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# Letter of the Secretary of the Interior, in relation to the construction of the Fifteenth and Sixteenth Articles of the Treaty of July 19, 1867, with the Cherokee Nation, addressed to Hon. James Harlan, Chairman of the Committee on Indian Affairs, United States Senate.

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# LETTER

OF

# THE SECRETARY OF THE INTERIOR,

IN RELATION TO

*The construction of the fifteenth and sixteenth articles of the treaty of July 19, 1867, with the Cherokee Nation, addressed to Hon. James Harlan, chairman of the Committee on Indian Affairs, United States Senate.*

FEBRUARY 27, 1871.—Referred to the Committee on Appropriations, to accompany amendments intended to be proposed by Mr. Harlan to the bill H. R. No. 3064.

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., February 24, 1871.*

SIR: In construing the fifteenth and sixteenth articles of the treaty concluded with the Cherokee Nation July 19, 1866, I arrived at a conclusion in accordance with the views of the Cherokee delegates, who insist that none but *civilized* Indians can lawfully settle within their country east of the ninety-sixth meridian of longitude.

There is no conflict of opinion on the right of the United States to settle west of that meridian friendly Indians; but some difficulties occur in giving practical effect to the sixteenth article, by which that right is expressly conferred.

The Great and Little Osages have agreed to leave their diminished reservation in Kansas and to settle within the Cherokee country, but are unable to agree with the Cherokees in regard to the value of the district which will be probably assigned to them as a permanent home. The President is authorized to fix the price in case of a disagreement between the parties in interest in regard to it.

The first clause of the sixteenth article, in stipulating for the right of the United States to settle friendly Indians, provides that the part of the Cherokee country west of the ninety-sixth meridian shall be taken in a compact form not exceeding in quantity 160 acres for each member of each of said tribes thus to be settled; "the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee-simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide."

The second clause declares that the lands thus disposed of shall be paid for, &c.

It would seem that the district for any tribe must be distinctly marked and set apart before the President can determine the price of the lands included within it, should such tribe and the Cherokees fail to agree. The Cherokees, by their delegation, have requested the President to determine the price of their lands west of said meridian, and the first sec-

tion of the inclosed draught empowers him to do so, and makes his decision final and conclusive.

In regard to the conveyance of a district in fee-simple to a friendly tribe, permit me to remark that the Cherokees have a qualified fee in their lands, subject only to a collateral limitation. They hold them by patent, and their estate therein is determinable upon their extinction as a nation or their abandonment of the lands. On the happening of either event, the lands revert to the United States. Now, it was not the object of the treaty of 1866 to secure to the Indians who should thereafter settle within the Cherokee country a higher interest or a less defeasible estate in any particular district than was vested in the Cherokees themselves. A transfer was to be made only of the Cherokee title to the soil, subject to all its limitations and conditions; but the contingent reversionary interest of the United States was not to be thereby impaired. There is a difficulty in making the transfer of the Cherokee title. As their country is subject to the jurisdiction and sovereignty of the United States, a specific provision for the conveyance of that title can undoubtedly be made by Congress, and it is, in my opinion, highly expedient. All controversy about the form and sufficiency of the conveyance by the Cherokees, and any injury resulting from their failure to make it promptly, will be thus avoided, and the rights of all parties in interest secured. When friendly Indians have been or shall be settled west of the ninety-sixth meridian, the district assigned to them in the Cherokee country should be distinctly marked, and the title thereto conveyed to them. This is required by the treaty. I propose, as a simple but effectual and complete mode of securing the object, that the plat of survey, when approved by the Secretary of the Interior, and filed and recorded in this Department, shall operate to vest in such Indians the Cherokee title to the district upon which they have settled.

Should these views meet the approval of your committee, I trust that you will present the subject to the early consideration of the Senate.

Very respectfully, your obedient servant,

C. DELANO,
*Secretary.*

Hon. JAMES HARLAN,
*Chairman Committee on Indian Affairs, U. S. Senate.*

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