4-1-1870

Cherokee neutral lands of Kansas. (To accompany bill H.R. no. 1074.)

41ST CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 53.

CHEROKEE NEUTRAL LANDS OF KANSAS.

[To accompany bill H. R. No. 1074.]

APRIL 1, 1870.—Ordered to be printed, and recommitted to the Committee on Indian Affairs.

Mr. CLARKE, from the Committee on Indian Affairs, made the following

REPORT OF ARGUMENTS.

ARGUMENT OF JAMES F. JOY, ESQ.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: The interests involved in this matter, and the many misrepresentations that have been made about it, have induced me to appear before this committee; because, whatever may be our rights, we do not wish to be misrepresented, and we do not wish to be charged with crimes—for that is what we are charged with—which we have never intended or designed to commit.

I will give a short history of my connection with these Cherokee neutral lands. I am engaged, as some of you know, as the agent of gentlemen in the eastern section of the Union, who are engaged in building railroads in the West. I commenced with them in Michigan, and in the progress of events these operations extended till they reached Illinois, and Missouri, and Kansas City. At that point it was my design to stop and never proceed any further. Having succeeded in bridging the Missouri, and completing roads so that we could reach the road in Kansas, it was my design to stop. But when we reached that point there were other interests found beyond, and I was importuned, on behalf of gentlemen in Kansas, to take up the Border Tier road in Kansas, which runs through the neutral lands, and thence down through the Indian country, so as to make a great route for an outlet for the productions of the country to the Gulf. Kansas is some eight hundred miles nearer the tide-waters by this route to the Gulf than in any other direction, and the interest of that section requires this outlet. My friends importuned me to take up that road and build it. It was the natural direction for a road; and although it was not my purpose to take it up, yet in the progress of the discussion, and in portraying the advantages from building it, they brought to my mind this tract of land called the neutral lands. It is fifty miles long and twenty-five miles wide. It was represented to me, and by some gentlemen now on this committee, that there were few settlers there; that it was almost entirely destitute of population, but a good country; and that there might be a sufficient inducement for capitalists to take hold of it, because the lands might be of such value that they would make it best to build the road. They thought they would, however, build the road if they could get the lands; and they thought that if I would allow them

to use my name in a proposition for that land to the department at Washington, they could purchase it.

I said to them, after great hesitation, they might do so; and Colonel Coates, of Kansas City, the president of that railway company, visited Washington during the last administration and made a proposition to Mr. Browning to purchase this land. That was in the month of June, 1867, I think. Mr. Browning said to him, "I will not accept the proposition now, but I will publish an informal notice in the newspapers that they are still in the market, as, on account of some informality in the treaty, the former contract was declared invalid." He said that propositions would be received for them until the 1st of October following; and then he said, "If you come to Washington and make a proposition that I think I can accept, I will do it." Mr. Coates went home, and he made a proposition for the lands in my name, and Mr. Browning accepted that proposition. An informal contract was prepared. I did not then intend to have these lands, nor to take up this road; but the parties were exceedingly anxious to have the road, and I so far permitted them to use my name.

In the mean time these lands had been sold to what was called the American Emigrant Company. When the contract was made with me in behalf of this railroad company, that emigrant company rose into life and published all over the world that they owned these lands, and they should contest the sale.

I wrote immediately to Mr. Browning, stating the nature of the contest, which I did not want to be involved in, and requesting him to cancel the contract with me. I had never dreamed of any controversy with the settlers in these lands. Mr. Browning wrote back that he thought he had done the best thing for the Indians, as they would lose the lands if they were not sold, and he held me to the contract; and the result was a controversy between the Emigrant Company and myself.

My contract was with the department, and they were made powerless by the Emigrant Company disregarding their title. Nothing could be done. So it remained till June, 1868, when the Emigrant Company, some of them, came to me and requested that a compromise should be made, and that we should pay them something. I declined squarely. I said there was no money made out of it, and if there was to be a controversy we were not to be involved in it. This led to a good deal of discussion and negotiation. The contract made in my name was for cash, and money was worth eight or ten per cent. Their scrip was taken at five per cent. annually. They sent to me a proposition and said, you can afford to pay something as the difference between your contract and ours. If you take our contract and have it sanctioned by the Cherokees, there is the difference between seven and five per cent. Figure that out, and we will go to the Cherokees and have a new treaty; and if the government sanctions it we will have the lands transferred to you. In the position in which we were it was for my interest to have it accepted; and after considering the question, and consultation with my friends in Boston and New York, I concluded to accept the proposition. They came here and consulted with the Cherokee delegation. They were glad to have the difficulty settled, so that they could receive the interest for their money; and the result was a new treaty, embodied in this document. [A printed document was presented for examination of the committee.]

That treaty recites the dispute and that it was for the interest of all parties that this controversy should be settled; that the Cherokees desired it; that it was better for them; that the government desired it and

that we desired it. Therefore the Senate ratified that treaty, sanctioning the assignment of their contract to me, confirming that contract and making it valid; providing how the payments should be made, and stating that the new contract carried out the terms of the old contract, and that when done the transaction should be consummated. Upon the ratification of that treaty I took the responsibility of going to the department and closing the contract.

Having done that, I undertook to raise the money to build the road. We have raised the money and built about one hundred and twenty-five miles of the road, running down through that country, to give value to the land, for which I would not give anything like the amount of the cost of the road, without the road being there. By the 1st of May next it will be done to the Indian country, ready for use.

That is the position, and that is the way precisely in which I became involved in this controversy.

Much to my amazement I found many settlers were on the land at the time the treaty was made. More were going on all the time, and the result has been very considerable difficulty with the settlers on these lands. Now the question is, who is right and who is wrong, and what shall be done?

In order to ascertain that, it will be necessary for me to refer you to the treaties and the legislation of Congress upon this subject; and for convenience I will read that from a little pamphlet which has been prepared, setting forth the facts in this case. This is an old controversy, and the treaties under which these rights have accrued are of many years' standing.

Some of you will remember when the Cherokees were driven out of Georgia in 1835, and at other times, and the difficulties which arose under General Jackson's administration. It was in his administration that they finally acquired the title to these lands. The treaty is this:

But in December, 1835, another treaty was made, and which is found in the same volume of the Statutes, page 478, providing for a cession of the Cherokee possessions in Georgia. Article 1 of this treaty provides as follows:

"The Cherokee nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed, or possessed by them east of the Mississippi River, and hereby release all their claims upon the United States for spoliations of every kind, for and in consideration of the sum of five millions, to be expended, paid, and invested in the manner stipulated and agreed upon in the following articles."

Article 2 recites that whereas, by the said treaty of May 6, 1828, and the supplementary treaty thereto of February 14, 1833, with the Cherokees west of the Mississippi, the United States guaranteed and secured to be conveyed by patent to the Cherokee nation of Indians the following tract of country, (stating the description of the lands as in the former treaties,) and containing the following clause, to wit: "And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation, on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars therefor, hereby covenant and agree to convey to the said Indians and their descendants, *by patent in fee simple*, the following additional tract of land, situated between the west line of the State of Missouri and the Osage reservations, beginning at the southeast corner of the same, and running north along the east line of the Osage lands fifty miles to the northeast corner thereof, and thence east to the west line of the State of Missouri, thence with the said line south fifty miles, thence west to the place of beginning; estimated to contain eight hundred thousand acres."

That is the contract which the gentlemen living upon this land are making this controversy about. You will observe that it is for the consideration of $500,000, and that it is a sale, and that a patent is to be given to the Indians and their posterity forever, in fee simple, absolutely.

The next year after that treaty was made, Congress passed an act to carry it into effect. The act is found on page 73, volume 5, of the Stat-

utes. I will state that there had been an act passed, which is found in the fourth volume of the Statutes, page 791, before this treaty was made, appropriating money to be given to Georgia to settle the treaty. The State of Georgia, in violation of this treaty, had extended their State laws over the Cherokee country, and had imprisoned a missionary, Mr. Worcester, who was in Georgia, connected with the Cherokees, upon the ground that he was exciting them as against the State—an incendiary. He was in prison perhaps when this treaty was passed. The whole country wanted the matter settled. After the treaty was made this act was passed; among other things containing this clause:

For the amount stipulated to be paid for the lands ceded in the first article of the treaty with the Cherokees of the 29th of December, 1835, deducting the cost of the land to be provided for them west of the Mississippi, under the second article of said treaty, $4,500,000.

You will remember that the treaty provided that they should have $5,000,000 for their possessions in Georgia. They were apprehensive that the lands in the western country were not large enough for the whole tribe. They therefore made a contract with the government for these eight hundred thousand additional acres, for $500,000; and when Congress came to make the appropriation they deducted this $500,000. Therefore the Cherokees paid $500,000 in money and received a patent in fee simple for the land. That is now nearly forty years ago; and from that time to the present they have been the owners of that land. From that time up to the time of the Kansas troubles government always protected them according to the treaties which bind the government in the most solemn way.

I will read from the treaty:

The treaty of 1828 (page 311 of the Statutes at Large, vol. 7) begins by this recitation: "Whereas, it being 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 lines, or placed over it the jurisdiction of a State or Territory, nor be pressed upon by the extension over it in any way of the limits of any existing State or Territory—the parties hereto do conclude the following articles, viz:

* * * * * * *

"ARTICLE 2. The United States agrees to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, seven million of acres of lands, to be bounded as follows:" (The boundary then follows; not necessary to insert here.) The article then goes on as follows: "In addition to the seven millions of acres thus provided for and bounded, the United States further guarantees to the Cherokees a perpetual outlet west, and free and unmolested use of all the country lying west of the western boundary of the above-described limits."

By article three of the treaty, the United States agrees to remove all white persons, and all others not acceptable to the Cherokees, from said tract of land.

"ARTICLE 7. The chiefs and head-men of the Cherokee nation aforesaid, for and in consideration of the stipulation and agreements, do hereby agree, in the name and in behalf of their nation, to give up and surrender to the United States, and to leave the same within fourteen months, all the lands they are entitled to in Arkansas, and which were secured to them by the treaty of January 8, 1817, and the convention of the 27th of February, 1819."

Article 8 recites that the Cherokee nation west of the Mississippi, having by this agreement secured themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guarantee of the United States, as contained in this agreement, a large extent of unembarrassed country, &c.

These were the prior treaties, under which a portion of the nation was removed to the west. The subsequent treaty of 1835 alludes to that treaty, adopts it, and in addition to the land conveyed under it is conveyed this tract of eight hundred thousand acres, not as a gift, but as a sale for $500,000; and with the sale guarantees the protection of the Cherokees in it; never to allow any Territory to be established here nor

any State; nor any white men to intrude into it; nor were they to be molested in any way by white men. And up to the time of the Kansas troubles no white men were permitted to enter unless they became Indians by marriage. And the government kept troops there to keep settlers off. As many as two or three times they put off men who had intruded, and burnt up their buildings, so as to keep the country free from the intrusion of the whites. When the Kansas troubles came on, and when the war broke out, government was too much engaged in other directions to be able to keep off the settlers. Settlers therefore entered, and the consequence was the desire of the Cherokees to sell; and in consequence of that was the treaty of 1866, the provisions of which I will read. The Cherokees saw what I did not see: that there was to be a conflict with the settlers there; they knew how Indians are treated when settlers came upon their lands; and hence their desire to sell the lands and realize the money for them. In consequence of that desire this treaty of 1866 was made. Article 17 of that treaty provides thus:

The Cherokee nation hereby cedes *in trust* to the United States the tract of land in the State of Kansas which was sold to the Cherokees under the provisions of the second article of the treaty of 1835; also that strip of land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas, and the Cherokees consent that said lands may be included in the limits and jurisdiction of said State. It provides, further, that the said lands shall be surveyed as the public lands of the United States are surveyed, and shall be appraised by two disinterested persons, one to be chosen by the Cherokee national council and one by the Secretary of the Interior, and the appraisal not to be less than an average of one dollar and a quarter per acre. It provided further, that the Secretary of the Interior might advertise from time to time for sealed proposals, and sell to the highest bidder, for cash, the said land, in parcels which should not exceed one hundred and sixty acres each. "Provided, however, that nothing therein contained should prevent the Secretary of the Interior from selling the whole of said lands, not occupied by actual settlers at the date of the ratification of the treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to a responsible party, for cash, for a sum not less than one dollar per acre."

You will see how the convenience of everybody was provided for; the government, by right, was bound to keep off the settlers by force. But when the Indians manifested a willingness to sell, the government not being willing to buy, the government provided in a treaty that the lands might be sold by the Secretary of the Interior, saving the rights of everybody by having them sold, not at the government price, but at their actually appraised value. The Indians said, "We bought that land, and paid for it with money; we are entitled to what it is worth; therefore, it should be appraised, and we will appoint one, and you the other." These were the terms. The lands, amounting to forty or fifty thousand acres, were appraised at about an average of $2 50 an acre. Taking out these lands, and protecting everybody who had made improvements there, government authorized the Secretary of the Interior to sell the balance at not less than one dollar an acre.

It was under that treaty that my proposition was made, as I have stated here. You will see that the government protected the Indians and how generous they were to the settlers. They gave the Indians the actual value of the land by appraisal, and secured the settlers on land on which they had made improvements by paying for it, recognizing the force of the treaty. I have referred to both the legislation and the treaty. The question is, whose are these lands? Can there be any doubt that they belonged to the Cherokees, and that they had the fee simple and were entitled to sell; and, as the government refused to purchase, had a right to sell to others. Why did government refuse? Because they would have to pay some two dollars an acre, and if they

bought at that price they would have to give them away under the pre-emption laws. Therefore they refused to buy. This very railway company came here and worked a whole winter to get the government to buy the lands and give away half, selling the remainder at $2 50 an acre. The bills will be found in the archives of the Senate now. Government said, No, we are not going to buy the lands and give them away. The Indians may sell them if they can find a purchaser. I was unfortunate enough to become the purchaser.

Having become involved in this matter in this way, and finding it necessary to raise the money to build the road, in order to save myself, if I can do it at all, this land and the road were included in an ordinary railway mortgage to secure such bonds as might be issued to be sold for the construction of the road, with a provision in the mortgage that whenever the land should be sold the trustees should realize that. Thus we could raise money on the credit of the land for the purpose of building the road. Bonds to the amount of $5,000,000 are scattered all over the United States, bought by gentlemen who knew the lands, and knowing the right and title. They have invested their money, and in that way I have succeeded in raising the money for building the road. So that we have not only the most solemn guarantee which the government could give, but we have conveyed a title by mortgage to secure a portion of the money which goes into the construction to build the road and make the lands valuable.

I assume that no lawyer can, for a moment, question the title to the lands. The fee simple, beyond all manner of doubt, was in the Cherokees for nearly forty years. They sold with the consent of the government—sold under a treaty made by government. The government become the guarantor of the title, and are bound to protect it by every principle of honor and good faith, instead of impugning it.

Now, what does this bill propose to do?

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the treaty between the United States and the Cherokee Indians proclaimed August eleven, eighteen hundred and sixty-six, and of the supplemental treaty proclaimed June ten, eighteen hundred and sixty-eight, as attempted to authorize any sale or disposal of any part or parcel of the tract of land known as the Cherokee neutral land, in the State of Kansas; and all sales, conveyances, or transfers made, and all patents issued under authority assumed to be given by said treaties, and attempting to divest the United States of title to said tract or any part of it, be, and the same are hereby, declared null and void; and that all persons who have paid, or shall pay, any money to any officer of the United States in pursuance of any of said assumed sales, conveyances, or transfers, shall be entitled to receive back the amount so paid.

SEC. 2. *And be it further enacted,* That all bona fide claimants on said tract under the nineteenth article of the treaty proclaimed August eleventh, eighteen hundred and sixty-six, shall receive patents for the amount of land therein stipulated, according to the conditions of the nineteenth article of said treaty.

SEC. 3. *And be it further enacted,* That any person being the head of a family, or a widow, or a single man or woman, who shall be over the age of twenty-one years at the time fixed by this act for making payment therefor, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws, or who has served not less than fourteen days in the army or navy of the United States during actual war, and who has made, or shall hereafter make, a settlement in person, and in accordance with the provisions of this act, or any part of said tract, and inhabit and improve the same, and who has erected, or shall erect, a dwelling thereon, shall be entitled to purchase from the United States, and to receive a patent in fee simple therefor, any number of acres of land by legal subdivisions, not to exceed one quarter section as by the government surveys, at the rate of one dollar and twenty-five cents per acre, to be paid within two years after the passage of this act. And that, after deducting from the money so received for the land the expense of carrying into effect the provisions of this act, the balance shall be paid over to the Cherokee Indians.

SEC. 4. *And be it further enacted,* That when any person shall, before the passage of

this act, have made settlement, as hereinbefore provided, on the sixteenth or thirty-sixth sections of any township of said tract, he or she shall be entitled to purchase the same as aforesaid, and other lands as contiguous thereto as may be, and contained in the said tract, shall be given instead thereof to the State of Kansas for school purposes; and all of said Cherokee neutral lands not occupied by actual settlers at the date of the passage of this act shall be subject to selection under this section; and the county superintendant of common schools for any county in which said sixteenth and thirty-sixth sections so occupied may be, and are hereby, empowered to ascertain how much of said tract within his county included in the said sections is so occupied, and to make selections of other lands in the same county instead thereof, as soon as practicable after the passage of this act.

SEC. 5. *And be it further enacted*, That in all cases of contested claims arising under this act, the right shall be in him or her who made the first settlement: *Provided*, That such persons shall conform to the other provisions of this act: *And provided further*, That rights of claimants to town sites shall be subject to such laws of the United States, and of the State of Kansas, in regard to town sites as are now in force, and not inconsistent with the provisions of this act.

SEC. 6. *And be it further enacted*, That nothing in this act shall operate to deprive any person of any rights that he or she has acquired, or may acquire, under the homestead act of May twenty-eight, eighteen hundred and sixty-two, or any act amendatory thereto.

You will observe that that bill assumes that the title to the lands is in the United States; assumes that the ancient treaties with the Cherokees are void; that the recent treaties are void; assumes that the conveyances to me are void; cuts through all the securities which the railroad company has given to obtain the money; makes valueless every dollar issued as security upon the land. And we have dealt with the United States in good faith, not only under these treaties, but under the law; have been invited by them to build this road; have been seduced to build this road, and now this very government is asked to declare every transaction utterly null and void, and the security we have given wholly worthless. This is the way we are treated, if this bill passes.

In the same year 1866 the government passed a land grant bill to this very company, containing provisions of this sort. It was to assist in building a road through Kansas City, down through this tier of counties, through the Indian country to Preston, in Texas, and thence down to Galveston, so as to form a continuous line.

Influenced by these considerations a law was passed, some of the provisions of which I will state:

By an act of Congress, approved July 25, 1866, granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to the Red River, not only certain grants of land were made for these purposes, but certain other powers were granted to the railroad company to enable it to accomplish the purpose the government had in view in passing the act. Section 8 provides that the Kansas and Neosho Valley Railroad Company, its successors and assigns, is hereby authorized and empowered to extend and construct its railroad from the southern boundary of Kansas, south, through the Indian Territory, to Red River at or near Preston, in the State of Texas, so as to connect with the railway now being constructed from Galveston to a point at or near Preston, &c.

Section 9 grants lands through the Indian Territory to aid in said construction, whenever the title shall be extinguished, equivalent to the grant contained in the first section of the act, or every odd section for twenty miles on each side of said road.

There is an agreement by the government providing that, after extinguishing the title down through the Indian country, they will give to this railroad company every odd section of land in the Territory, for a distance of twenty miles on each side of said road.

Section 10 provides that the said Kansas and Neosho Valley Railroad Company shall have the right to negotiate with, and acquire from, any Indian nation or tribe authorized by the United States to dispose of lands for railroad purposes, and from any other nation or tribe of Indians through whose lands the said road may pass, subject to the approval of the President of the United States, &c.

This does not require a treaty nor the sanction of the Senate, the object being to secure a road from Kansas City to the Gulf. That author-

ized this company to go and buy this land of the Indians, without a treaty, with the assent of the President of the United States alone. Instead of buying them with the assent of the Senate alone, we buy them with the assent of the Senate and the President of the United States both. The Senate confirmed the treaty authorizing the land to be sold to us, and the President twice proclaimed it with his approval.

Now, what is the position of this government toward this company? They have authorized the sale of the lands to us, have tempted us into this thing, have given every guarantee of law which it was possible for Congress to give, have seduced us to put our money into this road; and now this bill asks you to turn about and repudiate every arrangement made, every treaty made, every act of Congress authorizing these treaties; repudiating these treaties and compelling us to become bankrupt, and defraud the public of millions of money which have been put into the road under these arrangements.

Now, I have no fear of such an act passing. I have no fear that this committee will recommend such an act. I do not believe that this government are going to treat men who deal with them in that manner. I do not believe the government can afford to have it proclaimed to the world that no arrangement under any treaty—no arrangement under any law can stand, if squatters or intruders shall see fit to go upon the land and say they have some rights, and they demand by their vote and their voices that Congress shall turn back on all its legislation for fifty years and declare all treaties and acts for fifty years void. It seems to me that the capital of the country has a right to place faith in the government; and when the government induces its citizens to place faith in it, they have a right to ask that the ordinary protection should be given them.

Now, what does the bill propose to have Congress do? To act as legislators? No, but as judges. They want you to decide that all these acts and legislation are void. They want you to act, not only as judges, but as executioners; for that will be the result. Pass a bill of that sort, and embarrass this great company, and destroy its credit, and before the Supreme Court of the United States can review this action this enterprise will be destroyed, and these securities will be sold in the market for twenty cents on the dollar.

I do not wish to take up the time of the committee further, but I will allude to the history of the country in connection with these Indian treaties. It is sufficient to say, on the question of making treaties, that these things have been before the Supreme Court; that you have a volume all made up of Indian treaties, which have been going on since the country was made up of colonies. Long before we ceased to be colonies even, treaties were made with the Cherokees. The first treaty made by Washington was made with the Cherokee Indians. This government has recognized the Indians as political communities, has dealt with them as powers, and whatever the government recognizes as a power, as a political community, the courts are bound to recognize. These treaties, therefore, must be valid. Whenever a treaty has come before the United States courts, the courts have uniformly said they have nothing to do with it, because it is a political matter. Lands have been disposed of by treaties and with individuals. Almost universally reservations are made to some of the tribe, or some friends of the tribe. When the reservation is bestowed upon individuals, the courts have held that the act was binding, because the government treated with them as with a nation.

[Citations were here made to cases; for which see brief, appended and marked A.]

Now, I have no complaint to make of the government. The government has done its full duty by us. But I will not conceal from you that there has been a sort of civil war there by which we have been attempted to be driven out. When our engineers went there to survey the road they were met by an armed force and seized as prisoners. Their wagons, instruments, and tents were burnt. That has been done once or twice. They have maintained a military organization there, by which at any time a body of men can be sent to do any act of violence. Government ordered a body of troops there to enable us to go on and build the road, and they have been there for some time; and since they have been there it has been as quiet as possible.

The committee sent by the Kansas legislature is sent to inquire whether it is necessary to maintain these troops there or not. It has nothing, and can have nothing, to do with the titles. Men who have been suspected of wishing to aid in maintaining our title have been driven off. They have had to flee to save their lives, because they were friendly to us and the railroad. In fact there is an organized attempt not only to resist us, but to resist the government, and to prevent the great object for which the railroad company was organized.

It has been our desire always to treat the settlers with the utmost liberality. The first thing I did, when it become apparent that I must raise the money to build the road, was to conciliate the feelings of every settler. I published to the country that we would build a road complete to the south part of the State, and through the middle of it, and would sell to every settler on the lands, at the time we took possession, in June, 1868, at prices which should not exceed five dollars an acre, no matter where situated, and running down to two dollars an acre, depending on the situation. That was a standing rule, and so much faith was placed in that proposition that nine hundred persons came in and took their contracts. And so much confidence does the rest of the world have in these claims, that they have been subject to sale, and some have sold for as much as two thousand dollars over what they cost.

But I told them we could not afford to build the road and then sell the rest of the land for the same price; and that those who came after the time named, June, 1868, would have to pay what the land was worth at the time they took it. New settlers may now come and have the land for what it is worth; and they have been notified that they need pay only seven per cent. interest.

There are parties there who are turbulent, as there always are on the frontier; and it is these parties who are making trouble here.

Mr. Joy then, in answer to questions from different members of the committee, explained some of the statements already made.

WASHINGTON, D. C., *February* 18, 1870.

A.

First. The history of this title, treaties, &c.

Second. Congressional sanction (4 *Statutes*, 791; 5 *Statutes*, 73.)

The questions which arise upon it under the bill. First, the bill assumes to judge as to the title, a power which belongs to courts.

Third. The law relative to Indians and treaties with them, where they have the right of occupancy only, and the government hold the fee. (9 *Peters*, 748; 6 *Peters*, 557, 558; 5 *Peters*, 1; 10 *Howard*, 460; 23 *Howard*, 457; 4 *McLean*, 418.) This results of necessity from the recognition of them as an independent nation, (5 *Wallace* 752.)

Fourth. Treaty of 1866 and negotiations under it, and the treaty of 1868 and contract. By treaty was the only way the Indians could sell until lately, (*Vol.* 4, *Statutes*, 730.) Act of Congress granting land to railroad.

Close up with alluding to the state of the country; propositions to settlers; importance of quiet; the interests involved and the wretchedness of this agitation, and demand that Congress repair the mischief.

ARGUMENT OF W. R. LAUGHLIN, ESQ.

As the accredited delegate from the organization originally known as the "Cherokee Neutral Land League," afterward changed to the "Neutral Land Home Protection Corps," and also informally, but actually, representing as I do a very large number of settlers not members of that organization, I present the following

PETITION OF THE SETTLERS ON THE NEUTRAL LANDS.

We, the undersigned, residents on the "Cherokee Neutral Lands," in the State of Kansas, would respectfully represent that the settlement of these lands has been made under assurances from President Buchanan before the war, and President Johnson since the war, that the Indian title would be extinguished by the United States, and that we would get titles to our homes from the government under the laws of Congress; that our own senators have always written to us in such a manner as to encourage the settlement of this country, and to assure us of titles from the government at government rates; that the Cherokees have ever since the war earnestly encouraged settlers to locate here, and that the general government has exercised complete jurisdiction here ever since the war; and the State of Kansas since the treaty with the Cherokees, of August 11, 1866. And further, that there are now about thirty-five hundred families who have located here, expecting to make permanent homes for themselves; that most of us have expended all of our means in necessary expenses for living, and in improving our claims; that two-thirds of us have been soldiers in the Union army; that our settlement of the neutral land has been made under unusual difficulties, which we have borne, trusting the government to protect us in the rights accorded to settlers of the new parts of our country by the pre-emption and homestead laws.

And further, that the title to this tract has never in any instance passed from the United States by any act of Congress.

We therefore, respectfully petition the Congress of the United States to declare by law that all assumed sales or conveyances of this tract purporting to have been made by virtue of any treaty or treaties are null and void, and to declare the "Cherokee neutral land" public lands of the United States, to be open to settlement under the pre-emption and homestead laws.

The petition suggests two questions:

1st. Ought the thing asked for to be done?

2d. Can it be done?

The first question is one of justice and equity; the second is one of law and of fact.

I invite the closest attention of the committee to the subject, and their most careful study of the case in all its bearings.

My quotations and citations can be looked at in the libraries; while for everything that I shall state to be *fact* I assume the most entire responsibility, both as the delegate from those people and personally.

I shall first discuss the nature of the title *ab initio*.

The fee simple, absolute title to the soil of North America was, from the date of its discovery, recognized by the European powers as vesting in the discoverers. This was acknowledged by the different nations in their treaties with each other, and in grants made by their sovereigns to favorite subjects.

At the organization of our government, some of the States held large tracts of land mostly occupied by Indians.

The land thus held was finally surrendered to the United States, and the general government became the owner of the *fee* of *all the lands* within our exterior boundaries that was not already owned by our citizens.

Our government recognized the right of the Indian tribes to *occupy* the lands over which they wandered and hunted until such time as they saw fit to relinquish that right to the *United States.*

For character of the title of the United States and of Indian title, see Story on the Constitution, vol. 1, where both are fully discussed; also, 5 Peters, 48, where the court says: "Indians have rights of occupancy to their lands as sacred as the fee simple, absolute title of the whites, but they are only rights of occupancy, incapable of alienation, or being held by any other than common right, without permission from the government."

In 8 Wheaton, 547–571, the Indian title is asserted to be "*occupancy,*" and the ultimate, absolute fee simple jurisdiction and sovereignty were in the United States, subject only to such rights of occupancy.

Chief Justice Marshall said: "They (the Cherokee Indians) occupy a territory to which we assert a title independent of their will, which must take effect, in point of possession, when their rights of possession cease. Congress has the exclusive right of pre-emption to all Indian lands lying within the Territories of the Union."

6 Peters, 580, the court says: "Their right of occupancy has never been questioned; but the fee in the soil has been considered in the government."

December 26, 1854, McClelland, Secretary of the Interior, decided that the Oneida Indians "have no right to cut timber upon the lands of the tribe," except for their own use; and says he will "enforce the laws to prevent trespasses upon public lands" if they do not desist.

Opinions of Attorneys General, vol. 8, p. 255: "Lands may be granted in fee to private persons as well before as after the extinguishment of the Indian title."

SOLE POWER OF CONGRESS OVER THE PUBLIC AND INDIAN LANDS.

Constitution of the United States, art. 4, sec. 3: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The Constitution itself (art. 1, sec. 1) says Congress "shall consist of a Senate and House of Representatives."

13 Peters, 436, (13 C. R., 235,) Supreme Court says: "Congress has the sole power to declare the effect and dignity of titles emanating from the United States."

13 Peters, 498, (13 C. R., 266,) Supreme Court says: "Whether a title to a tract of public lands has passed from the United States is a question depending upon statutes enacted by Congress."

15 Peters, 407, (14 C. R., 128,) "Congress has exclusive power to make and authorize appropriations of the public lands."

Opinions of Attorneys General, vol. 10, p. 359: Bates, Attorney General, (case of Rock Island military reservation,) states that the President, acting under authority of an act of Congress, had withdrawn the reservation from the body of the public lands.

Mr. Bates held that the President had no authority even to restore the reservation to the body of the public lands; but that Congress alone could place it in that condition. He says: "The appropriation of the public domain, either to public or private use, is an act of sovereign power. It is the exercise of ownership, and implies the right of control over the title. It is a conversion of the property of the nation equal in responsibility and gravity with the appropriation of the public money, and derives its authority from the same high source. Under our system

this extreme power resides only in Congress. As the Executive can draw no money from the treasury, but in consequence of appropriations made by law, so he cannot divest the title to a foot of the public lands without the same legislative sanction."

9 Peters, 759–762, the court bases its decision on "acts of Congress."

14 Peters, 525, the court said, "the power over the public lands is vested in Congress *without limitation*."

The Congress of the United States has never, in any case that I find any account of, acknowledged a fee-simple title to vest in a *tribe* of Indians; but always when, by act of Congress, such a title has passed to Indians, it has been to *individuals* in *severalty*.

The language used to place the disposition of the public domain in the hands of Congress is precisely the same used in the same instrument to give Congress power to "coin money," "to borrow money," "to provide for the punishment of counterfeiting securities, or coin of the United States;" "to establish post offices and post roads;" "to declare war;" "to provide and maintain a navy;" "to declare the punishment of treason;" "to determine the time of choosing the electors;" &c., &c.

If the treaty-making power can dispose of lands, the fee simple of which is in the United States, it has equal power, by every word and every letter used in making both grants of power, to do any and all of the things above enumerated.

Has the treaty-making power ever presumed to "coin money," "to borrow money," "to provide and maintain a navy," or "to declare war," or to assume control of postal affairs?

The House of Representatives has denied the right of the treaty-making power to dispose of Indian lands, at least seven times:

1. Resolution by Mr. Julian, May 11, 1868, "passed" June 27, 1868.

2. By Mr. Julian, June 1, 1868, "read, considered, and agreed to."

3. Joint resolution (H. R. 286) relative to the lands of the Cherokee and Great and Little Osage Indians:

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, directed to withhold the issuing of patents to the purchasers of lands heretofore sold, or which may hereafter be sold, under and by virtue of the treaty between the United States and the Cherokee Indians, concluded on the nineteenth day of July, in the year eighteen hundred and sixty-six, and the treaty between the United States and the Great and Little Osage Indians, concluded on the twenty-ninth day of September, in the year eighteen hundred and sixty-five, or under any Indian treaty which may hereafter be concluded, until otherwise provided for by law.

Passed the House of Representatives June 3, 1868.

Attest: EDWARD McPHERSON, *Clerk.*

4. June 18, 1868. Resolution offered by Mr. Clarke, of Kansas, from Indian Committee of the House, in regard to treaty with Osage Indians; denies right of treaty-making power to dispose of Indian lands, and protests against the passage of that treaty. "*Passed unanimously.*"

5. Joint resolution (H. R. 259) passed June 27, 1868, denies that the treaty-making power can dispose of Indian lands. H. Res. No. 335, of same session, passed unanimously, declaring that settlers on the Cherokee neutral land should have their claims at $1 25 per acre under the pre-emption laws.

6. On the day of , 1869, the House asserted the power of Congress over this particular tract of land by passing another joint resolution to the same effect.

Also, see speeches of Hon. George W. Julian, made at different times

during the years 1866, 1867, 1868, 1869, on the Cherokee neutral land case, the Osage treaty, and other cases.

Also, speeches of Hon. Wm. Lawrence, of Ohio, (see Congressional Globe, 2d session 40th Congress, pages 2065, 2684, 2710, 2815, 2894, 4000, 4429 and Globe, 3d session 40th Congress, last vol., appendix, page 77, and Globe, 1st session 41st Congress, pages 166, 167, 648.)

On the 28th day of May, 1830, a law was passed by Congress, which authorized the treaty-making power to *exchange* lands west of the Mississippi to such Indian tribes living east of that river as chose to remove to the west for the lands held by them where they then lived. This law authorized the issue of patents in such cases; but it made the last clause of section 3 of the law itself a part of each patent so issued. That clause reads: "*Provided always*, That such lands shall revert to the United States, if the Indians become extinct or abandon the same."

In section 1 of that law, the word *exchange* occurs once; in section 2, once; in section 3, three times; in section 4, once; and in section 5, twice; but there is not the slightest allusion to any power of *sale*, or to any other power but the power to *exchange*, and that only for other lands.

The discussions on this "bill for removal," occupied a very large share of the time of the session of 1829–'30; and from its beginning to its ending, no man who participated in it ever asserted the fee simple of the soil to be in any of the tribes to be affected by the passage of the bill.

By authority of this *law*, the treaty of 1835 was made; and any act which that treaty undertook to do must find its authority under this law, or in some source outside of this law, or else the treaty-making power had no authority for such undertaking.

The treaty of 1835, article 3, last clause, reads as follows:

> And whereas it is apprehended by the Cherokees, that in the above cession there is not contained sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars therefor, hereby covenant and agree to convey to the said Indians by patent in fee simple the following additional tract of land.

Then follows a description of what has since been known as the "Cherokee neutral land."

The treaty-making power does not presume to sell an old cannon, a condemned ship, or a lot of disabled horses. Then where did its license to *sell* the Cherokees 800,000 acres of public land come from? Surely not from the law of 28th May, 1830, and no other law has ever been pleaded as giving such a power in the case.

Article of the treaty of 1835 says:

> The United States also agrees that the lands above ceded by treaty of February 14, 1833, including the outlet, and those ceded by this treaty, shall all be included in one patent executed to the Cherokee nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830.

Thus the treaty itself stipulates for *one patent*, in which is to be placed the reversionary clause of the law of 1830.

The following is a copy of the granting clause of the patent of 1838, by which the Cherokees held *all the lands ever claimed by them west of the Mississippi*. This patent is recorded in full in the General Land Office at Washinglon, D. C.:

> Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee nation the two tracts of land so surveyed and hereinbefore described, containing in the whole 13,374,135$\frac{1}{100}$ acres, to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging, to the said Cherokee nation forever, subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie, referred

to in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the conditions provided by the act of Congress of the 28th of May, 1830, and which condition is "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

Was this a fee-simple title?

In Blackstone's Commentaries (vol. 1, Book 2, p. 104) it is said:

A fee, therefore, in general signifies an estate of inheritance, being the highest and most extensive interest that a man can have in a feud, and when the term is used simply, without any adjunct, or has the adjunct of *simple* annexed to it, (as a fee simple,) it is used in contradistinction to a fee conditional at the common law or a fee tail by the statute, importing an absolute inheritance clear of any *condition*, limitation, or restriction to particular heirs, but descendable to the heirs general, whether male or female, *lineal or collateral.*

In Kent's Commentaries (vol. 4, p. 4) it is said:

Fee simple * * * is an estate of perpetuity and confers an *unlimited power of alienation*, and no person is capable of having a greater estate or interest in the land. *Every restraint upon alienation is inconsistent with the nature of a fee simple.*

Wharton's Law Lexicon, page 359:

Fee simple, a freehold estate of inheritance, *absolute* and *unqualified.* * * * An *uncontrollable* power of *alienation*, whether by *deed*, *gift*, or *will.*

The Cherokee Indians do not now, and never did, plead a fee simple title to the lands held by them west of the Mississippi.

If they had had such a title to the neutral land, why did they not sell it directly to the party or parties who would pay them the most for it? And why do they not now *sell* to *the highest bidder* the vast tract lying west of their home country, which they have been trying so earnestly to *cede* by treaty to the United States for the last two years? They held it *all* by the *same title*, by the *same instrument*, by the *same identical words*, and to-day are offering millions of acres to the government for one-fourth of what it would bring in the open market with a fee simple title guaranteed. The very men who are now pleading "fee simple" to enable them to rob fifteen thousand *white* settlers of their *homes*, would, if successful in our case, plead the *want* of a "fee simple" to enable them to rob fifteen thousand *Cherokees* of *their homes* for "railroad purposes" before two more years have passed.

As to the construction to be put upon the grant of these lands, I refer the reader to the opinion of Attorney General J. S. Black, given November 22, 1858. He says:

It is well settled that all public grants of property, money, or privileges are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. * * * If you let the grantees have the advantage of the ambiguity, * * * acts which were supposed to have very little in them when they passed, will expand into very large dimensions afterward. An ingenious construction will make that mischievous which was intended to be harmless. The remedy for these evils—and they are evils to the public morals as well as to the treasury—is to let all men know that they can get nothing from the United States except what *Congress* has chosen to give them in words so plain that their sense cannot be mistaken.

Abandonment of the land is one of the conditions of its reversion to the United States.

What constitutes "*abandonment*" in such cases as this?

Felix Grundy's (Attorney General) opinion in case of Creek Indians, (Op., vol. 3, p. 390:)

Nothing more is necessary than to ascertain that the reservee left and removed from the land without an intention of returning and occupying it as his place of residence. * * * My opinion is, that so soon as a voluntary abandonment and removal from

the premises actually took place, from that time the right of the United States accrued and was perfect and complete; and although the register and receiver could not act until they had a knowledge of such abandonment, still the *rights* of *individuals might well* and *legally have their origin* to different *portions of said land, according* to *then existing laws*, or *laws which might be passed by Congress.*

Attorney General Butler (Op., vol. 3, p. 230) defines abandonment as "ceasing to have any direct personal connection with the use and enjoyment of the land. No judicial proceedings or actual entry on the part of the United States will be necessary to vest the estate in the United States. Whenever the estate of the Indian reservee shall have determined, the land becomes a part of the public domain. * * * *Its liability to entry for floating claims, or for other purposes, will from that time be the same as if it had then for the first time been ceded to the United States.*"

At the outbreak of the rebellion the Cherokee nation took sides against the government; and on the 7th day of October, 1861, concluded a "treaty of friendship and alliance" with the Confederate States.

The making of this treaty was most emphatically the act of the "nation," for it was "authorized by a general convention of the Cherokee people."

Article 2 of that treaty "*annexed to the Confederate States, in the same manner and to the same extent as it was annexed to the United States of America before that government was dissolved*," all the lands described in the patent given them by the United States in 1838.

Article 5 of same treaty: "The Cherokee nation hereby gives its full, free, and unqualified assent to those provisions of the act of Congress of the Confederate States of America, entitled 'An act for the protection of certain Indian tribes,' approved the 24th day of May, 1861, whereby it was declared that all reversionary and other interest, right, title, and proprietorship of the United States in, unto, and over the Indian country, in which that of the said Cherokee nation is included, should pass to, and vest in, the Confederate States." * * *

Article 7 of same treaty: "None of the lands hereby guaranteed to the Cherokee nation shall be sold, ceded, or otherwise disposed of to any foreign nation, or to any State or government whatever, and in case any such sale, cession, or disposition should be made without the consent of the Confederate States, all the said lands shall thereupon revert to the Confederate States."

Article 40 provides for the raising by the Cherokees of a regiment of troops for the confederate service.

Article 41 provides for raising more troops for same service in the future.

Article 47 provides that if the neutral land is "lost to the Cherokees by the chances of war, or the terms of a treaty of peace, or otherwise," the Confederate States are to pay the Cherokees $500,000, with interest thereon from December 29, 1835.

I suggest that by ceding this tract to the Confederate States they did most certainly "abandon" the land; and not only lost their right to occupy it, but that the fact was more flagrant, and the reversion to the United States was doubly strengthened by their joining with our enemies in war against us, and by the fact that that cession was to a public enemy of ours.

I submit that having thus by their own act *reverted* this tract to the United States, it became *unincumbered property* of the United States; that being in this condition, no power but that of *Congress* could "dispose of it;" that the treaty-making power was as incapable of restoring the forfeited right of the Cherokee Indians to that tract, as it would have been to give it or any other piece of public land to a railroad company

or to "John Doe," and that until *Congress* does take action in the matter of the disposition of it, no rights can possibly accrue thereon, except to *actual settlers* under the laws *already in existence;* and as a consequence, that the persons who have made *bona fide* settlements thereon have obtained equitable rights under such existing laws, of which not even Congress can divest them. The recognized law of nations that a state of war abrogates all pre-existing treaties between belligerent parties, only needs to be referred to.

I have not spoken of this "Pike" treaty with the confederacy because I wish to see the least injustice done to the Cherokee Indians, but because it furnishes Congress and the courts a plain ground on which to do justice to the people I represent.

If the neutral land had not *reverted* to the United States by virtue of any previous abandonment, the reversion would have been complete by the abandonment of it to the United States by article 17 of the treaty of August 11, 1866, which ceded the land to the United States.

That act of cession exhausted the power of the Cherokees over the land, and they had no more right to prescribe what should be done with it, than a lessee has to dictate the disposition of a leased farm, after or when his lease shall terminate.

It is a plain principle of law that no person or power can appoint a trustee to do a thing that the party appointing has not power to do.

The title to this land was in the United States, and if a trustee was to be appointed, only *Congress* could appoint one.

Again, if any trusteeship had been created, the act of sale by the person who assumed to act as trustee in this case was void, by the rules of law regulating trusts, because a higher price was offered by another person than was accepted by the assuming trustee. General John C. Frémont offered about $1 60 per acre for the tract, but it was sold for $1 per acre while the bid of Frémont was yet tendered.

Again, if any sale was at all authorized by the treaty of 1866, it was a sale by quarter sections, under sealed bids. Article 17 as, amended, says: "*Provided*, that nothing in this article shall prevent the Secretary of the Interior from selling the whole * * * in a body, * * * &c. Merely "not preventing" by "this article" confers no power; and unless the power can be derived from some other source, it does not exist by virtue of article 17 of the treaty, to sell "in a body," even if we were to grant the power to sell under sealed bids.

Again, if for no other cause, the sale was void for want of compliance with the stipulations; because by the amended article 17, "*the whole of said lands*," if any sale in a body was at all authorized, were to be sold "*in a body*;" and by reference to the treaty it will be seen that the "*neutral land*" and the "*strip*" extending from the Neosho River to the west side of the State, and lying just north of our southern boundary, together constitute the "whole of said lands" spoken of. The neutral land is only a part of that whole. This defect was not cured by the supplemental treaty of 1868, if for no other or better reason, because the power of the Cherokees over the tract ceased *certainly* as soon as the treaty of 1866.

On the 22d day of July, 1854, Congress passed a law, section 12 of which reads as follows:

And be it further enacted, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Kansas and Nebraska shall be subject to the operations of the pre-emption act of 4th September, 1841. * *

On the 2d day of June, 1862, Congress passed "An act to establish a land office in Colorado, and for other purposes." The words "*and for*

other purposes" are held by the custom of Congress, and also by decisions of the Supreme Court, to include all possible subjects of legislation. The first section is, in the broadest language, a general enactment, that *"all the lands belonging to the United States, to which the Indian title has been or shall be extinguished, shall be subject to the operation of the pre-emption act of 4th September*, 1841."

Section 2 of the act proceeds to establish a *local office*, under this act, *in Colorado.*

The supreme court of the District of Columbia has twice declared the first section of this law to apply all over the nation. (See decisions of that court in case of Whitney *vs.* Frisbie, August 16, 1866; and again, decision in same case, and decree entered thereon at the general term of same court, May, 1868.)

Our laws relating to pre-emption give a right to all persons possessed of certain qualifications to settle upon certain lands designated by law, and to purchase one hundred and sixty acres or less, so settled upon, for $1 25 per acre, to be paid within one year from date of settlement.

This right can only be defeated by the claimant's *own act* or *fault.*

No other person can intervene between him and his title from the government, and if he fulfills his part as far as the government gives him opportunity, even that government cannot deprive the claimant of his right to title, either by an arbitrary exercise of power, or by taking advantage of its own neglect to afford him the opportunity to fulfill the exact conditions and times prescribed by the law. This position is well sustained by the universal principle of law that no person or party is allowed to take advantage of his own fault, and that no person shall suffer for the crime or neglect of another.

Lytle *vs.* The State of Arkansas, 9 Howard, 333, the court say:

The claim of pre-emption is not that shadowy right which by some it is considered to be. Until sanctioned by law it has no existence as a substantive right; but, when covered by law, it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it.

It is founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer who is found in advance of our settlements encounters many hardships, and not unfrequently dangers, from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred and sixty acres. That this is the national feeling is shown by the course of legislation for many years.

In Delassus *vs.* The United States, 9 Peters, 133, Chief Justice Marshall says:

No principle is better settled in this country than that an inchoate title to lands is property. * * * The inquiry then is whether this concession was legally made by the proper authorities, and might have been perfected into a complete title.

In Smith *vs.* The United States, 10 Peters, 330, the court says:

It was never doubted by this court that property of every description in Louisiana was protected by the law of nations, the terms of the treaty, and the act of Congress, nor that in the term "property" was comprehended every species of title inchoate, or perfect, embracing those rights which lie in contract, those which are executory, as well as those which are executed.

The supreme court of the District of Columbia, August 16, 1866, said:

The government has granted him the option in the bargain either to go on and fulfil it until his title is perfected by the patent, *or to quit the land at his pleasure.* In the latter event the government can suffer no damage, for it has parted with no value, and retains the title to the land. It is like a contract for the sale of land, in which the owner retains the title as security for the purchase-money.

The purchaser, unless he have given his personal contract to the contrary, may at any time abandon his improvements, and leave the property to its owner without further liability. And yet had he remained, and complied with the terms of his agreement,

the owner would have been bound to him for the title, and in the meantime the purchaser had an equitable interest of which no power could deprive him without his own consent, unless taken for public use by the government on payment of its value. * * * Under it the settler who enters upon public land, and complies with its terms, has the right, by law, to demand his title from the government, by the strict terms of a contract, and not as bounty which the government is at liberty to grant or to withhold at its pleasure.

Its own want of either power or of disposition to take away the rights of pre-emption claimants has been constantly recognized by Congress itself in its acts granting lands to railroad companies, &c.

Also, in support of positions above taken, see Fletcher *vs.* Peck, 6 Cranch; New Jersey *vs.* Wilson, 7 Cranch; United States *vs.* Fitzgerald, 15 Peters 419; Garland *vs.* Winn, 20 How, 8; Rice *vs.* R. R. Co., 1 Black, 358; Lytle *vs.* Arkansas, 9 Howard, 333; Finley *vs.* Williams, 9 Cranch; McAfee *vs.* Kim, 7 S. and M. Miss. Rep., 780; Worn *vs.* Marshall, 20 How, 565; Wilcox *vs.* Jackson, 13 Peters, 498; O'Brien *vs.* Perry, 1 Black, 132; Brown *vs.* Griswold, 11 Illinois, 520; Tennett *vs.* Taylor, 9 Cranch, 43; Paulett *vs.* Clark, 9 Cranch 292; Willot *vs.* Sanford, 19 How, 79; State of Minnesota *vs.* Batchelder, 1 Wallace, 115; Minter *vs.* Crommelin, 18 How, 87.

Also, decision of Secretary of Interior, Lester's Land Laws, page 550.

The fee simple to all lands held by Indian tribes being vested in the United States, it follows that all lands not owned by private persons, or by corporate bodies under our laws, *are public lands.*

Public lands encumbered with the Indian possessory right cannot be settled upon except by consent of the Indians holding that right. But as a consequence of the laws of 1854 and of 1862, if the Indians permit a settler to locate and to remain on such lands until the extinguishment of their right, he is entitled to the pre-emption.

On the 20th day of May, 1862, Congress passed the "Homestead Act." This law was the result of a discussion that lasted more than twenty years. It was first adopted as an article of political faith by the "free soil party" at the Buffalo convention, and held, next to the anti-slavery idea, the most important position in the platforms adopted at Pittsburg, August 11, 1852; and at the republican convention held at Chicago, May 16, 1860, after "protesting against the sale or alienation of the public lands," * * * the convention "demanded the passage by Congress of the complete and satisfactory homestead measure which has already passed the House."

The republican convention held at Cleveland, May 31, 1864, resolved, "That the confiscation of the lands of the rebels, and their distribution among the soldiers, and *actual settlers*, is a measure of justice."

The faith of the republican party was pledged on the stump, by its newspaper organs, in Congress, everywhere, that the public domain should be sacred to *actual settlement by the people.*

The democratic convention, which met at New York, July 3, 1868, placed itself squarely on the same ground. Also see resolution of Kansas State convention of 1868.

The pre-emption laws, the laws of July 22, 1854, and June 2, 1862, and the homestead act, stand on the statute book unrepealed, and no man or party dares attack them openly.

The promises of the political parties are known and read of all men.

Are these laws to be carried out, and these promises kept, or are both to answer the purpose of decoys to lure a trusting pioneer population on to make settlement on the lands of the United States, only to find, when it is too late to save themselves from ruin, that the laws are

ignored, the promises broken, and they delivered into the hands of speculators by a "*railroad grant*" or a "*treaty sale?*"

The treaties of 1866 and 1868, by virtue of which Mr. Joy claims title to our homes, conflict directly with the law of July 22, 1854, (sec. 12,) and of June 2, 1862, (sec. 1;) and, in order to meet this difficulty, our enemies assert that a "treaty is the supreme law of the land." (Constitution, article 6.)

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the *supreme law of the land.*"

First, the Constitution. If a law formally passed by both houses of Congress, and signed by the President, is not in accordance with the Constitution, the Supreme Court is expected to declare it to be invalid.

Next, "laws of the United States;" and lastly, "treaties * * made under the authority of the United States."

In the name of Noah Webster, in the light of the science of English grammar, do these words make a treaty with a tribe of Indians *supreme* over the Constitution and the acts of Congress?

The Capitol building itself is no more the property of the United States than the "Cherokee neutral land" became on its recession to the United States in 1866; and it is about as much occupied by Indians as the neutral land has been at any time since 1860.

Now, suppose that in a treaty with some tribe of Indians it was stipulated that the Secretary of the Interior was to sell the Capitol building for the benefit of the Indians, and the Secretary should proceed to sell it to James F. Joy. The case of the settlers on the neutral land is the better case by just so much as it is strengthened by the rights of three thousand families of Americans, under existing laws.

The Constitution, by giving to "Congress" the "disposal of the territory" of the United States, denies the power to do the same act to every other department of the government. No man has yet plead the existence of any *act of Congress* authorizing the sale of the Cherokee neutral land to James F. Joy.

The dominating power of Congress over the treaty-making power has often been asserted by our greatest statesmen and best lawyers. It has been used by Congress to abrogate treaties with *foreign powers.* See act of July 7, 1798, U. S. Statutes at large, vol. 1, page 578. Also, Barclay's Digest for 1867, page 135. Also, see American Law Register, January, 1868, vol. 7, No. 3, N. S., page 149; case of Gray *vs.* The Clinton Bridge.

If *Congress* can abrogate a *treaty* with France, how can a *treaty* with fifteen thousand Cherokees set at defiance the laws of July 22, 1854, of June 2, 1862, the homestead act of May 20, 1862, the whole code of pre-emption laws, and the rights under those laws of fifteen thousand loyal Americans? But it is pleaded that these treaty sales of Indian lands have acquired force if not validity from their successful repetition. The first treaty *sale* was to a railroad company, and was *put through* in the year 1860. From that hour to this, every treaty sale has wronged more or less settlers already on the land; has robbed the landless poor of the nation of their right to make homes out of a share of the "people's heritage;" and has, at the expense of producers, enriched corporations, or increased the already enormous wealth of capitalists. How many illegalities make one legality? How many wrongs make one right? How many repetitions are necessary to sanctify a series of out-

rages? Are the land laws and the land policy of this nation to be subverted by a six-years-old usurpation?

The *last* treaty sale was that of the Cherokee neutral land, in the year 1866.

The *system* died by verdict of *the people*, after a career of six years.

Mr. Joy pleads that the treaty of 1835 was sanctioned by law of July 2, 1836, (5 Stat., page 73—marked obsolete in margin.)

"For the amount stipulated to be paid for the lands *ceded* in the first article of the treaty with the Cherokees, of the 29th December, 1835, deducting the cost of the land to be provided for them west of the Mississippi, under the second article of said treaty."

Mr. Joy also cited 4 Stat., pages 789, 790, 791. Page 789 appropriates "permanent annuity," as per treaty of 1798, and for educational purposes, as per treaty of 1828. Page 790 makes an appropriation for the removal of Cherokees, as per treaty of 1828. Page 791 makes an appropriation to defray expenses of negotiating for Cherokee lands east of the Mississippi. This act was passed March 3, 1835, before the treaty of 1835—December 29—was made.

The idea that anything that is contained in these laws could, or did, affect the character of the right of the Indians, or of the title of the United States to the Cherokee neutral land, or the rights of settlers under laws of the United States, is so absurd that it needs no further refutation than the statement of these items in connection with the facts. Mr. Joy tells us the company will be ruined if the bill now before Congress should pass. If this was *true*, it is also true that three thousand families of poor people will be ruined if Mr. Joy holds their homes. I accept this issue. Half a dozen or so very rich men will lose millions of *prospective plunder;* or else several thousands of poor men will lose most of their hard-earned little property.

Is the *gobbling* of the neutral land the object for which this great line of railroad is being built? Then railroad building has ceased to be prosecuted to supply the demands of business, and is now carried on as an assistant to land speculations.

But let us see about this "*ruin.*" I am furnished the following items by Attorney General Danford, of Kansas:

The Missouri River, Fort Scott, and Gulf railroad have obtained from the State of Kansas 125,000 acres of land, worth at least five dollars per acre, $625,000; bonds, Kansas City, $150,000; bonds, Johnson County, $150,000; bonds, Miami County, $150,000; bonds, Bourbon County, $150,000; total, land and bonds, $1,225,000; equal, for *each mile* of the road inside of the State of Kansas, to $7,656 25. If Mr. Joy holds the neutral land, we may add as profit on that job, at least $6,080,000. The company will then claim land in the Indian Territory, under act of July 25, 1866, equal, at five dollars per acre, to, say $9,600,000. Total, leaving out extra value of town property, coal mines, stone quarries, &c., $16,905,000; equal, for the whole line of road from Kansas City to southern boundary of the Indian Territory, to, per mile, $36,750.

By the proposed programme, the people of the neutral land, fifty miles of this road being on our tract, would furnish the means to build 243 miles, at $25,000 per mile. The people of the State of Kansas would furnish the means to build 292 miles.

Kansas and the Indian Territory would furnish the means to build 676 miles.

How much Texas is expected to hand over to this supplicating company I have no means of approximating.

This is the company that comes here importuning Congress to allow

it to consummate the "Cherokee neutral land *job;*" this the company that with dolorous whine insolently pits its prospective plunder against the rights of thousands of soldiers of the Union army to soil enough to build them homes upon; and, in the same harangue cracks its whip over the lower house of Congress for having dared to recognize the settlers' rights.

For what reason should the people of the neutral land be given over to the tender mercies of the railroad king?

No plea of its justice has been entered except by those interested in the *job.*

IS IT GOOD NATIONAL POLICY?

If our democratic-republican form of government is a failure, and if we are in need of a government of the many by the few, the process by which to secure it is already found in the systematic granting of the public lands to railroad companies, and in the treaty-sale system of the last few years.

If to divide our newer States and Territories into dukedoms and baronies, tenanted by serfs, is good policy, then take away from the poor settlers on the neutral land their homes and give them to the *railroad king,* as his admirers perpetually style him, James F. Joy.

There is not a boy ten years old on the neutral land that does not instinctively know that the humble family, of which he is a part, has a right to the spot they have made into a home. He has been taught to believe the government of his country is just. He knows the story of his father's hardships, dangers, and sufferings, on the field, in the hospital, in the southern prison. Rob that family of their home, turn them away from the trees they have planted, and the vines they have nourished, or compel them to yield up the earnings of years as the price of permission to remain upon it, and think you when another war comes, and the nation once more calls on the bone and sinew of the people to fill up the rank and file, that boy will not hesitate and stand back when he thinks of what his father did for that country, and of the return he received? Will it stimulate patriotism in the hearts of the men who fought, and of their children, to give their homes to men who during the war amassed millions by speculating in the nation's necessities—railroad transportation, shoes, material for uniforms, supplies, &c., &c.

The decision by *some* Kansas court, quoted by Mr. Joy, only needs to be carefully read. I ask no more for it.

Mr. Joy pleads act of July 25, 1866, that it gave the "Kansas and Neosho Valley Railroad Company," since changed to the "Missouri River, Fort Scott and Gulf Railroad Company," the right to "acquire from any Indian nation or tribe authorized by the United States to dispose of lands for railroad purposes," &c.

The pretended purchase of the Cherokee neutral lands *was not made by any "railroad company," but by James F. Joy;* and in the supplemental treaty of June 10, 1868, *not the slightest intimation can be found that the purchase was made by, or for the benefit of, a "railroad company."* A law authorizing A to buy a piece of land, does not authorize B to buy it. A sale to "James F. Joy" is not a sale to a "railroad company;" and I insist that the contract, which is contained in the supplemental treaty, is the only evidence that would be admitted in a court, as to who the purchaser was; and that no assumed conveyance of the land from Joy to a railroad company can bring the original sale *to* him within

the scope of that law. *If* the sale *to* Joy was *valid*, he might at any time between the date of his purchase and that of his attempt to convey it to the railroad company, (nearly or quite a year,) have made any other disposition of it he saw fit; and no person or no *company* could have hindered him.

But the settlers on the Cherokee neutral lands have a full guarantee for their protection in the first section of the act itself, which fixes the commencement of the company's rights to have the lands withdrawn from sale by the United States, and from homestead and pre-emption settlement, at the time "when the line of said road is *definitely located.*" Section four of the same act prescribes the conditions on the fulfillment of which the Secretary of the Interior shall withdraw certain lands from market. These conditions have not been fulfilled up to the present time.

Mr. Joy's disingenuous attempt to convey the impression that he was to lose what he had paid on the land will be shown in its true colors by reference to the bill itself, which provides in terms for the refunding of all moneys paid to any officer of the United States by any party, under any of the assumed treaty arrangements.

Mr. Joy says if our bill could have any effect it would make a present, under the act of July 25, 1866, to the railroad company of the whole tract.

His earnest efforts to prevent its passage is proof enough that he really does not doubt its *effect* if passed. A railroad company struggling for the privilege of paying $640,000 for what they might get for nothing! "Tell that to Appella, the Jew; *he may* believe thee."

General Hazen appears as commander of Mr. Joy's "army of occupation" on the neutral land, and finding no use for his sword betakes himself to his pen and employs his otherwise monotonous hours in writing letters, legal and otherwise, in the interest of Joy & Company. What motive could a general of the United States Army have had in writing up this *land case* for Governor Harvey and for the newspaper press?

The history of the stationing of *troops* on the neutral land is this: Emissaries of the railroad company procured from the sheriffs of Crawford and Cherokee Counties certificates, addressed to the governor Kansas, and stating that there had been armed resistance to the service of process in their counties; that the law could not be executed, and that a reign of terror existed on the tract. On these sheriffs' certificates Governor Harvey made a request to the President for United States soldiers to be sent into the State of Kansas and on to our tract.

Article IV, section 4, of the Constitution of the United States, act of Congress of February 28, 1795, and act of March 3, 1807, authorize the legislature of a State to apply for troops, in case of "*insurrection against the government*" of the State; or "*if the legislature cannot be convened,*" then the executive may make the request.

But Governor Harvey, untrammeled by such useless shackles on *his* action as the above, boldly strikes out a *new* and direct path to the objective point.

There had not been, nor has there been to this good hour, the slightest resistance to the *execution* of *any process, civil or criminal; no obstruction or intimidation of any court.*

The troops have not been called on to assist an officer or to sustain a court.

These facts are in evidence before a committee of our legislature. *Insurrection?* No. The presence of troops on the neutral land was procured by a railroad monopoly for the moral effect it would have in

the contest between that monopoly and the settlers, and the expense to the tax-payers of this nation of throwing this heavy weight into Mr. Joy's end of the scale already foots up more than $100,000. The Indians murder our frontier settlers almost with impunity; and the people and army officers on the border are calling for more protection, but those troops still abide on the neutral land.

In answer to the charges made against the settlers of terrible outrages committed by them, I state the facts. Only seven of the settlers have been arrested by the civil officers, and that soon after the soldiers came; these seven were bound over to appear at court. They appeared, and Judge Low *dismissed* every one of the cases as *frivolous.* The men who are accused of everything criminal, by the subsidized newspapers, are at large, ravaging the country with plows, harrows, and similarly dangerous tools. The ground is literally torn up, and large quantities of seed wheat and oats have already been buried; and if the army does not interfere more vigorously before long, many bushels of both corn and potatoes will share the same fate.

A decent regard for appearances requires that *business* on the neutral land be found for those troops, or that they be sent where they can find business.

ATTORNEY GENERAL CUSHING.

On the 19th day of July, 1856, Attorney General Cushing gave an official opinion on the request of the governor of California to the President for "arms and ammunition" to place in the hands of the militia of that State for the purpose of putting down the "vigilance committee."

Mr. Cushing decided that not even "arms and ammunition" could constitutionally and legally be sent, except upon request of the legislature; or upon a showing by the governor that the legislature could not be convened, his request might be granted; and that not even that aid could be given until "the whole constitutional power of the State had been exhausted."

Our position has lately been again sustained by the action of President Grant in the Tennessee case. I have not been able to learn whether the present Attorney General gave an opinion in the Tennessee case, but the papers inform us that the request of the governor of that State was refused because he had not called the legislature together. If governors of States can ignore the existence of legislatures, and are able to procure troops on their own requests, it is only necessary for railroad companies to elect a governor, or to buy one already made, and the strong right arm of the general government is at their service.

Mr. Joy states that a large number of the settlers have contracted with the railway company for their homes. Drowning men will catch at straws. Mr. Joy stood with his contract in one hand, and the United States Army in the other. The threat was openly made that such of the settlers as did not contract would be driven off by the military; and under this pressure every appliance of deception was used by the railroad ring, with frantic energy. What wonder that the timid portion of our people gave up all hope of justice at the hands of the government; that they believed *anything* to secure our subjugation could be carried out by *King Railroad;* and many an ex-soldier felt more of heart-sickening fear at the prospect of losing his family's home, than he had known at Shiloh, Vicksburg, or Chickamauga. A large share of those who contracted, did so with very much of faith that Congress would, at the present session, relieve us of this wrong; and, as the last trap was

baited with a credit of more than a year before any payment was required, that nothing would be lost by it. Many letters here in my possession will sustain what I have said on this subject. As proof of the truth of what I have said in regard to the charges made against the settlers of "outrages committed," "officers resisted," "civil war," &c., I refer the committee to the majority report and the two minority reports of the committee sent by the legislature to our tract to investigate the state of affairs there. The report of the majority does not assert any such things to be facts as would justify the presence there of United States troops. The testimony of no one witness before that committee asserts any resistance to an officer, or the obstruction of any court; and I call the attention of this committee to both the minority reports; and to the fact that both of the sheriffs who furnished the certificates on which the governor acted in calling for troops, absented themselves from our part of the country, evidently because they feared to face, under oath, before that committee, the false certificates they had furnished to aid the railroad company. I also call the attention of this committee to the "evident willingness" of the majority report of that committee.

The only man who has lost his life on account of this land difficulty was Jeremiah Murphy, who we believe to have been shot by a *hired assassin*, because he was a "leaguer;" and the only other attempt to take any man's life was in the case of H. McGinnis, who was fired at twice by a "Joy man," while under arrest, disarmed, and closely guarded by a civil officer.

McGinnis being a "leaguer," the man who shot at him had no difficulty in escaping the infliction of any penalty by the aid of his "law and order" friends.

Just after the murder of Murphy his killing was openly applauded by "Joy men" in both Fort Scott and Baxter Springs, and it was openly said by the same parties that Sanford, Vincent, and Laughlin would be served the same way. Whether the settlers are not "more sinned against than sinning" let all candid men judge, first taking care to know the truth.

HOW AND WHY WE SETTLED HERE.

As early as during the administration of President Buchanan a considerable number of families, attracted by the beauty and fertility and the genial climate of this section, and meeting with no opposition from any source, came upon these lands. For political reasons a movement was set on foot to eject these settlers. Soldiers, without any proper authority, were brought here, and a few worthless buildings burned. The indignation of the settlers at such unwarranted proceedings was such that the *military* desisted from their work of ejectment, and the citizens sent a delegation to see President Buchanan.

The President told them to return to their homes and occupy them, to encourage the settlement of the country, and the land would soon come in under the pre-emption law.

The military, that politicians had procured to be sent here as a part of their *nice little game*, was immediately withdrawn, and settlement went on.

During the rebellion the neutral land was held alternately by both parties, the settlers not being able to remain safely at their homes.

Thousands of Union soldiers campaigned back and forth over these lands, and when the war was over thousands of them brought their families here to make homes.

The Indians *directly*, and even *earnestly*, encouraged the settlement of the country, *immediately and always, after the war.*

In March, 1866, President Johnson wrote to us: "Go on and settle it up, and make a country of it, and you shall be protected in the homestead and pre-emption right." Senators Lane, Pomeroy, and Ross, by many letters, some of which are yet preserved, stimulated our occupation of the country, and assured the settlers of their safety under the land policy and laws of the nation.

The jurisdiction of the general government has been complete here ever since the war, and that of the State since the treaty of 1866, and not a word of discouragement to our settlement has ever been heard from any party concerned up to this date, even Mr. Joy having by letter encouraged people to continue to occupy the land he claims and *trust him to fix the terms at some time in the indefinite future!*

WHO AND WHAT THE PEOPLE OF THE NEUTRAL LAND ARE.

We number about twenty thousand souls.

Most of us came from the States north and east.

Three-fourths of our men were Union soldiers.

More than a common proportion of us are young men with growing families, and we do but state a plain fact when we say that a more loyal, moral and substantial, or a better behaved people of equal numbers, cannot be found on any one spot in the Union, the vile slanders of our enemies to the contrary notwithstanding. We are poor, but we are not contented to remain so. We live on such as we have, and wear our old clothes, not out of choice, or from laziness, but from a necessity of which we are not ashamed.

What we want is *our homes*, with titles from the government, at government rates.

Leave to build houses and barns—to plant for *ourselves* orchards and vineyards—liberty for us, and for our wives and children, to sit under *our own vine and peach tree*, and to enjoy the benefits of our labor, instead of sending it east to gorge the coffers of pampered aristocrats.

The settlement of so much of our country as is yet unoccupied by other families on the same terms.

The sixteenth and thirty-sixth sections for school purposes, or, where they are occupied, "other lands as contiguous as may be," (see act of admission.)

THE KIND OF TITLE OFFERED TO THE SETTLERS BY JOY & CO.

There is on record, at our county seats, what purports to be a trust deed of the Cherokee neutral land, to which we invite attention. Whether this beautiful instrument is a sham or not, it is not our purpose to inquire at present. The rascality is equally apparent whether the transaction is regarded by the parties to it as genuine or not. The trust deed recites that James F. Joy has conveyed the neutral land, in fee simple, to the Missouri River, Fort Scott & Gulf Railroad Company; that the railroad company deeds the tract in trust to Nathaniel Thayer, F. W. Palfrey, and George W. Weld, of Boston, Massachusetts; that the railroad company *may sell* claims of one hundred and sixty acres each, that were occupied before June 10, 1868, to actual residents thereon; but that even this *may sell* may be revoked by the Boston men on record of such revocation; that if the railroad company fails to pay either in interest or principal promptly, the Boston men may enter immediately

upon possession of the land, and having given thirty days' notice through the *New York* and *Boston* papers, proceed to sell the tract at public auction, at the *City of Topeka, Kansas.*

If Mr. Joy's title to this land were genuine, and *if* this trust deed is a bona fide document, to what fearful contingencies would the settlers be liable! *The "may" of a railroad company! The mercy of Boston capitalists!*

FURTHER COMPLICATED BY BONDS SPOKEN OF BY MR. JOY.

The settlers have no confidence in their chances in a four-handed grab game between themselves, Mr. Joy, the railroad company, and the Boston men, and in which our opponents propose to furnish the cards, shuffle, cut, and deal. That Mr. Joy has no confidence in the validity of the title he claims is shown by the fact that in several instances he has been tendered the money down for claims that had been "proved up," at the highest rates for which his "contracts" are drawn, and has refused to so receive the money and to return either a deed or a bond for a deed, thus attempting to force on such men as would buy from him the "contract" stipulating for a series of payments reaching over a space of seven years. He has not attempted to put his title to the test by writ of ejectment, which might soon settle it if his title was good. We have suffered for nearly two years under his attempt to *wear us out*, to frighten, deceive, and harass our poor people into submission to his extortions, and we ask to be relieved from the infliction.

We maintain that the absolute title to the Cherokee neutral lands has never passed from the government of the United States; that the patent to the Cherokees, of 1838, (both treaty and patent expressly stating their authority to be derived from the law of May 28, 1830,) only conferred a right of occupancy, which they could only relinquish to the United States; that that *was done* by the treaty of August, 1866, to say nothing of any other abandonment or forfeiture; that the attempt to make the Secretary of the Interior a trustee to "dispose of" these lands, or to "dispose of" them in any other way by treaty was void; that the tract is now, and has been since the recession, August, 1866, *entirely subject to the power of Congress, except so far as actual settlers have acquired rights under pre-existing laws*, and we ask Congress to relieve us of the necessity of wearisome and expensive litigation, by the passage of a law that shall give us title to our homes unencumbered by a doubt.

It is no bar to this action by Congress that Mr. Joy has obtained patents for a part of this land.

See letter of Secretary of the Interior to the Commissioner of the General Land Office, September 29, 1859.

Same to same, March 31, 1859.

Opinions of Attorneys General, vol. 5, page 7: "A patent may properly issue to pre-emptors, notwithstanding others to ordinary purchasers may have been issued for the same land, and remain outstanding."

Ross vs. *Borland*, 1 Peters, 656, the court held that "the second patent issued upon legal authority; the first did not; and therefore the second must prevail."

Brown vs. *Clements*, 3 Howard, p. 650, it was directly adjudged by the Supreme Court that "the second patent prevailed over the first, where the first was not legally issued."

Give us who have settled and those who shall settle on the neutral lands patents to our homes, issued by authority of Congress, and our troubles will be ended. No man assuming to hold title under a patent

issued by authority of a "treaty" will vex us more; and, *threaten litigation* as they will, we can smile at their rage.

Respectfully submitted by

W. R. LAUGHLIN,

Delegate from settlers on Cherokee neutral lands, Kansas.

WASHINGTON, D. C., *March* 30, 1870.

[These reports were made by a committee of the Kansas legislature.]

CHEROKEE NEUTRAL LANDS—HOUSE INVESTIGATING COMMITTEE—MAJORITY AND MINORITY REPORTS.

MAJORITY REPORT.

Mr. SPEAKER: We, the undersigned, a majority of the select committee appointed under the resolutions of the house adopted February 4, 1870, to take into consideration that portion of the governor's message which refers to the neutral lands, &c., with power to send for persons and papers, and with authority to visit that region and report, both upon the action of the troops and of the people on those lands, respectfully report that, in pursuance of said resolutions, the committee visited the Cherokee neutral lands, and took the testimony of witnesses at Girard and Columbus, on those lands, as also that of witnesses at Baxter Springs, Fort Scott, and Topeka, all of which testimony is herewith submitted and made a part of this report.

We, the undersigned, find from the evidence that as early as February, 1869, an organization existed on those lands known as "The Land League;" that such organization still exists there, and that its name now is "The Neutral Land Home Protecting Corps;" that it was, and still is, a secret quasi military organization numbering fifteen hundred men, commanded by a general and drilled into regiments, battalions and companies, commanded by colonels, lieutenant colonels, majors, captains, and other officers with military designations; that one of the objects of said organization was to prevent the building of the Missouri River, Fort Scott and Gulf railroad through the neutral lands, until James F. Joy should relinquish his right or claim to those lands; that in accordance with the settled purpose of the league, about two hundred of their number, being fully armed, marched on Baxter Springs to break up the railroad land office at that place, and did, by threats and intimidation, compel its removal therefrom; that during the spring and early summer of 1869 members of "The League" forcibly burned about twenty-six hundred railroad ties in Cherokee County, on those lands; also, that they arrested Colonel J. A. J. Chapman and Captain John Runk, jr., engineers on the road, together with their party of assistants and laborers, and after burning the wagons, tents, surveying instruments, blankets, commissary stores, &c., drove the subordinates of the surveying party from the lands, with orders never to return in the employ of the railroad company, under penalty of death, and that they then marched Colonel Chapman and Captain Runk several miles south, when they stripped off the coats from their prisoners, hood-winked them, and administered to each of them fifteen lashes, and then ordered them to leave, to never return, and to never mention what had occurred, under penalty of death; also, that they forcibly drove from the line of the railroad, laborers, agents, and other employés, and from the neutral

lands many persons because of their opposition to the league and their friendship with the railroad company.

We also find that the governor of the State was informed by verbal statements, letters, affidavits, petitions and certificates of the officers of Crawford and Cherokee Counties, of the perpetration of these outrages, and that the violators of the law were too formidable to be successfully resisted or restrained by the civil officers of those counties; that, acting upon the information thus received, the governor made application to the proper military authorities for a sufficient force of United States troops to be stationed on those lands to preserve the peace and to protect persons and property; that, in compliance with that request, troops were sent and are there now, stationed at different points in Crawford and Cherokee Counties, contiguous to the line of the road, under the command of Major James P. Roy, of the Sixth United States Infantry—a gallant soldier, a most excellent and discreet officer, an honest and disinterested man.

We further find that prior to the arrival of troops on those lands, lawlessness prevailed and terrorism reigned there; that but for their presence the railroad could not have been built through the lands, nor could persons who advocated the building of the road have safely remained there. We further find that since troops have been stationed on those lands, order has prevailed throughout that region, although a very hostile feeling seems still to exist among the people; so intense, indeed, that, as we believe, should the troops be removed, collisions resulting in bloodshed would ensue. We, therefore, believe that there was a necessity for United States troops on the neutral lands at the time that they were stationed there; and we further believe that that necessity exists.

All of which is respectfully submitted.

JOHN T. BURRIS,
E. H. LEDUC,
JOHN K. WRIGHT,
Majority of Committee.

MR. SANFORD'S REPORT.

Mr. SPEAKER: The undersigned, a minority of the select committee appointed in accordance with the resolutions adopted in the house of representatives, February 4, 1869, for the purposes therein set forth, begs leave to submit the following minority report:

The entire committee proceeded to the "region" of the Cherokee neutral lands, and took the testimony of thirty-one witnesses, in writing, seven of whom were examined at Fort Scott, eleven at Girard, six at Columbus, and seven at Baxter Springs—the first and last mentioned places not being on said lands. Of this number there are six who are members of the Neutral Land Home Protecting Corps, a secret organization formed among the settlers for the purpose of testing the validity of the "Joy title" to said lands in the courts, and three who are classed as settlers' men, but not members of the organization, while the other witnesses, twenty-two in number, are either railroad employés or supporters of the "Joy purchase." The testimony of these witnesses, together with that of his excellency the governor, and the papers found in the office of the executive, comprises all the evidence obtained by the committee, and which is too voluminous to recapitulate. After making

as thorough an investigation as was possible in the limited time the committee devoted to that purpose, and after carefully considering the questions submitted to the committee, I deem it my duty to state that, in my opinion, there never existed, since the organization of the counties of Crawford and Cherokee, any necessity for stationing United States troops upon the Cherokee neutral lands, and that there is no necessity for their presence there now. This opinion is based upon the fact that the evidence shows, beyond a doubt, that the courts of record have held their terms regularly, and have never been obstructed in any manner or form; that no judicial officer has ever been prevented by violence or threats of violence from issuing warrants for the arrest of any persons charged with the violation of any law, and that no sheriff or other ministerial officer has ever been resisted or prevented in any manner from executing any writ or performing any duty, by any citizen of either of said counties. The only case of resistance to the execution of the civil law, as shown by the testimony, is that of a soldier in or near the town of Girard, who struck and kicked the constable who attempted to arrest him under the authority of a warrant issued by a justice of the peace. That there have been violations of law in those counties it is true; but in those cases most complained of, to wit, the burning of railroad ties and driving surveyors from the line of their work, there has been no attempt made to bring the offenders to justice, neither before nor since the arrival of the troops upon the neutral lands. The troops have in no instance been called upon to assist in the preservation of the peace or to quell any disturbance whatever. They are stationed along the line of the railroad and are quartered in barracks provided for them by the railroad company. The petitions forwarded to the governor from citizens of those counties, asking for military aid, were signed only by the citizens of Baxter Springs and Girard. The evidence shows that three-fourths of the citizens of the last-mentioned place are what are called there "Joy men," and that the petition was circulated by one T. H. Annibal, of Fort Scott, an employé in the land department of the railroad company, who also procured the certificate or requisition from Sheriff Ryan, of Crawford County, on the 18th day of May last, and transmitted them to the governor. The committee were unable to procure the testimony of J. M. Ryan, ex-sheriff, for the reason that he had "gone to Arkansas" three days before the arrival of the committee, and William G. Seright could not be found in the county of Cherokee. In my opinion the presence of the troops was procured by the parties interested in and claiming title to the land in controversy, for the purpose of overawing the people and intimidating them into submission to the terms offered them by James F. Joy, the so-called "railroad king," who purchased that portion of the tract unoccupied on the 11th of August, 1866, consisting of about 670,000 acres, at $1 per acre, on nine years' credit, which sale was made by the Secretary of the Interior, without the authority of any act of Congress, and consequently is believed by the settlers to be void, as they have been so advised by eminent legal counsel. The papers presented to the governor, however, show on their face that the military asked for was for the "preservation of the peace;" and that officer states in his testimony that he made the application to the President for that purpose. The question here arises: Was this application made by the proper authority? Section four of article four of the Constitution of the United States authorizes the legislature of the State to make application to the United States to protect the State against "domestic violence," but in my opinion there is no authority conferred upon the executive to make such an applica-

tion except in cases "where the legislature cannot be convened;" and it has been held that the application must show that fact on its face. In this case the legislature might have been convened by proclamation under the provisions of section five, article one, of the State constitution. There was no "domestic violence" in the State to prevent it, and, in fact, the papers from the governor's office show that five hundred and eighty-seven of the very men who are charged as being rebellious, lawless, and insurrectionary, petitioned the governor to convene the legislature for the purpose of taking the matter into consideration. Section four of article eight of our State constitution, entitled "militia," reads as follows:

"The governor shall be commander-in-chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, and to repel invasion," and it seems to me that the military power of the State, if any was needed in this case, should have been brought into requisition before any application was made for federal troops to be stationed in Kansas to the disgrace of the State. The impression is created abroad that there is now existing on the Cherokee neutral lands, in Kansas, a rebellion so formidable that the militia of the State cannot suppress it, and therefore federal bayonets are brought to bear upon the settlers there. The same pretext that is used in this case, for the purpose of stationing United States troops in those counties, could be as consistently used in nearly every county in the State, and yet Kansas is famed for her loyalty and devotion to the principles of our democratic-republican government. Believing that standing armies in time of peace are dangerous to liberty, and that the military should at all times be in strict subordination to the civil authority, and that the presence of troops upon the neutral lands, at this time, is a source of irritation to the people and is humiliating to the thousands of as true men as ever followed the flag of our Union in its hour of peril, I submit the following concurrent resolution and recommend its adoption:

Resolved by the house of representatives, (the senate concurring:) 1. That the President of the United States be, and he hereby is, respectfully requested to cause the troops now stationed upon the neutral lands in Kansas to be removed and sent to the frontier for the protection of settlers from Indian hostilities. 2. That the secretary of state be instructed to transmit a copy of these resolutions to the President of the United States without unnecessary delay.

All of which is respectfully submitted.

AMOS SANFORD,
Chairman.

MR. SNEAD'S REPORT.

Mr. SPEAKER: The undersigned, one of the committee appointed by your honorable body to investigate the matter of sending United States troops to that portion of the State known as the Cherokee neutral lands, and to ascertain whether there ever existed any necessity for the military arm of the government there, and, if so, whether or not said necessity still exists, respectfully reports that he is unable to agree with the majority of the committee in this, that the said majority have clearly enlarged the jurisdiction of the said committee and the scope of inquiry which they were empowered to make by the house; for the undersigned cannot be mistaken in presuming that it was the intent and purpose of the

house to limit the inquiries of the committee to the service of process, and the enforcement of law, on the district known as the neutral lands; whereas the majority of the committee insisted upon giving their inquiries an unlimited range over the whole field of sentiment and action of the people of said lands, whether it had anything to do with the administration of justice or the serving of processes, or not. For example, it will be seen from the evidence that the committee went into an investigation of an alleged speech made by the Hon. Sidney Clarke, a member of Congress from this State, on a certain occasion, and also of the speeches made by other parties at the same and other occasions. What this had to do with the resistance of civil process the undersigned could not see, and therefore, of course, objected to the same, though in vain; since the majority of the committee seemed to him to be upon a political rather than a bona fide legislative mission, and bent rather on making capital against some fancied political enemy than in reporting plain facts, on a very plain matter, submitted to them for inquiry and report. And it will be perceived by reference to the testimony accompanying the report of the majority of the committee, that very much is of this kind and description, to wit, entirely irrelevant to the inquiry submitted to them for investigation; and if in order, the undersigned would respectfully submit the propriety of striking out all such evidence before publication, as manifestly irrelevant to the objects and purposes for which such committee was constituted and appointed. Nor is this all; a large proportion of such evidence will be found to be mere hearsay, and consequently incompetent under any legal rules of evidence, the undersigned having frequently objected to the same, but without effect. For example, the entire evidence in relation to the burning of certain ties heretofore mentioned or referred to in the public prints consists of the testimony of parties who heard a man say, who acknowledged himself a leaguer, that the leaguers burned them. No names are given in this connection, nor did the committee insist on having the names of the said third party who thus represented himself as a leaguer, that he might be found, and the credibility of the story thus tested. Again, the committee, as if recently charged by that great enemy of secret societies and associations, Senator Pomeroy, to institute rigid inquiry into all the requirements of such associations, and presentment make to the legislature, proceeded to swear men and compel them to disclose in detail all the internal paraphernalia of such associations, "what the design of such association was, whether they were governed by an oath," &c.; while the undersigned insisted (but insisted in vain as before) that the only necessary and proper question to be put to such witnesses was, whether their association had for its object and purpose the resistance to law and the service of process. Whether the said evidence will be interesting to the members of the house or not, the undersigned will not undertake to decide, but he does say that it showed no criminal intent or purpose on the part of the members of such association; at which the majority of the committee seemed to be very much disappointed and disgusted, and, as a last resort under the smarting of such disappointment, it will scarcely be believed by the house that the committee summoned before them the party known as the wild man of the prairies, or the gorilla, whom members of the house will recollect to have read of in the public press of last fall, as ranging over southern Kansas and infesting its swamps, to the great terror of women and children, and proceeded to examine him with all the solemnity of a sensible and credible witness, although he freely admitted that he had been impeached by no less than ten witnesses at the last term of the district court in Crawford County. The under-

signed was further surprised to find a disposition on the part of a majority of the committee to encourage only such testimony as seemed to square with some preconceived notion or theory of such majority. As an illustration of this one, J. W. Davis having been called and sworn by the committee, proceeded to testify that the league were not the evil-disposed persons that they were represented to be, which seemed to be entirely unsatisfactory to the majority, and, therefore, he was summarily and peremptorily dismissed, notwithstanding his protestation that it was unfair to call him off in the midst of his evidence. In this connection the undersigned does not overlook the fact that the evidence shows several sensational demonstrations or disturbances on and about the neutral lands, but in no case involving the loss of human life, and, therefore, not of so serious consequences as frequently occur in the towns and villages along the line of the Kansas-Pacific railroad in the western part of the State, and the undersigned is apprehensive that the majority of the committee are disposed to attach too much importance to these ebullitions of popular sentiment. If such they were, of course the undersigned does not approve or apologize for scenes that the evidence shows were enacted there, but it is not in proof that the disturbances were made by settlers upon the neutral lands or by the leagues. The undersigned derived the impression from the evidence that they were perpetrated in some cases by half-grown boys; in others, by half-drunken rowdies; and in others, he fears, by persons in the employ of or in the Joy interest. But even if they emanated from men goaded by a fancied or real sense of injury, the house should remember the answer of Dr. Franklin to the Englishman, who insisted that our revolutionary fathers were insurrectionary and disturbers of the public peace, to wit: "That much, very much, should be pardoned to the spirit of liberty." So much, very much, should be pardoned to people goaded by a sense of injury; and when you remember that two Presidents of the United States and other governmental authorities invited the people to settle upon those lands, from which they are now to be summarily expelled by certain action of the Secretary of the Interior and Senate of the United States, pronounced by the governor of the State and two legislatures thereof as infamous, their action in the matter ought to be charitably regarded, and much more when it does not appear from the report of the committee that the officers of the law were even resisted there, or that the body and mass of the settlers are not a law-abiding, moral, and religious people.

To proceed to the main points of the case, the necessity for the presence of the military arm of the government on the neutral lands, the undersigned will be very brief, as the evidence, with a slight variation, all points in one direction, to wit: That there never was any necessity for the presence of troops there to aid in the service of process or the administration of the law. For example: First. In point of credibility and respectability, certainly, in the opinion of every member of the committee, J. E. Williams, P. M., of Baxter Springs, and J. W. Hightower, of the same place, unqualifiedly and emphatically state that no such necessity ever existed, and they are supported in this by the county attorney of Cherokee County and the under sheriff of Crawford County, both of them evidently most respectable men, as well as the county clerk of the same county, and five or six other witnesses, equally credible, but perhaps not so prominent in society. Indeed, no one party testifies that the courts were ever obstructed in the execution or enforcement of the law, or that the service of process was ever resisted, except in one case, and that by United States soldiers, since they were posted

in that vicinity; and there was almost a universal concurrence of opinion that the presence of United States soldiers was no longer necessary there. And it is worthy of notice that two-thirds of all the witnesses testifying are in sympathy with J. F. Joy and the railroad company, so that due allowance ought to be made for their prejudices and prepossessions in the premises. Of course it will be readily supposed that the very first inquiry made by the committee, on its arrival at the scene of action, was for the public authorities, to wit: The sheriffs of Cherokee and Crawford counties, upon whose requisition his excelleney the governor was induced to call for United States troops to assist in the enforcement of the laws of the State upon the neutral lands, and, to our great surprise and disappointment, they had both left the country, one of them reported as defaulter to a considerable amount to his county, and the other, as was supposed, to avoid the alternative of testifying before the committee.

The undersigned, therefore, both from this circumstance as well as from the general tenor of the evidence bearing upon the point, is forced to the belief that his excellency the governor was originally imposed upon with reference to the necessity of sending the said troops to the neutral lands, and cannot fail to believe that, in view of the evidence produced by the committee, he will speedily withdraw them, because their presence there is an impeachment of the character of the people of that section, and a standing disgrace to the State of Kansas; and instead of promoting the public peace, the presence of troops stationed there, to overawe the people, is calculated to stir up ill-feeling, and make any breach which may already exist deeper and wider in the public mind. The undersigned, therefore, submits the following resolution:

Resolved, That the governor be requested to take the necessary steps to secure the removal of the United States troops from the neutral lands to the western frontier of Kansas, to protect the settlers there from the threatened depredations of the Indians.

J. H. SNEAD.