with civilized nations and asked that the whole question of claims under the Treaty of 1821 be reconsidered. This was refused by the Attorney General of the United States who declared:

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 Vattel (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 Mussulmans.* Their

common safety requires that they should treat with each other, and treat with security. . . .

What Vattel says of difference of religion is equally applicable to this objection * * *. And that civilization which should claim an exemption from the full obligations 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.⁴³⁰

With the departure from the Presidency of John Quincy Adams the strict observance of treaty obligations with the Indian tribes ceased to be an accepted national policy. Henceforth the emphasis was to be on "removal," and a few days after his inauguration Andrew Jackson insisted that it was necessary for the Creeks to migrate as soon as possible.⁴³¹ In vain the Creeks protested.⁴³² Their delegation to Washington was granted an audience on the condition that they would be fully empowered to negotiate in conformity with the wishes of the Government.⁴³³ Finally, a treaty was concluded March 24, 1832,⁴³⁴ and all the Creek land east of the Mississippi passed into the possession of the Federal Government.

By article 14 of this agreement, the United States solemnly promised tribal self-government to the Creeks. A number of years later this guarantee figured in a charge to the jury regarding robbery committed in the Indian country. The court in denying that the Indian country was under the sole and exclusive jurisdiction of the United States said:

* * *. A sole and exclusive jurisdiction would exclude all Indian laws and regulations, punish crimes committed by Indian on Indian, and regulate and govern property and contracts and the civil and political relations of the inhabitants, Indians and others, in that country. It would be wholly opposed to a self-government by any Indian tribe or nation. This self-government is expressly recognized and secured by several treaties between the United States and Indian tribes in the Indian country attached by the act of 1834 to Arkansas or Missouri District for certain purposes. This may be seen from the treaty with the Choctaws in 1830, and the treaty with the Creeks in 1832, and other Indian treaties. * * *.⁴³⁵ (P. 1004.)

For a number of years it was alleged that the United States had not fulfilled its obligations under this treaty. Suit was brought by the Creek Nation in the Court of Claims under the jurisdictional act of May 24, 1924,⁴³⁶ The plaintiff sought to recover the 1837 value of the entire reserves except as to those sales for which it had been proved that the owners received the stipulated "fair consideration," alleging that the Government

⁴²⁰ Talk, December 8, 1824, Journal of Proceedings, cited in Abel, *op cit.*, p. 337.

⁴²¹ A mixed blood, cousin of Governor Troup of Georgia, and leader of the lower Creek towns (Abel, *op. cit.*, p. 335).

⁴²² Campbell had suggested various ways of securing the Creek signature to a "removal" treaty. Finally he was informed that the President would not "countenance a treaty unless it were made "in the usual form, and upon the ordinary principles with which Treaties, are held with Indian tribes" Indian Office Letter Books, Series II. No. 1, pp. 309-310, cited in Abel, *op. cit.*, p. 339.

⁴²³ Abel, *op. cit.*, p. 340.

⁴²⁴ 7 Stat. 237.

⁴²⁵ Art. 2. All Creek holdings within the State of Georgia were included in the cession.

⁴²⁶ Treaty of Washington of January 24, 1826. 7 Stat. 286.

⁴²⁷ Abel, *op. cit.*, p. 352.

⁴²⁸ Supplementary article of March 31, 1826, 7 Stat. 289.

⁴²⁹ In the Committee of the Whole, Berrien of Georgia, asked that the first article be altered so that the Indian Spring Treaty could be abrogated without reflecting upon its negotiation. This was refused. Berrien and five others were the only members of the Senate who on the final vote refused to consent to ratification. Afterwards, Berrien admitted that he had voted against the treaty because he felt that it did not contain enough of an inducement to migration. American State Papers, Indian Affairs II, pp. 748-749, cited in Abel, *op. cit.*, p. 352.

Before the whole matter was settled to the satisfaction of Georgia, which claimed that more than the described territory should have been relinquished, another treaty of cession was negotiated Treaty of November 15, 1827. 7 Stat. 307.

⁴³⁰ 2 Op. A. G. 110, 135-136 (1828). See also sec. 1, *supra*, fn. 5.

⁴³¹ Indian Office Letter Books, Series II, No. 5, pp. 373-375, cited in Abel, *op. cit.* fn. 352, p. 370.

⁴³² On February 6, 1832, the Head Men and Warriors of the Creek Indians addressed the Congress of the United States entreating them not to insist on the program of removal pointing out "We are assured that, beyond the Mississippi, we shall be exempted from further exaction;

* * * Can we obtain . . . assurances more distinct and positive, than those we have already received and trusted? Can their power exempt us from intrusion in our promised borders, if they are incompetent to our protection where we are? . . . H. Doc. No. 02, 22d Cong., 1st sess. (1832), vol. 3, pp. 1, 3.

⁴³³ Indian Office Letter Books, Series II, No. 7, p. 422, cited in Abel, *op. cit.*, pp. 387-388.

⁴³⁴ 7 Stat. 366. (This was amended in certain particulars by treaties of February 14, 1833, 7 Stat. 417, and November 23, 1838, 7 Stat. 574.) article IV of the Treaty of February 14, 1833, 7 Stat. 417, expressly mentioned the Seminole Indians in Florida and provided for a permanent and comfortable home on the lands of the Creek Nation according to treaty negotiations with the Seminoles May 9, 1832, 7 Stat. 368.

⁴³⁵ Anonymous, 1 Fed. Cas. No. 447 (C. C. Missouri 1943). And see *Atlantic and Pacific Railroad Co. v. Mingus*, 165 U. S. 413, 435-436 (1897). See Chapter 23.

⁴³⁶ C. 181. 43 Stat. 139.

failed to remove intruders from the country ceded as guaranteed by Article V of the treaty and that as a result it became impossible to fulfill Articles II and III involving the surveying and selection by the Indians, of reserved lands. While the Court of Claims found that the Creek Nation, with certain exceptions, had waived all claims and demands in a subsequent treaty, its holding on the execution of this treaty is illuminating:

* * * While the 'record leaves' no room for doubt that most dastardly frauds by impersonation were perpetrated upon the Indians in the sales of a large part of the reserves, the conclusion is justified, and we think inescapable, that 'because of repeated investigations prosecuted by the Government these frauds were largely eliminated. The investigations were conducted by able and fearless men and were most thorough. Every possible effort was exerted by them to have individual reserves: who claimed they had been defrauded to present their claims. Chiefs of the nation were invited to bring to the attention of the investigators all claims of fraudulent practices upon the Indians, and were assured all claims would be considered and justice done. Hundreds of contracts upon investigation - were found to have been fraudulently procured and their cancellation recommended by the investigating agents. While the identity of the particular cases investigated and found to have been fraudulent, and the final action of the Government on the agent's 'reports recommending the reversal of such cases are not disclosed, it is manifest their recommendations were in the main followed and new contracts of sales were made, certified to the President and approved by him. (Pp. 260-261.)⁴³⁷

5. *Florida Indians*.⁴³⁸ One of the problems arising from the treaty with Spain by which the Floridas⁴³⁹ were acquired was that of the proper disposition of the Indians who inhabited that region.⁴⁴⁰ In some quarters it was insisted that the Indians had been living in the territory by sufferance only and even if this were not true their lands were now forfeit by conquest.⁴⁴¹ General Jackson in particular was outspoken in his opposition to treating with the Indians, asserting that if Congress were ever going to exercise its power over the natives it could not do better than to begin with these "conquered" natives.⁴⁴²

After 2 years of considering the various viewpoints, concentration in Florida was decided upon, and President Monroe appointed commissioners to treat with the Florida Indians. The result was the Treaty of 'Camp Moultrie of September 18, 1823.⁴⁴³ Article 1 of this instrument recites that—

The undersigned chiefs and warriors, for themselves and their tribes, have appealed to the humanity, and thrown

themselves on, and have promised to continue under, the protection of the United States, and of no other nation, power, or sovereign; and, in consideration of the promises and stipulations hereinafter made, do cede and relinquish all claim or title which they may have to the whole territory of Florida * * *

In return the United States (Art. 4) "assigned" land with a guarantee of peaceable possession, and gave them (Art. 3) in addition to implements, stock and an annuity, protection against all persons

* * * provided they conform to the laws of the United States, and refrain from making war, or giving any insult to any foreign nation, without having first obtained the permission and consent of the United States.

An additional article granted to six chiefs permission to remain and large tracts of lands.

Soon it was obvious that the territory assigned was unsatisfactory. Agriculture was impossible in the swamps of the interior. Although as provided by Article 9 the boundary line was to be extended to find "good tillable land," it still failed to afford the tribe adequate means of support.⁴⁴⁴

Friction developed between Indians who remained and white settlers, and between the removed Indians and whites searching for runaway slaves. The plight of those who had removed grew steadily worse.⁴⁴⁵

In 1832 at Payne's Landing, they were persuaded to migrate, although the treaty⁴⁴⁶ was not to be considered binding until an initial party explored the west and found a suitable home. However in 1833 the chiefs who undertook this preliminary search, without authority to do so, signed another treaty⁴⁴⁷ which was construed to make removal under the early treaty obligatory instead of conditional. This treaty was never accepted by the tribe, and large scale removal of Seminoles never took place.⁴⁴⁸

6. *Other tribes*.—In the Northwest Territory a treaty of removal was concluded with the Delaware Indians on October 3, 1818.⁴⁴⁹ Article 2 of this agreement binds the United States in exchange for land in Indiana " * * * to provide for the Delawares a country to reside in, upon the west side of the Mississippi, and to guaranty to them the peaceable possession of the same."

The next year treaties signed at Edwardsville, Illinois,⁴⁵⁰ and at Fort Harrison⁴⁵¹ provided for exchange of Kickapoo lands from Indiana and Illinois to Missouri territory. By the terms of the Edwardsville treaty (Art. 6) the United States ceded to the Indians and their heirs forever a certain tract of land in Missouri territory, provided that "the said tribe shall never sell the said land without the consent of the President of the United States." Article 4 of the Fort Harrison treaty refers to the contemplation by the tribe of Kickapoos of the Vermilion, of 'removing from the country they now occupy * * *'

In 1824, a treaty⁴⁵² with the Quapaw Nation was concluded, whereby the Quapaws ceded all their land in Arkansas territory and agreed to remove to the land of the Caddo Indians (Art. 4).

These agreements were for a number of years the major attempts made by the United States to persuade the Indians of

⁴³⁷ *Creek Nation v. The United States*, 77 C. Cls. 226, 252, 260 (1933). On alleged diversion of Creek Orphan fund under Article II; distinctions as to issuing of patents on individual reserves under II, III, IV, as to state citizenship and right to patent. Art. 4. See 16 Op. A. G. 311 (1878); 3 Op. A. G. 288 (1837), 585 (1840).

⁴³⁸ See fn. 414. *supra*.

⁴³⁹ Treaty of February 22, 1819; October 29, 1820, with Spain, ratified by United States, February 18, 1821, 8 Stat. 252.

⁴⁴⁰ In 1821, a subagent, Penieres, was appointed for the Florida Indians by Jackson (then, Governor) to explore the country, determine the number of Indians, add prepare them either for concentration in Florida or for removal elsewhere. Abel, *op. cit.*, p. 328.

⁴⁴¹ They were known as Seminoles ("separatist") and consisted of descendants of Creek Tribes, Hitchiti, Yamasee, Yuchi, and a Negro element. Foreman, *op. cit.*, p. 315.

⁴⁴² Abel, *op. cit.*, p. 323. The first Seminole War, with General Andrew Jackson in Command, had ended in 1818, disastrously for the Indians. Escape by runaway slaves into their territory continued, as did the subsequent white raids. Foreman, *op. cit.*, p. 318.

⁴⁴³ +a Abel, *op. cit.*, p. 329.

⁴⁴⁴ 7 Stat. 224. For the first time (Art. 7) recognition is taken of the fugitive slave problem and the Indians agree to prevent such individuals from taking refuge, and to apprehend and return them for a compensation. See also Treaty of June 18, 1833, 7 Stat. 427, in which the Appalachian Band of Indians relinquished all privileges to which they were entitled by this treaty (Art. 1).

⁴⁴⁵ Abel, *op. cit.*, pp. 330-334; Foreman, *op. cit.*, pp. 318-319.

⁴⁴⁶ Foreman, *op. cit.*, pp. 318-320.

⁴⁴⁷ Treaty of May 9, 1832, Preamble and Art. 1, 7 Stat. 363.

⁴⁴⁸ Treaty of March 28, 1833, 7 Stat. 423. This treaty was the cause of the second Seminole War. Foreman, *op. cit.*, p. 321. Some of the Indians fled to the swamps where desultory fighting went on for years.

⁴⁴⁹ Foreman, *op. cit.*, p. 323.

⁴⁵⁰ Treaty of October 3, 1818, 7 Stat. 188. And see supplement to this treaty, September 24, 1820, 7 Stat. 327.

⁴⁵¹ Treaty of July 20, 1819, 7 Stat. 200.

⁴⁵² Treaty of August 30, 1819, 7 Stat. 202.

⁴⁵³ Treaty of November 15, 1824, 7 Stat. 232.

that region to exchange their holdings for land lying elsewhere.⁴⁶⁴ Then, in the autumn of 1832 four treaties were negotiated at Castor Hill, Missouri, which assured the departure from Missouri of the remnants of the Kickapoos,⁴⁶⁵ the Shawanoes and Delawareans,⁴⁶⁶ the Kaskaskias and Peorias,⁴⁶⁷ and the Piankeshaws and Weas.⁴⁶⁸ In the meantime other federal commissioners were negotiating with the bands of Pottawatomies, who inhabited Indiana, Illinois, and Michigan. Although a number of treaties⁴⁶⁹ providing for cession of their land were concluded with them, it was not until late in 1834 that their signature was secured to the first of a series of "removal" treaties.⁴⁷⁰ The treaty of February 11, 1837,⁴⁷¹ provided for final removal within 2 years.

For a number of years the white settlers in the Northwest and the Sacs and Foxes had clashed. In 1804⁴⁷² the United Tribes of Sac and Fox Indians had made a treaty of limits with the United States. The white settlers interpreted that to mean relinquishment of all claims east of the Mississippi. This cession the Sacs and Foxes never recognized.⁴⁷³ Dissatisfaction was further increased by the treaties of August 4, 1824⁴⁷⁴ August 19, 1825,⁴⁷⁵ and July 15, 1830.⁴⁷⁶ After the making of the last treaty, the Indians left on their winter hunt and upon returning discovered that their lands north of Rock River, which had been in dispute for some time, had been surveyed and sold during their absence. Hostilities ensued. At the battle of Bad Axe, August 2, 1832, the Winnebagoes and the Sacs and Foxes were defeated.⁴⁷⁷ In the treaties of Fort Armstrong which resulted, the United States secured from the Winnebagoes all their claims east of the Mississippi,⁴⁷⁸ and from

the Sacs and Foxes nearly all of eastern Iowa with the exception of a small reserve on which they were concentrated.⁴⁷⁹

In the following year the Federal Government obtained the consent of the "United Nation of Chippewa, Ottawa and Potawatamie Indians" to a treaty at Chicago, Illinois. In this treaty⁴⁸⁰ the United States, in exchange for the land the Indians held—about 5,000,090 acres including the western shore of Lake Michigan—granted to them (Art. 2) approximately the same amount of territory "to be held as other Indian lands are held."

At about the same time, the Quapaws were concentrated in the northeast corner of the Indian territory.⁴⁸¹ This was done because of the failure of the original plan⁴⁸² to confine them to lands occupied by the Caddo Indians.⁴⁸³

It is not to be assumed that during this period treaty-makers were occupied with "removal" to the exclusion, of all else. In fact, until 1828, the number of treaties negotiated solely for the purpose of extinguishing aboriginal title to land predominated.⁴⁸⁴ Even during the years 1828-40 when the migration program was at its height, treaties were concluded with the Otoes and Missourians,⁴⁸⁵ Pawnees,⁴⁸⁶ Menominees,⁴⁸⁷ the Miamis,⁴⁸⁸ (3 treaties) the Wyandots,⁴⁸⁹ the United Nations of Chippewas, Ottawa, and Potawatamie Indians,⁴⁹⁰ Ioways,⁴⁹¹ Yankton Sioux,⁴⁹² Sioux,⁴⁹³ and

⁴⁶⁹ Treaty of September 21, 1832, 7 Stat. 374.

⁴⁷⁰ Treaty of September 26, 1833, 7 Stat. 431.

⁴⁷¹ Treaty of May 13, 1833, 7 Stat. 424.

⁴⁷² Treaty of November 15, 1824, 7 Stat. 232.

⁴⁷³ The lands given them by the Caddoes proved very poor, hence they returned to their old home in Arkansas. (Preamble, Treaty of May 13, 1833, 7 Stat. 424.)

It should be noted that by Treaty of July 1, 1835, the Caddo Indians (7 Stat. 470) agreed to removal in these terms: " . . . promise to remove at their own expense put of the boundaries of the United States . . . and never more return to live settle or establish themselves as a nation tribe or community of people within the same."

⁴⁷⁴ There are 21 of these which have not been noted before: Treaty of September 29, 1817, with Wyandot, Seneca, etc., 7 Stat. 160; Treaty of September 17, 1818, with Wyandot, Seneca, etc., 7 Stat. 178; Treaty of September 20, 1818, with Wyandots, 7 Stat. 180; Treaty of October 2, 1818, with Wea Tribe, 7 Stat. 186 ("The United States, by treaty with the Delaware Indians in 1818, agreed to provide a country for them to reside in." *United States v. Stone*, 2 Wall. 525 (1864)); Treaty of October 6, 1818, with Miami Nation, 7 Stat. 189; Treaty of September 24, 1819, with Chippewa Nation, 7 Stat. 203; Treaty of June, 16, 1820, with Chippewa Tribe, 7 Stat. 206 (7 Stat. 203 and 7 Stat. 206, construed in *Chippewa Indians of Minnesota v. United States*, 301 U. S. 358, 360 (1937)); *Spalding v. Chandler*, 160 U. S. 394, 403 (1896); Treaty of July 6, 1820, with Ottawa and Chippewa Nations, 7 Stat. 207; Treaty of August 11, 1820, with Wea Tribe, 7 Stat. 209; Treaty of August 5, 1826, with Chippewa Tribe, 7 Stat. 290; Treaty of October 23, 1826, with Miami Tribe, 7 Stat. 300; Treaty of August 11, 1827, with Chippewa, Menomonic, and Winnebago Tribes, 7 Stat. 303; Treaty of August 24, 1818, with Quapaw Nation, 7 Stat. 176; Treaty of September 25, 1818, with Great and Little Osage Nation, 7 Stat. 183; Treaty of June 2, 1823, with Great and Little Osage Nation, 7 Stat. 240, construed in *Holden v. Joy*, 17 Wall. 211, 245 (1872); Treaty of August 10, 1825, with Great and Little Osage Nations, 7 Stat. 263; Treaty of June 3, 1825, with Kansas Nation, 7 Stat. 244 (construed in *Jones v. Meehan*, 175 U. S. 1 (1899)); *Smith v. Stevens*, 10 Wall. 321, 325 (1870); *State of Missouri v. State of Iowa*, 7 How. 660 (1849)); Treaty of November 7, 1825, with Shawnee Nation, 7 Stat. 284; Treaty of September 25, 1818, with Peoria, Kaskaskia, etc., 7 Stat. 181; Treaty of February 11, 1828, with Eel River or Thorntown party of Miami Indians, 7 Stat. 309.

⁴⁷⁵ Treaty of September 21, 1833, 7 Stat. 429.

⁴⁷⁶ Treaty of October 9, 1833, 7 Stat. 448.

⁴⁷⁷ Treaty of October 27, 1832, 7 Stat. 405. This modified the treaty concluded February 8, 1831, 7 Stat. 342, and provided for a grant of land to the Stockbridge, Munsee and Brothertown Indians, and New York Indians. Later the Stockbridge Indians migrated west under the terms of the Treaty of September 3, 1839, 7 Stat. 580.

⁴⁷⁸ Treaty of October 23, 1834, 7 Stat. 458; Treaty of November 6, 1838, 7 Stat. 569; Treaty of November 28, 1840, 7 Stat. 582.

⁴⁷⁹ Treaty of April 23, 1836, 7 Stat. 502.

⁴⁸⁰ Treaty of July 29, 1829, 7 Stat. 320.

⁴⁸¹ Treaty of October 19, 1838, 7 Stat. 568.

⁴⁸² Treaty of October 21, 1837, 7 Stat. 542.

⁴⁸³ Treaty of September 29, 1837, 7 Stat. 538.

⁴⁶⁴ Treaties of cession were common during this period, but outright removal to exchanged lands was not.

⁴⁶⁵ Treaty of October 24, 1832, 7 Stat. 301.

⁴⁶⁶ Treaty of October 26, 1832, 7 Stat. 307.

⁴⁶⁷ Treaty of October 27, 1832, 7 Stat. 403.

⁴⁶⁸ Treaty of October 29, 1832, 7 Stat. 410.

⁴⁶⁹ Treaty of October 2, 1818, with the Potawatamie, 7 Stat. 185; Treaty of August 29, 1821, with the Ottawa, Chippewa, etc., 7 Stat. 218; Treaty of August 19, 1825, with the Sioux and Chippewa, etc., 7 Stat. 272; Treaty of October 16, 1826, with the Potawatamie, 7 Stat. 195; Treaty of September 19, 1827, with the Potawatamie, 7 Stat. 305; Treaty of August 26, 1828, with the United Tribes of Potawatamie, Chippewa, etc., 7 Stat. 315; Treaty of September 20, 1828, with the Potawatamie, 7 Stat. 317; Treaty of July 29, 1829, with the United Nations of Chippewas, Ottawa, etc., 7 Stat. 320; Treaty of October 20, 1832, with the Potawatamie, 7 Stat. 378; Treaty of October 26, 1832, with the Potawatamie, 7 Stat. 394; Treaty of October 27, 1832, with the Potawatamie, 7 Stat. 399; Treaty of December 4, 1834, with the Potawatamie, 7 Stat. 465; Treaty of December 16, 1834, with the Potawatamie, 7 Stat. 468.

⁴⁷⁰ Treaty of December 17, 1834, 7 Stat. 469; Treaty of March 26, 1836, 7 Stat. 490; Treaty of March 29, 1836, 7 Stat. 498; Treaty of April 11, 1836, 7 Stat. 499; Treaty of April 22, 1836, 7 Stat. 500; Treaty of April 22, 1836, 7 Stat. 501; Treaty of August 5, 1836, 7 Stat. 505; Treaty of September 20, 1836, 7 Stat. 513; Treaty of September 22, 1836, 7 Stat. 514; Treaty of September 23, 1836, 7 Stat. 515; Treaty of February 11, 1837, 7 Stat. 532.

⁴⁷¹ 7 Stat. 532.

⁴⁷² Treaty of November 3, 1804, 7 Stat. 84.

⁴⁷³ Abel, *op. cit.*, pp. 388-389.

⁴⁷⁴ 7 Stat. 223. Interpreted in *Marsh v. Brooks*, 8 How. 223, 231, 232 (1850).

⁴⁷⁵ 7 Stat. 272. Construed in *Beecher v. Wetherby*, 95 U. S. 517 (1877). To this treaty the Sioux and the Chippewas, Menomonic, Ioway, Winnebago and a portion of the Ottawa, Chippewa, and Potawatamie tribes were also parties.

On October 21, 1837, by a treaty with the Sacs and Foxes of Missouri, 7 Stat. 543, the right or interest to the country described in the second article and recognized in the third article of this treaty, was ceded to the United States together with all claims or interests under the treaties of November 3, 1804, 7 Stat. 84; August 4, 1824, 7 Stat. 229; July 15, 1830, 7 Stat. 328; and September 17, 1836, 7 Stat. 511.

⁴⁷⁶ 7 Stat. 328.

⁴⁷⁷ Abel, *op. cit.*, p. 391.

⁴⁷⁸ Treaty of September 15, 1832, 7 Stat. 370.