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Cherokee neutral lands. (To accompany bill H. R. No. 1074.).

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CHEROKEE NEUTRAL LANDS.

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

JANUARY 11, 1871.—Ordered to be printed and recommitted to the Committee on Indian Affairs.

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

REPORT.

The Committee on Indian Affairs, to which was referred bill (H. R. No. 1074, "To dispose of the Cherokee neutral lands in Kansas to actual settlers only," submitted the following report:

The "Cherokee neutral lands" is a tract of about 800,000 acres, (the exact quantity is 799,615.18 acres,) lying in the southeast corner of the State of Kansas, extending fifty miles north and south, and twenty-five miles east and west. It is part of the "Louisiana purchase," the title to which the United States derived from France by the treaty of April 30, 1803. It has been uniformly held to be perfect and indefeasible. The United States has, however, recognized in the Indians a "right of occupancy," which has been so far respected that the lands occupied by them have never been opened to settlement until this right, commonly known as the "Indian title," has been extinguished. This has always been with the consent of the tribes in occupancy, and with few, if any exceptions, in the form of a treaty. These treaties, with even the weakest of the tribes, have been recognized by every department of the Government, and have been rigidly and uniformly enforced against them.

The Indian title to the land in controversy was extinguished by the treaty of June 2, 1825, (7 Stat. L., page 240,) with the Osage Indians, who then occupied it, and who, pursuant to the treaty, relinquished the possession, and removed from the lands.

Thus the United States were in position to give both title and possession to whomsoever, and upon such consideration as, they chose to convey.

Two parties assert title: James F. Joy, representing the Fort Scott and Gulf Railroad, who claims that the United States conveyed the lands to the Cherokees by treaty of 1835, and by patent pursuant thereto in 1838. That the Cherokees, by the treaty of 1866, reconveyed the same to the United States, as trustee, to make sale thereof; and that the United States, in execution of the trust, sold the same to him by agreement, dated the 9th day of October, 1867; that having purchased the land, he has paid the purchase money in full; has entered into possession of the land, and has, at a cost of over \$5,000,000 constructed through its entire length a railroad, part of a through line from Kansas to the Gulf.

He does not assert title to such part of the land as was occupied by actual settlers prior to August 11, 1866, the date of the ratification of

he treaty by which the Cherokees conveyed the land to the United States in trust to sell. This land was reserved from the contract, and patents are being issued to the settlers as fast as they make payment.

The sale thus made to Joy was modified as to the terms of payment by supplementary treaty between the United States and the Cherokee of April 27, 1868, duly ratified by the Senate, and accepted by Joy, and under it patents have been issued to him for all the land embraced in the contract.

He further claims that the "settlers" who entered subsequently to August 11, 1866, are mere intruders, who entered without right and with full notice of the Cherokee title, and who have acquired no right which they can maintain against the title vested in him by the patents of the United States.

The counter-claim is on behalf of the "settlers," who it is alleged entered upon the lands in good faith as preëmptors, and who, by virtue of their settlement, have acquired the right to purchase from the United States, and receive title under the preëmption laws, at the rate of \$1 25 per acre.

It is also claimed that all the Cherokee neutral lands not occupied by actual settlers are subject to selection under the general preëmption laws.

Such claims on behalf of the settlers have been persistently pressed upon the Land Office ever since the treaty of 1866, and have been uniformly rejected.

The bill now under consideration (H. R. 1074) proposes to leap over all questions of title and vested rights under the treaties and patents of the United States, and by legislative construction and by authority of law, to declare the patents of the United States, duly executed and delivered to James F. Joy, to be null and void. It proposes to withdraw from the courts the consideration of the conflicting rights of the contesting parties, and to compel the officers of the Government to execute and deliver other conveyances of title to the same land to persons who claim adversely, and who will set up the second deed to defeat the first, thereby subjecting the Government to claims for damages from one party or the other, and placing the Government in the discreditable position of accepting, with full notice, purchase-money from two adverse claimants of the same land, and delivering a deed to both.

In the view of your committee the title is vested in James F. Joy, and the settlers who entered after August 11, 1866, are trespassers who have no title which they can maintain against him. But be this as it may, the question is *now pending* in Kansas, in both the federal and State courts, in several actions which have been there instituted for the purpose of trying the title, and in which the whole question will be judicially considered and determined. In the judgment of your committee it is not only inexpedient to pass the proposed bill, by reason of its great injustice, but because the question is preëminently one for judicial determination, and because, whatever title is vested in Joy, is a vested right which no subsequent legislation can impair, and the determination of which cannot be withdrawn from the courts.

A brief review of the facts, it is believed, will fully justify these conclusions.

The Cherokees, a very numerous and warlike tribe of Indians, were originally located in Georgia. Part of the tribe, from time to time, removed west of the Mississippi, and were scattered over a large extent of territory, but were finally gathered within the limits of Arkansas, upon reservations secured to them by the treaties of January 8, 1817,

and February 27, 1819, and now known as the "Cherokee country," as distinguished from the "Cherokee neutral lands." A large part of the tribe, however, remained in Georgia.

The progress of civilization in that State, and the constantly recurring conflicts between the Indians and the settlers, resulting frequently in armed collisions, rendered it a matter of national importance that the Indians should be removed. To effect this object the treaty of May 6, 1828, (7 Stat. L., 310,) was entered into, the preamble of which recites that—

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 its 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 :

By this treaty it was provided—

ARTICLE 2. The United States agree to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, seven millions 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, 1817.

Article eight 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 amid 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.

The supplementary treaty of February 14, 1833, (7 Stat. L., 414,) modified the boundaries of the "Cherokee country," but reaffirmed the grant, as follows :

ARTICLE 1. The United States agree to possess the Cherokees, and guarantee to them forever, and that guarantee is hereby pledged, of seven million acres of land, to be bounded as follows, viz :

(Here follow the boundaries, not important in this connection.)

The Cherokees west of the Mississippi were gathered within this territory; but those in Georgia, for the most part, remained within that State. The conflicts with the settlers increased in frequency and violence until, in President Jackson's administration, they were finally, and with force, removed, under the treaty of December, 1835, (7 Stat. L., 478.) By this treaty—

ARTICLE 1. 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 spoiliations of every kind, for and in consideration of the sum of *five millions of dollars*, to be expended, paid, and invested in the manner stipulated and agreed upon in the following articles :

Article two refers to and reaffirms the treaties of May, 1828, and February, 1833, whereby *seven millions* of acres of land, with a perpetual outlet west, is conveyed and guaranteed to the Cherokees, and then provides conveyance of eight hundred thousand acres more, being the land embraced within the bill, (H. R. 1074,) and now known as the "Cherokee neutral lands," in the following terms :

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.

Article two provides—

The United States also agree that the lands above ceded by the 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.*

By the act of Congress of 1830 it was provided—

SECTION 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

By the act of July 2, 1836, "making appropriations for carrying into effect certain Indian treaties," there was appropriated—

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

Thus the transaction was complete. It was a valid contract between competent parties, and upon sufficient consideration. The Cherokees received \$500,000 less in money, and 800,000 acres more in land. The titles and possession of the land were reciprocally exchanged, and from that time down to the present controversy both parties to the contract have been mutually satisfied, and neither has questioned the title of the other, and both do now insist that the titles thus passed were and are perfect and indefeasible.

To this, the alleged "settlers," who have no priority of title with either, and are repudiated by both, set up an *inchoate* title by virtue of a plain trespass upon lands on which they entered by force or by stealth, against the well-known prohibition of all the parties in whom there could be the slightest pretense of title.

The title of the Cherokees was as perfect by virtue of the treaty alone as that of the United States to the "Louisiana purchase," of which it is a part, and which rested upon treaty only; but so anxious were the United States to satisfy the Indians beyond the possibility of a doubt, that upon the exchange of lands their title should be perfect, that it was provided in the act of Congress of 1830, and paramount to this act embodied in the treaty of 1835, that "if they (the Indians) prefer it,

that the United States will cause a *patent or grant* to be made and executed to them for the same." This was not necessary to the perfecting of their title, but it was done. The patent of the United States, dated December 31, 1838, and recorded in the Land Office at Washington, was duly executed and delivered to the Cherokees, the granting clause of which is as follows:

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^{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 condition 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."

Thus the title to the Cherokee neutral lands became vested in the Cherokee Nation. It is, as already stated, a compact body of 800,000 acres of land in the extreme southeast corner of the State of Kansas, fifty miles long from north to south, and twenty-five wide. It lies in the direct course of the most available railroad route from Kansas City to the Gulf, and by which Kansas is eight hundred miles nearer to tide-water than by any other possible route. The road is already built through its entire length, at a cost of more than \$5,000,000. The lands of the company upon which this money was raised, are secured by a first mortgage of both the railroad and the lands, and are held, as such lands usually are, by thousands who are dependent upon them for their means of support. The company has also, in full reliance upon their title, sold many thousands of acres to probably not less than a thousand settlers, who have paid their money and taken title from the company. To destroy their title would be an act of the grossest injustice; and to cloud it with suspicion, a wrong wholly without justification, tending to retard the development of the country, and working extensive injury to the material interest of that portion of the State.

Nor have the trespassing settlers any just cause for complaint. The company has offered to them titles at less than the current rates of sale and less than the real value of the land; and many who have accepted these terms have resold their land, enhanced as it is by the railroad, at large advance upon their purchase price. Neither are they entitled to either sympathy or favor. It seems to your committee like a scheme for getting farms for \$1 25 per acre, which, by reason of the labor and capital of others, they know to be of much greater value. There is probably not a settler on the land but knew of the Cherokee title, and the provision of the treaty which required the United States to keep her citizens off the land, under the sixth article of the treaty of 1835, which requires "the United States to protect the Cherokee Nation against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent."

This provision was rigidly enforced, and the fact nowhere better known than on the neutral lands and its vicinity, until, on the breaking out of the rebellion in 1861, the Government was compelled by the exigencies of the times to relax its supervision. Up to that time no settlers entered upon the territory but with the consent of the Cherokees.

And the committee is not informed that any settlers who were located prior to August 11, 1866, are asking the intervention of Congress.

During the unsettled condition of the country consequent upon the rebellion, many settlers entered upon the lands without consent of the Cherokees, and with no acknowledged rights from any source. Those, however, who entered prior to August 11, 1866, are fully protected and make no complaint.

The treaty of 1835 was proclaimed on the 23d May, 1836, and was not only legal and constructive notice to all the world, but as matter of fact the exclusive title and possession of the Cherokees was well known to all who entered upon the premises, and had been for more than thirty years not only claimed by them, but defended by the United States by the garrisons of troops sent there for the express purpose, as required by treaty, of keeping off unauthorized settlers. When the troops were necessarily withdrawn to serve elsewhere, these rich and valuable lands presented temptations to unscrupulous men too strong to be resisted. As the number of intruding settlers increased it became manifest to the Cherokees, who were unable to resist them, that their treaty rights therein would no longer be respected, and could only be maintained by the armed intervention of the Government. Under these circumstances they wisely determined to sell this portion of their territory, and made with the United States the treaty of July 19, 1866; (14 Stat. L., 799.)

Through every part of this treaty, the stipulations of all previous treaties, and the exclusive ownership of all the land conveyed to them by patent is everywhere recognized and admitted; nor does the United States in this treaty, nor have they at any time since the granting of the patent claimed or exercised any right of property over the same except the small parcels reserved in the treaty for Government use over the same, but only such governmental jurisdiction as they exercise in common over all the States and Territories. In the 26th article the express guarantee of former treaties is again reiterated, and "The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country," * * * and that "they shall also be protected against interruptions or intrusion from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory." This provision is in full force, as all the territory conveyed to the Cherokees by the patent of 1838, except the 800,000 acres which by the terms of the treaty of 1866 they reconveyed to the United States in trust, as follows:

ARTICLE 17. 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 by the United States under the provisions of the second article of the treaty of 1835, and 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 the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land Office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council, and one by the Secretary of the Interior; and in case of a disagreement, by a third person, to be mutually selected by the aforesaid appraisers; the appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

And the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders, for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided*, That whenever there are improvements of the value of fifty dollars made on the lands, not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning and in person residing on such improve-

ments shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be intitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions, which will include his improvements, not exceeding in the aggregate one hundred and sixty acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land:

Provided, That nothing in this article shall 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 this treaty, not exceeding one hundred and sixty acres to each person entitled to preëmption under the preëmption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

This treaty was proclaimed August 11, 1866, and was a full acceptance by the United States of the trust upon the conditions expressed. By every principle of equity they must execute it according to its terms, or surrender the trust unimpaired to their grantor. They have no discretionary power to change its conditions, or for any reasons of real or supposed expediency to dispose of it otherwise than the treaty directs.

Any attempt on the part of Congress to declare this title void and grant another title to other and adverse parties would be a flagrant breach of trust, in direct violation of its plighted faith.

The United States having thus on the 11th of August, 1866, accepted the trust proceeded to sell the lands.

On the 30th of the same month, Mr. Harlan, then Secretary of the Interior, made an agreement of sale of the land to the American Emigrant Company. But the validity of this sale was always doubted, and on October 4, 1866, Attorney General Stanbery held it to be null and void for non-compliance with the provisions of the treaty of 1866.

The land was then again offered for sale by Secretary Browning, who states (see Ex. Doc. No. 85, second session fortieth Congress) as follows:

I suggested and urged, at the last session of Congress, that the United States should become the purchaser at one dollar per acre, and issue bonds in payment thereof. Such a proposition was, I believe, submitted to Congress, but not accepted.

After the adjournment of Congress I authorized an unofficial statement to be made in newspapers that the proposals for the purchase of said lands in a body would be received at the Department until the 1st of October.

Early in October Mr. James F. Joy, of Detroit, Michigan, proposed to take the lands in a body at \$1 per acre, and pay the cash for them.

No other offer was made. I accepted Mr. Joy's, and concluded a contract with him, from which all lands occupied by actual settlers at the date of the ratification of the treaty were excluded. A copy of the contract is herewith furnished.

There being no other bids, the Secretary, October 9, 1867, made with him the following contract:

This agreement, made and entered into this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, by and between Orville H. Browning, Secretary of the Interior, and James F. Joy, of the city of Detroit, in the State of Michigan, witnesseth: Whereas, by the seventeenth article of a treaty between the United States of America and the Cherokee Nation of Indians, made and concluded on the nineteenth day of July, A. D. 1866, and proclaimed on the eleventh day of August in said year, and the two several provisos to the said section annexed, there were ceded in trust to the United States certain parcels of land therein mentioned, with power to the Secretary of the Interior to sell all of the said ceded lands, with the exception of such parts thereof as are embraced within the tenor and effect of the said two provisions to the seventeenth article of said treaty, for cash, for the sum of not less than one dollar per acre; and whereas the said James F. Joy has proposed to become the purchaser of said lands, and has for that purpose offered to pay therefor the sum of one dollar per acre in cash, which is, in the opinion of the Secretary of the Interior, an eligible and satisfactory price for the same; and whereas the quantity of land embraced within the exception as aforesaid is as yet unascertained, by reason whereof the number of acres of said ceded lands which the Secretary of the Interior is authorized to sell in the manner and at the price aforesaid remains for the present unknown:

Now, therefore, I, Orville H. Browning, Secretary of the Interior, acting for and on behalf of the United States, and by virtue of the power upon me by the said treaty in that behalf conferred, do hereby agree to and with the said James F. Joy, to sell unto

him, his heirs and assigns, all of the hereinbefore-mentioned lands, which were by the seventeenth section of said treaty ceded in trust to the United States, with the exception of such parts thereof as are embraced within the tenor and effect of the said two provisos to the seventeenth section of said treaty, and which parts of said ceded lands are not included in this contract, at and for the sum of one dollar per acre in cash, payable and to be paid as soon as the number of acres hereby contracted to be sold is ascertained, and that on the full payment of the said purchase-money a patent or patents shall be in due form issued granting the same unto the said James F. Joy, his heirs and assigns: *Provided, however,* That this contract is made subject to the rights reserved by the nineteenth article of said treaty to such of the Cherokees as, being heads of families, resided, at the date of the ratification of said treaty, on any of the said ceded lands.

And the said James F. Joy hereby, on his part, agrees to pay unto the Secretary of the Interior, or to such other officer of the Government of the United States as may be authorized to receive the same, the sum of one dollar in cash for each acre of land by this instrument contracted to be sold, as soon as the number of said acres shall be ascertained, and also to pay, for the benefit of such of the Cherokees as, being heads of families, resided on any of the said ceded lands at the date of the ratification of said treaty, and desire to remove from the same, the value of their improvements thereon reserved to them by the nineteenth article of said treaty, as soon as such value is ascertained in the manner provided in said article.

In witness whereof I, Orville H. Browning, Secretary of the Interior, have subscribed my name and caused the seal of said Department to be affixed hereunto; and the said James F. Joy has hereto on his part, subscribed his name. All done in duplicate the day and year first above written.

[SEAL.]

O. H. BROWNING,
Secretary of the Interior.

JAMES F. JOY,

By N. BUSHNELL, *his Agent.*

The Emigrant Society then came forward and asserted title under their contract of August 30, 1866. Mr. Joy immediately offered to surrender his contract, but Secretary Browning refused to accept it, and notified him that he would be held to its fulfillment.

Subsequently Mr. Joy and the Emigrant Company, with the consent of the United States and of the Cherokees, compromised their dispute and the Emigrant Company transferred, June 6, 1868, all their right, title, and interest, whatsoever, to Mr. Joy. The arrangement was fully and formally ratified by the supplemental treaty of April 27, 1868, in which it is expressly provided that said Joy shall "assume and perform all obligations of the said American Emigrant Company, under said first-named contract, as hereinafter modified."

The contract and assignment referred to are as follows :

This agreement, made this 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part—

Witnesseth: That the said Harlan agrees to sell, and hereby doth sell, to the said company all that tract of land known as the "Cherokee neutral lands," in the State of Kansas, containing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and said Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all the beneficial interest therein, at the rate of one dollar per acre in lawful money of the United States, to be paid to the Secretary of the Interior in trust for said Indians as hereinafter set forth, viz: Twenty-five thousand dollars on the execution hereof, twenty-five thousand dollars on the approval of the surveys of said lands by the Commissioner of the General Land Office, and twenty-five thousand dollars on the 30th day of August, 1867; seventy-five thousand dollars on the 30th day of August, 1868, and seventy-five thousand dollars on the 30th day of August, 1869; seventy-five thousand dollars on the 30th day of August, A. D. 1870, and one hundred thousand dollars per annum thence afterward until the whole shall be paid; each of said several sums to draw interest at the rate of five per cent. per annum from the date of the approval of the surveys aforesaid.

The said American Emigrant Company agree to pay the said several sums of money, with interest thereon as aforesaid, to the said Secretary in Washington in lawful money of the United States as the same shall become due; the said interest on each and all deferred payments to be paid annually on the first day of July. The United States agree to cause said lands to be surveyed as public lands are usually surveyed in one

year from the date hereof, and on the payment of fifty thousand dollars to set apart for said company a quantity of said lands in one body in as compact form as practicable, extending directly across said tract of land from east to west and containing a number of acres equal to the number of dollars then paid, and from time to time to convey the same by patent to said company, or its assigns, whenever afterward requested so to do, in such quantities by legal subdivisions as said company shall indicate; and on the payment of each additional installment, with interest as herein stipulated, to set apart for said company an additional tract of land in compact form, where said company may request, but extending directly across the said neutral lands from east to west, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to said company or its assigns as hereinbefore described; and so on from time to time until the whole shall be paid; and no conveyance of any part of said lands shall be made until the same shall be paid for as provided in this agreement; but said company may make payments at earlier periods than those indicated, or pay the whole, principal and interest, and receive titles of tracts of land accordingly, if they shall so elect.

In witness whereof said Harlan has hereto affixed his name and the seal of the Department of the Interior of the United States, and the said Emigrant Company has also, by Franklin Chamberlin, a director of said company, thereto lawfully authorized by vote of said company, (copy whereof is hereto annexed,) and affixed the name and seal of said company the day and year first above written.

Executed in presence of—
W. PENN CLARKE.

JAMES HARLAN,
Secretary of the Interior.
AMERICAN EMIGRANT COMPANY,
By F. CHAMBERLIN,
Director and Attorney in fact.
HARTFORD, CONNECTICUT, June 6, A. D. 1868.

[SEAL.]

For value received, the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, do hereby assign and transfer unto James F. Joy, of the city of Detroit, Michigan, all the right, title, claim, or interests which the said American Emigrant Company has in or to a certain contract made and entered into on the 30th day of August, eighteen hundred and sixty-six, with James Harlan, Secretary of the Interior, on behalf of the United States, for the sale of the Cherokee neutral lands, and do transfer to said James F. Joy the credit and benefit of the twenty-five thousand dollars which was paid to the Secretary of the Interior in trust for said Indians at the execution of said contract on the 30th day of August, eighteen hundred and sixty-six, and to be applied as a portion of the seventy-five thousand dollars named in article first of the modifications in the supplemental article to a treaty dated April 27, eighteen hundred and sixty-eight, signed by N. G. Taylor, commissioner, and others.

In witness whereof the American Emigrant Company has hereto, by the hand of George M. Bartholomew, president of said company, thereto duly authorized, duly affixed its name and seal the date and year first above written.

[SEAL.] THE AMERICAN EMIGRANT COMPANY,
By GEO. M. BARTHOLOMEW,
President.

Witness:
J. B. GRINNELL.

[U. S. revenue five-cent stamp.]

The modifications made by the treaty of 1868 are

1st. That within ten days from the ratification of this supplemental article the sum of \$75,000 shall be paid to the Secretary of the Interior as trustee for the Cherokee Nation of Indians.

2d. That the other deferred payments specified in said contract shall be paid when they respectively fall due, with interest only from the date of the ratification thereof.

This treaty was ratified by the Senate on the 6th day of June, 1868.

The "neutral lands" have been ascertained by the final and corrected statement to contain, exclusive of certain reservations, 794,053.71.

Of this there were awarded to settlers,.....	Acres. 154, 395. 12
To James F. Joy, under his contract, by—	

Patent dated October 31, 1868.....	Acres. 108, 169. 71
Patent dated January 6, 1869.....	3, 491. 48

	Acres.	
Patent dated February 19, 1869.....	113, 478. 32	
Patent dated November 2, 1870.....	414, 519. 08	
		Acres.
		639, 658. 59
		794, 053. 71

Of the amount awarded to settlers 149,644.68 acres have been paid for and patented to them, realizing the aggregate sum of \$286,948 19 $\frac{1}{2}$, leaving on the 1st November, 1870, 4,750.44 acres, appraised at \$9,938 82, for which the Government is ready to issue patents to the settlers entitled when the purchase-money is paid.

For the part patented under the Joy contract he has paid to the Department in <i>full payment for the land</i>	\$638, 893 68
With interest on deferred payments amounting to.....	47, 627 27
Total.....	586, 520 95

The whole number of settlers on the 11th August, 1866, was ascertained to be 1,031. At the present time it is supposed there are about 2,500. Deducting the 1,031 who are provided for by the treaty of 1866, there remains about 1,500 who seek title from some source to their respective settlements. Of these, as stated by Mr. Joy, about 900 have taken title, or contracted for title from him. The balance, numbering about 600, are represented here by an agent who denies, on their behalf, the validity of all the action of the United States respecting these lands for more than half a century, not only in its treaties, but in its contracts and patents, and asks Congress to declare them all to be null and void and of no effect.

It is respectfully submitted that this extraordinary position is wholly untenable. It is in direct conflict with the policy and practice of the Government from its earliest history. It contravenes the clearest decisions of the courts, and the fixed principles of equity and common justice, and would involve the Government in the most flagrant repudiation of its contracts and the violation of its plighted faith.

The title of the Cherokees, whether regarded as a treaty or patent title, or both, rests essentially upon the treaty of 1835, and either is amply sufficient. Both parties were fully competent to contract, and they did contract. As a treaty title it is precisely similar to that by which the United States holds the "Louisiana purchase," Florida, California, and Alaska. The patent title was merely cumulative, the title was perfect without it. The Indian tribes have been treated by the Government as distinct nationalities, and it is too late, as respects any past transaction, to reverse the action. It is for Congress, in the exercise of its political sovereignty, to say when they will cease to recognize the tribes as distinct powers and absorb them into the general mass of citizens. But until it is done, all departments must respect and abide by the contracts which have been made with them. The Government having realized the advantages of the contract, cannot repudiate its obligations. Such new policy for the future is reasonable and proper, but as applied to the past is full of repudiation and dishonor.

In *Cherokee Nation vs. The State of Georgia*, 5 Peters, 1, decided in 1831, the court say :

The Cherokees are a State. They have been uniformly treated as a State since the settlement of the country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of

being responsible in their political character for any violation of their engagements or for any aggression committed on the citizens of the United States by any individual of their number. Laws have been enacted in the spirit of these treaties. *The acts of our Government plainly recognize the Cherokee Nation as a State*, and the courts are bound by those acts.

Treaties have been made with the Cherokees on November 28, 1785, October 2, 1790, July 22, 1791, November 17, 1792, October 24, 1804, October 25, 1805, October 27, 1805, January 7, 1806, July 8, 1807, September 11, 1807, March 22, 1816, July 8, 1817, September 27, 1819, May 6, 1828, February 14, 1833, December 29, 1835, September 19, 1846, August 11, 1866, June 10, 1868; and there are doubtless others which I have not cited. These with the Cherokees alone. There are innumerable treaties with other tribes, involving *the conveyance of land* and all the important and intricate questions of title, possession, and government which have arisen in the intercourse of the tribes with the people and Government of the United States.

To deny the power of the Government, and treat with the Indian tribes, and reciprocally to grant and receive conveyances of title, would be to unsettle the titles of whole provinces and states. If the Cherokee title be not valid, the same reasoning would invalidate the title of millions of acres in sections of the country now densely populated, and covered with towns and cities, and would be in the face of the whole current of judicial decisions.

In "*Cherokee Nation vs. Georgia*," before cited, it is expressly held that—

The Indians are acknowledged to have an unquestionable and, heretofore, an unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government.

In the case of the Kansas Indians, (5 Wallace, 737,) it is held that "rules of interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them."

In the same case, speaking of the Shawnees who *ceded their very valuable lands in Ohio to the United States* by the treaty of 1825, (7 Stat. L., 284,) and removed from them to the Shawnee reservation in Kansas, the court says:

The well-defined policy of the Government demanded the removal of the Indians from organized States, and it was supposed at the time the country selected for them was so remote as never to be needed for settlement.

The court enforces the covenants of this treaty, and (p. 757) says:

Their situation can only be changed by *treaty stipulation*, or a voluntary abandonment of their tribal organization. As long as the United States recognize their natural character they are under the protection of treaties and the laws of Congress.

A case not yet reported, but an abstract of which has been furnished, has been recently decided in Kansas, arising under the Kickapoo treaty made in 1862. This is a *small and insignificant band* of Indians.

The court says:

It may seem to border very closely upon the ludicrous, if not the ridiculous, to see the Government of the United States gravely making a treaty with a few half-naked, half-starved savages, as though these savages were a great nation, and then have it claimed that the treaty thus made is a part of the supreme law of the land, paramount to any act of Congress and to any constitution or law of any of the States, and yet no one at this day will question the power of the Government or validity of the treaty.

But if it can be supposed that the action of Congress was necessary to the validity of the treaty, there is superabundant evidence of its legislative recognition. By the act of March 3, 1835, money was appropriated to defray the expenses which had been or might be incurred in any negotiations with the Cherokees. The treaty of 1835 was recog-

nized by Congress in 1836 by the act which appropriated \$4,500,000—deducting \$500,000 for the “neutral lands”—to carry out the treaty.

In 1845 appropriations were made to carry into effect the provision of the treaty.

In 1845 appropriations were made of money to pay for valuations ascertained and reported by Upton and Sumney and other official assessors, as ordered by the commissioners under the treaty of 1835, (Stat. L., 673.)

In 1856 (Stat. L., 80) an act was passed appropriating \$5,724 35 for payment of reservations, preëmptions, and rents, under the treaty of 1835.

From the making of the treaty down to the time of the breaking out of the civil war the Government maintained troops upon the land for the express and avowed purpose of fulfilling the treaty obligations of the United States to keep “settlers” off the land; and in almost every Congress acts have been passed to provide for expenses incurred in fulfilling the obligations of the treaty. No allegation is made that the Cherokees have not fulfilled their part of the contract.

Your committee believes that there is no sound distinction can be taken between the right of the Government to conclude treaties with Indian tribes, touching questions of internal policy and government, that does not equally include the right, both to receive and to convey parts of the public domain. It is difficult to see why, if the tribes are nationalities at all, and if they are treaty powers, having rights and possessions, which it is important the nation should possess, why other rights and other possessions, which the Government may advantageously exchange or sell, may not be the subject of reciprocal exchange or sale. No such distinction has yet been recognized by the courts, nor does any good reason appear to your committee why any should made.

But assuming for the argument that the Cherokee title, and those derived under it, are all void and of no effect, and that the lands are “public lands” of the United States, and subject to preëmption settlement, it would be equally unavailing to the intruding settlers.

Under the act of July 15, 1866, (p. 236,) every odd section for ten miles on each side of the railroad *would have become the property of the railroad company.*

The act provides, “that in case it shall appear that the United States, when the line of the road is definitely located, have sold any section or any part thereof granted under this act, or that the *preëmption or homestead settlement* has attached to the same, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purpose of filling up the grant from the public lands of the United States nearest to the sections granted, so much land as shall be equal to the amount of such lands so sold, reserved, or otherwise appropriated.”

The road runs as near as may be through the center of the “neutral lands,” which is only twenty-five miles wide. If the alternate sections along the line of the road were disposed of the Government would be bound to make up the quantity granted to the company out of the lands nearest to the road. North of the neutral lands there are no Government lands remaining; and the nearest sections of the neutral lands would be necessary to fill the grant. *All the sections* not confined to odd or even sections would be subject to the grant and pass by the act. It would follow that, if the Cherokee title be void, and the lands are Government lands, that the whole, or nearly so, of the “neutral lands” would pass to the railroad company, under the terms of the act granting it lands to aid in constructing the road.

Your committee, therefore, without further elaboration of the argument, conclude:

1. That the title to that portion of the "neutral lands" conveyed by the United States, by the several patents hereinbefore referred to under the contract with James F. Joy, is valid and indefeasible.

2. That the "settlers" who entered upon the neutral lands after the ratification of the treaty of 1866 are trespassers, who have no title which they can maintain against the patents issued pursuant to the contract with said James F. Foy.

All of which is respectfully submitted.

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